

Workplace Law: Updates and Best Practices 2026

Anne K. Gallop
June 19, 2026

Norton Rose Fulbright Canada LLP



Contents

- 01 **Legislation Update**
- 02 **Alcohol & Drugs**
- 03 **Workplace Investigations**
- 04 **Remote Work**
- 05 **Artificial Intelligence**

1. Legislation Update

Recent Legislative Changes

Bill 30 (*Working for Workers Seven Act, 2025*)

Topic & Legislation	Change	In-Force Date
ESA – Job Seeking Leave	Three-day unpaid leave for job search activities following a mass termination notice (50+ employees).	Nov 27, 2025
ESA – Temporary Layoffs	Extended layoff of 35 or more weeks in any 52-week period, but less than 52 weeks in any 78-week period, permitted with employee agreement and Director approval.	Nov 27, 2025
OHSA – Administrative Penalties	<p>MOL inspectors may issue administrative monetary penalties (AMPs) for OHSA contraventions.</p> <p>So far, limited only to a narrow compliance issue in Government of Ontario procurement of construction work.</p>	Nov 27, 2025
OHSA – Defibrillators	WSIB authorized to reimburse employers for required workplace defibrillators (subject to future regulations).	Nov 27, 2025
WSIA – Compliance & Penalties	Introduction of new offences, increased fines (up to \$750,000), and expanded aggravating factors for non-compliance.	Nov 27, 2025

New recruitment rules in Ontario

Effective January 1, 2026

Pay Transparency

Publicly advertised job postings must include **expected compensation** for the position or the **range of expected compensation** for the position. This applies to positions with expected compensation less than \$200k, and the maximum range is \$50k.

Canadian Experience

Publicly advertised job postings or application forms must not include **any requirements related to Canadian experience**.

Artificial Intelligence

Publicly advertised job postings must disclose any use of artificial intelligence **to screen, assess or select applicants** for the position.

Job Vacancy

Publicly advertised job postings must include a statement as to whether the posting is for **an existing vacancy**.

Interviewee Follow-Up

If an employer interviews an applicant for a publicly advertised job posting, the employer must, within 45 days of the last interview, **inform the interviewee as to whether a hiring decision has been made for the job posting**.

Proposed Legislative Changes

Bill 105 (*POWER Act, 2026*)

Topic & Legislation	Change	In-Force Date
ESA – Complaints & Enforcement	Employment standards officers may investigate complaints relating to job postings, electronic monitoring policies, temporary help agencies, and any other prescribed matters.	On Royal Assent
ESA – Uniforms	Employers prohibited from requiring employees to pay for uniforms or prescribed items, except in limited circumstances (e.g., loss or damage).	Jan 1, 2027
ESA – Collections	ESA enforcement recoveries will be prioritized to employees first, before government allocation.	To be proclaimed
LRA – Construction (Displacement)	Timeline for union displacement applications reduced from 2 months to 1 month.	To be proclaimed
LRA – Construction (Termination)	Timeline for applications to terminate bargaining rights reduced from 2 months to 1 month.	To be proclaimed
OHSA – Protective Headwear	Potential for government reimbursement for prescribed protective headwear.	To be proclaimed
WSIA – Benefits Beyond Age 65	WSIB may extend benefits beyond age 65.	To be proclaimed
WSIA – Benefit Rate Increase	Increase in loss of earnings benefits from 85% to 90%.	To be proclaimed
WSIA – Expanded Coverage	Expansion of mandatory WSIB coverage to residential care facilities and group homes.	To be proclaimed

2. Alcohol & Drugs Update

Misconduct while intoxicated can be “wilful”

Facts

- Employee became extremely intoxicated at a work event and engaged in inappropriate conduct toward colleagues.
- His actions violated workplace policies and explicit instructions to avoid excessive drinking.
- He was summarily dismissed after the event.
- He complained to the MOL. An ESO ordered payment of termination pay / severance pay. Employer sought review before the OLRB.

OLRB Decision

- **Order to pay reversed.** Employee had engaged in “wilful misconduct”. He was not entitled to termination pay/severance pay.
- Lack of intention to cause harm is irrelevant. All that matters is whether disobedience of employer instruction and policy was wilful.
- Intoxication does not indicate lack of wilfulness unless medical evidence shows “psychotic, delusional and involuntary conduct”.

Misconduct while intoxicated can be “wilful”

Takeaways



Work parties are still work

Employees may be required to adhere to workplace policies and employer instruction regarding alcohol consumption at work-related events.



Intoxication is not an excuse

At least for ESA purposes, an employee cannot argue they did not intend their actions while drunk unless they have medical evidence proving lack of voluntariness (a very high standard).



Accommodation is another matter...

Where an employee claims their misconduct is related to a substance use disorder the employer will need to confirm via medical evidence and potentially begin the accommodation process.

Prompt response is critical to drug-related safety and discipline

Facts

- Grievor worked in a safety-sensitive manufacturing environment. Workplace policies included prohibition on working under influence of intoxicants like cannabis.
- Grievor was observed by a manager off-site during a break smoking what smelled like cannabis.
- Manager waited until the next day to report suspected cannabis use. There were no related safety incidents.
- In disciplinary meeting, grievor denied smoking cannabis but was insolent. Grievor was dismissed.

Arbitrator's Decision

- Arbitrator found grievor had been smoking cannabis, contrary to policy, lied about doing so and was insolent.
- However, there was no evidence of impairment **because incident was not reported until the next day**. There were no safety incidents. Grievor has a “mostly” discipline free employment history.
- Given lack of evidence of impairment dismissal was unreasonable. 3-month suspension substituted.

Prompt response is critical to drug-related safety and discipline

Takeaways



Setting enforceable standards

Enforcing prohibitions on work-related drug use or drug-related impairments starts with policies and training. Employees and management must be clear on what is prohibited, and the consequences for breach of drug use rules.



Current impairment is a focus

In dismissal grievances some arbitrators require more than proof of drug use at work in breach of policy – they require proof of impairment. Lack of evidence of current impairment – either through direct observation or “reasonable cause” testing – can undermine a case for summary dismissal.



Prompt response is critical

When an employee is suspected of drug use at work an immediate response is required to (1) avoid the hazard of an impaired employee in the workplace and (2) confirm drug use and current impairment. Both of these objectives are lost if management fails to act promptly.

3. Workplace Investigations

Why Investigations Matter

01

Investigations may be legally required

- *Occupational Health and Safety Act*, RSO 1990, c O.1
- *Human Rights Code*, RSO 1990, c H.19

02

Investigations support defensible actions

- Basis for discipline/termination decisions
- Provides a defensible record in later litigation

Core Principles of Effective Investigations



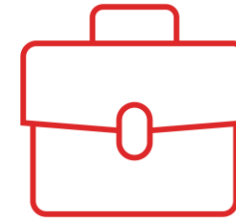
Timely:
Act quickly and complete within required timelines.



Objective & Unbiased:
Open mind, no conflicts.



Thorough & Fair:
Consider all evidence and perspectives.



Legally Compliant:
Follow legislation and internal policies.



Qualified Investigators:
Trained, neutral.

The Investigation Report

Objective and Complete

Reports must be objective and evidence-based. One-sided investigations invite scrutiny on fairness and bias.

Stick to Facts – Not Recommendations

Reports should set out findings of fact only – no recommendations on discipline or outcomes.

Apply the Civil Standard

Use the civil standard of balance of probabilities.

Assess Credibility on the Evidence

Make explicit credibility findings where accounts conflict. Show a clear rational path from evidence to conclusion.

Link Evidence to Conclusions

Clearly link evidence to findings, address minor discrepancies, and demonstrate transparent reasoning.

Identify Breaches of Workplace Rules

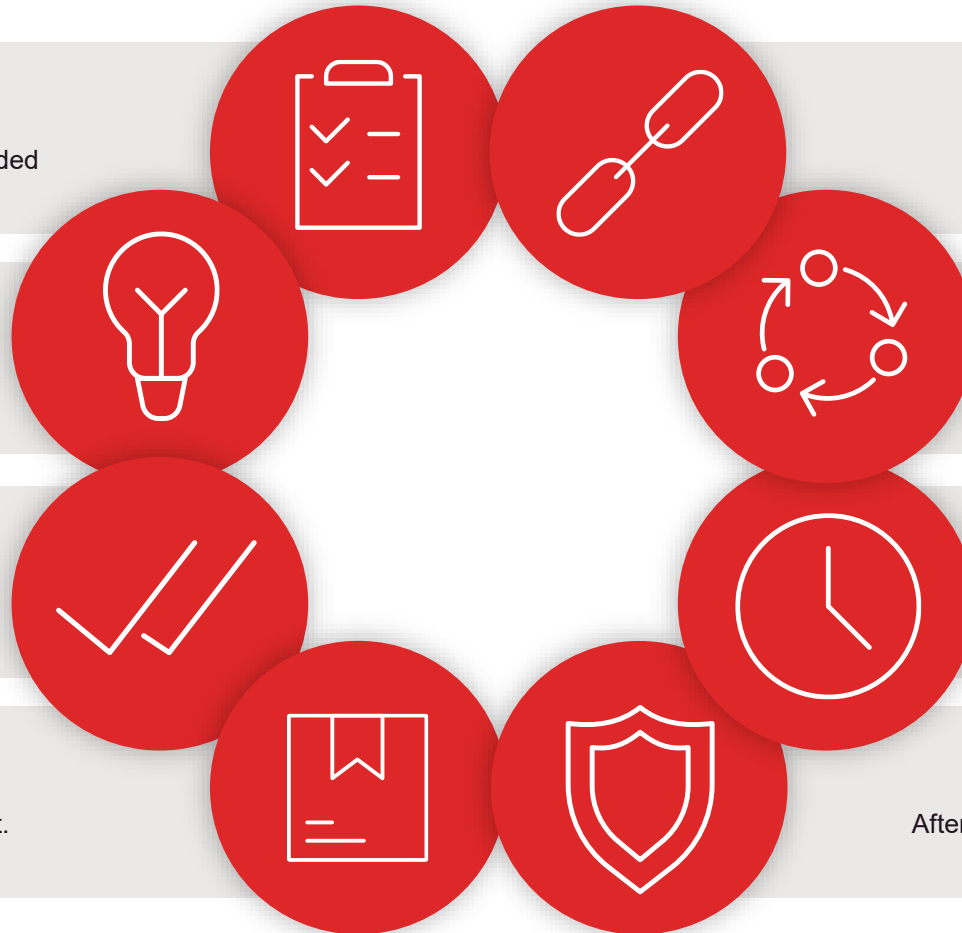
Be precise in characterizing misconduct. Vague findings of breach weakens the case for discipline.

Take the Time to Ensure Quality

Prioritize accuracy over speed. A poorly reasoned report undermines otherwise justified discipline.

Procedural Closure

After investigation, thank participants, reinforce confidentiality, and remind employees that retaliation is prohibited.



Reliance on Faulty Investigation Report Undermines Employer Action

Facts

- Grievor made four allegations of harassment against co-workers.
- Investigator interviewed Grievor first, then other parties. Grievor was not given opportunity to reply to other evidence or to review preliminary report.
- Investigation report found one allegation substantiated but provided no analysis of remaining three allegations.
- Employer accepted final report. Employee grieved sufficiency of investigation, employer denied grievance on the basis investigation was fair and now complete.

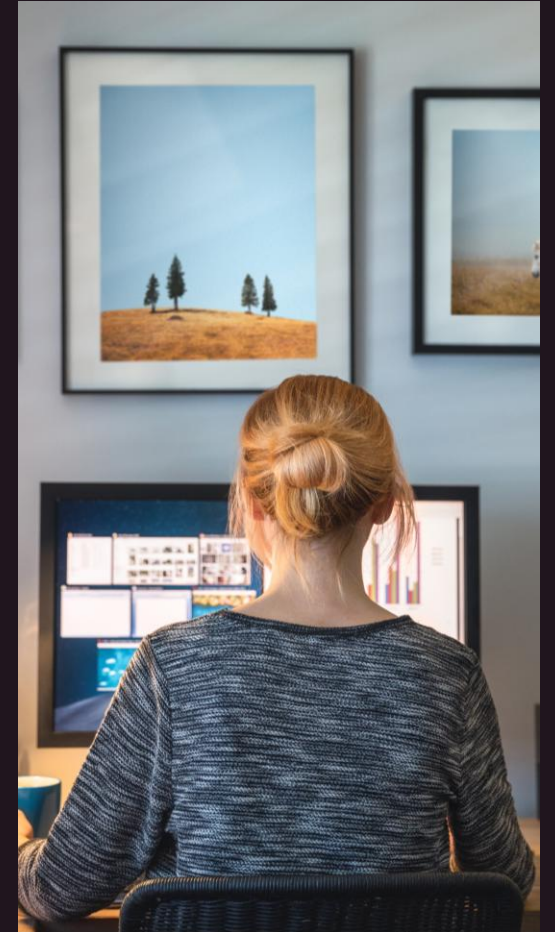
Federal Court Decision

- **Investigation was unreasonable.** Court concluded:
 - Grievor should have had opportunity to comment on evidence from other sources.
 - Grievor should have had opportunity to comment on preliminary investigation report.
- Court ordered employer to initiate a new investigation and to redetermine the allegations
 - New investigation must cure defects of earlier one (i.e. opportunity to comment on evidence and review report)

4. Remote Work Update

Remote Work: Two Perspectives

- There are two important perspectives to take when considering remote work:
 - Remote work as a matter of **contract**.
 - Remote work as an **accommodation**.



Remote Work as a Matter of Contract (Non-Union)

- Work location (in-person, hybrid or remote work) is usually an **essential term** of the employment contract.
- Essential employment contract terms cannot be changed unilaterally:
 - If an employee refuses to attend work in-person, as the contract requires, they might be terminated for **cause** or **job abandonment**.
 - If an employer insists on requiring an employee to attend work in-person, contrary to a remote or hybrid work agreement, the employee might assert **constructive dismissal**.
- In recent years there has been **growing tension** between employee preference for remote work and employer return-to-office directives.

A Need for Caution in RTO Directives

Refusal of RTO Directive Was Not “Repudiation”

- Employee was hired remotely during the pandemic.
- Employer recalled staff to office and employee asked for commuting allowance due to driving costs.
- The employer failed to respond. The employee insisted on working remotely until the allowance was discussed.
- The employer terminated the employee for “repudiation”.
- Court found the employee did not give an ultimatum of “allowance or I quit”, she just wanted communication. The termination was **without cause**.
- **Takeaway:** Absent clear recall rights, RTO may require more communication and negotiation with employees.

RTO Directive Was Constructive Dismissal

- Employee moved to remote work to care for ill child, with oral approval of management.
- Management changed and insisted employee return to office, tell employee the decision was final.
- Court found original oral agreement was an amendment to employment contract. RTO directive without reasonable notice was a **constructive dismissal**.
- **Takeaway:** Even oral remote work agreements are enforceable. RTO may require notice or renegotiation.

Remote Work as Human Rights Accommodation

- Employers have a **duty to accommodate** where:
 - An employee has a protected characteristic (e.g. disability; family status; etc.);
 - The employee experiences an adverse impact (e.g. unable to meet a key job duty or enjoy a benefit); and
 - There is a connection between the protected characteristic and the adverse impact.
- Accommodation means **making changes to rules, practices or facilities** with the goal of:
 - Allowing the employee to participate fully in the workplace.
 - Treating the employee fairly, based on their needs as opposed to any stereotypical assumptions.
- There is a limit to the duty to accommodate – **undue hardship**.
- Failure to accommodate to the point of undue hardship **is the basis for a human right complaint!**

Remote Work is an Accommodation Option – But There are Limits

Remote Work Was Not (Entirely) Undue Hardship

- Grievor, working as an analyst, had long mental health decline. Physician recommended remote work.
- Employer asserted in-office work was a *bona fide* requirement to facilitate direct communication.
- Arbitrator held remote work was not undue hardship. One fixed in-office day per week was reasonable. Allowing grievor to vary attendance was undue hardship.
- **Takeaway:** Undue hardship is contextual. Some amount of remote work may be reasonable in light of an employee's restrictions, available resources, etc.

Remote Work Was Undue Hardship

- Employee, medical secretary at a small clinic, requested remote work due to health and family care concerns.
- Employer refused due to patient confidentiality concerns, lack of existing remote systems, and a downturn in work.
- Court found remote work would be undue hardship, beyond employer's resources on short notice.
- **Takeaway:** Undue hardship is contextual. Small employers may not be able to offer remote work supports open to larger employers.

5. The Legal Landscape of Workplace AI

A Slow Start in Canadian Workplace AI Regulation

- In Canada, there are very few laws dedicated to AI deployment in the workplace:
 - **Federally:** The *Artificial Intelligence and Data Act* (AIDA) died on the Order Paper in January 2025.
 - The federal government announced its AI strategy on June 4, 2026. That strategy does not suggest workplace AI regulation is coming.
 - **Ontario:** The *Employment Standards Act, 2000* requires that employers (1) disclose in public job postings the use of artificial intelligence to screen, assess or select applicants for the position; and (2) adopt a policy on employee monitoring that discloses the existence and purpose of such monitoring.
 - **Quebec:** Where personal information is used to make an automated decision, an affected individual must be informed of the decision and the factors that led to it, and they can ask for the decision to be reviewed by a person.
 - **Voluntary codes or best practices:** Privacy commissioners, human rights tribunals and the federal government have published guidance on AI deployment generally, or in the workplace, but these are not strictly binding.
 - **E.g.:** “Principles for the Responsible Use of Artificial Intelligence” published by IPCO and OHRC.

In the Absence of Workplace AI Laws, We Should Consider:

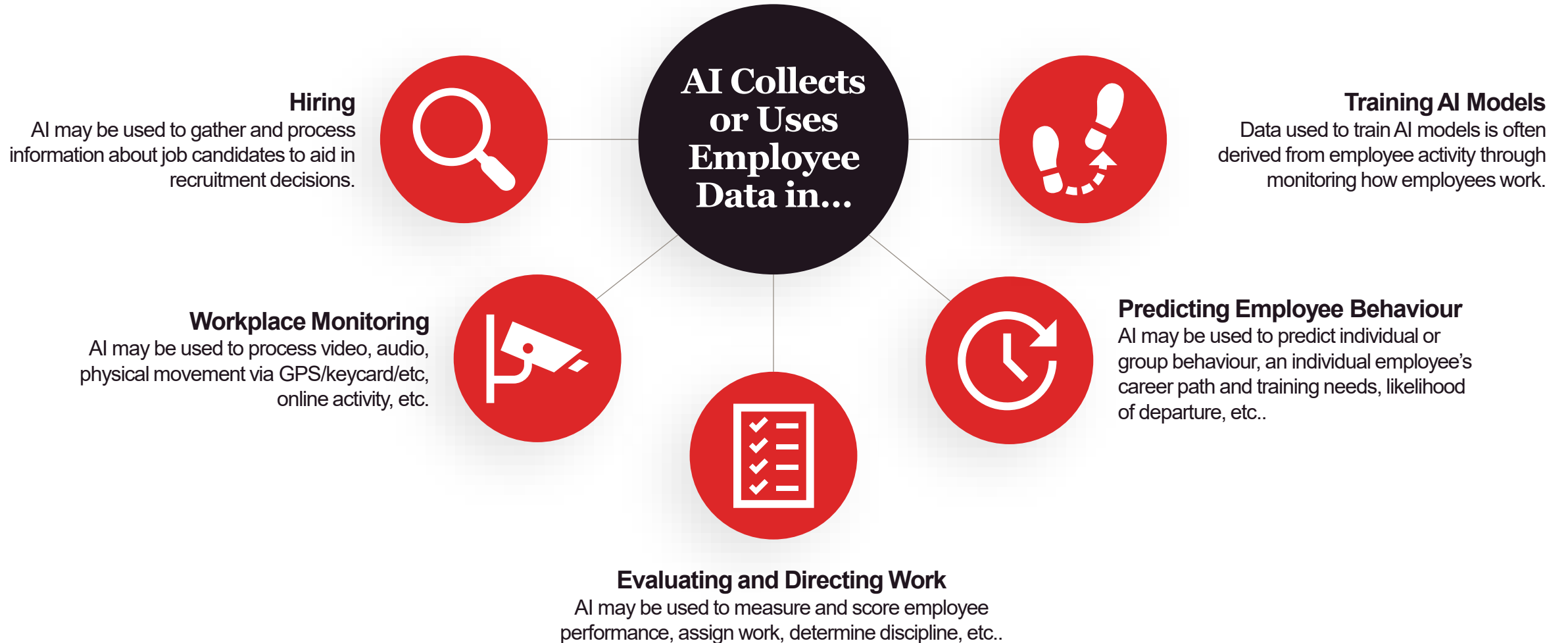
Privacy Laws

- Privacy law is a patchwork. The following *might* apply:
 - Privacy legislation (e.g. PIPEDA) in FED/BC/AB/QC applicable to **private sector employees**
 - **Collective agreement** protections for “privacy interests” of unionized employees
 - Statutory torts or civil torts
- Privacy laws limit employer collection, use and disclosure of employee **personal information**.

Human Rights Laws

- Human rights laws are set out in dedicated statutes:
 - E.g. *Human Rights Code*, RSO 1990, c H.19
- Prohibits discrimination related to protected grounds (gender, race, disability, age, place of origin, etc.)
- Prohibited discrimination can occur even if it is not intended!

Workplace AI Interactions With Employee Personal Information



Privacy Compliance for Workplace AI

Transparency	Disclose the collection and use of employee personal information in workplace AI.
Consent	Obtain informed consent from employees for collection, use and disclosure of personal information. Exercise caution in relying on consent exemptions in privacy statutes.
Limiting collection, use, disclosure and retention	Limit information cycle through AI to only those purposes disclosed (and if necessary consented to) and retain for only so long as necessary.
Accuracy	Create systems or human oversight to ensure accuracy of personal information inputted into or generated by AI systems.
Access and Security	Limit access to information to only those necessary. Implement appropriate safeguards to prevent unauthorized access or data breaches.
Accountability	Employers will be held accountable for AI tools they deploy. Internal tools should be tested, and vendors should be scrutinized. Internal responsibility should be established.

Misuse of Personal Data to Train AI

- On **May 6, 2026** four Canadian privacy commissioners (FED/BC/AB/QC) released a joint report finding that OpenAI had breached Canadian privacy law.
- OpenAI built its early ChatGPT models in part on the personal information of Canadians scraped from the internet. According to the report, OpenAI failed to:
 - Obtain appropriate informed consent to collect, use and disclose personal information for training
 - Meet required standards of limited collection, transparency, accuracy, access, etc.
- **Similar use of employee data in the workplace may attract regulator attention!**

OpenAI didn't respect Canadian privacy law when it trained ChatGPT: investigation

Following investigation, OpenAI took steps to resolve commissioners' concerns

[Catharine Tunney](#) · CBC News · Posted: May 06, 2026 4:00 AM EDT | Last Updated: May 6



Listen to this article ⓘ

Estimated 5 minutes



Prima Facie Discrimination Risks in AI

- Workplace AI may discriminate where it creates an adverse impact on an employee based on a protected characteristic.
 - For example, gender or disability might play a role in a decision to hire, assign work, deny promotion, discipline, etc.
- Directing an AI tool to directly target protected grounds is unlikely. A greater risk is **proxy discrimination**.
- A **proxy** is a facially neutral piece of information that leads to disproportionate harm for a member of a protected class. AI tools can make **unexpected associations**, even while respecting defined characteristics.
 - A resume screener trained mostly on male resumes does not recognize resume experiences of female candidates.
 - *Female candidates are disproportionately excluded.*
 - A performance management tool does not account for disability accommodations on job performance.
 - *Employees with disabilities receive lower performance scores.*
- **If an employer cannot justify these outcomes, liability for prohibited discrimination may result.**

Minimizing Discrimination Risk in Workplace AI

Transparency

Disclosure may be required by law (e.g. under privacy legislation or in Ontario job postings) and can lend credibility to good faith use of AI tools.

Impact assessments and bias audits

Assess impact of automated decision-making before selecting AI tools. Use internal or external providers to test AI tools for biased outputs and repeat periodically.

Explainability

Choose “white box” AI tools that allow users to understand how decisions are made, to avoid negative inference of bias via proxy grounds.

Human oversight

Ensure human decision makers are “on the loop” or “in the loop” to monitor and/or approve key decisions like hiring, discipline, etc. to avoid highest risk outcomes.

Accommodation by design

Design or source AI tools that have built-in consideration for protected characteristics like disability in performing automated tasks like performance review or work allocation.

AI Discrimination in Hiring

- *Mobley v. Workday, Inc.* is an ongoing class action claim in the United States.
- Plaintiffs allege that the AI-powered recommendation system embedded within Workday discriminates against older applicants.
 - Despite meeting posted criteria, candidates are allegedly screened out before human review
- This is an important test case. Thousands of companies use Workday's hiring platform. Millions of job applications may be implicated.
- **Whatever the outcome, AI algorithms are now a target of discrimination litigation globally.**



Getting the Basics Right:
Plan to Hire

Important Considerations in Deploying Workplace AI

- ✓ Advance impact assessment and ongoing security/bias testing
- ✓ Transparency / notice of use
- ✓ Limiting collection, use and disclosure of personal information to disclosed purposes
- ✓ Guarding personal information with appropriate security
- ✓ Ensuring accuracy of inputted information and explainability of decisions
- ✓ Requiring human oversight or approval of processes that significantly impact employees
- ✓ Adequate training of anyone using or exposed to AI
- ✓ Providing for inquiries/appeals of AI-based decisions



nortonrosefulbright.com

Norton Rose Fulbright provides a full scope of legal services to the world's preeminent corporations and financial institutions. The global law firm has more than 3,000 lawyers advising clients across locations in the United States, Europe, Canada, Latin America, Asia, Australia, Africa and the Middle East. With its global business principles of quality, unity and integrity, Norton Rose Fulbright is recognized for its client service in key industries, including financial institutions; energy, infrastructure and resources; technology; transport; life sciences and healthcare; and consumer markets.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

nortonrosefulbright.com