

Pensions and employment mid-year review

Against the backdrop of a rapidly evolving landscape in 2025, we review the top trends that are shaping the future of workplace law and highlight key takeaways for employers.



A French version is available upon request.

The first half of 2025 has brought change and challenges to the Canadian employment law landscape. This is why our employment team has put together its latest report, exploring 10 issues that are top-of-mind in 2025 as employers and sponsors chart their path ahead.

- 1. Divergence in Canada and U.S. DEI policy is creating issues for cross-border companies.** As the calculus on DEI continues to change in the U.S., many Canadian and cross-border companies will want to review their internal DEI policies, ensuring programs continue to be merit-based and are designed to provide equal access to opportunities for all applicants and employees.
- 2. Tariffs may require some employers to consider layoffs and pay cuts.** While tariffs may affect employers to varying degrees and at different times, employers anticipating a downturn in business should begin to develop a strategy now to ensure compliance with applicable laws in the event of a need for cost-cutting measures affecting their workforces.
- 3. U.S. immigration orders may have cross-border impact.** Since taking office, President Trump has signed numerous executive orders meant to reshape U.S. immigration policy, which will have notable impacts on companies with cross-border operations and a U.S. workforce, including potential labour shortages and additional due diligence scrutiny in M&A transactions.
- 4. Executive compensation considerations for public companies.** Recent proxy season developments, including those around compensation programs, may help inform how public companies position themselves for success.

5. **AI is being incorporated into the workplace, bringing new risks.** While AI has the potential to streamline operations and enhance efficiency, its use raises important legal considerations and obligations that present themselves throughout the employment lifecycle.
6. **Workplace investigations are now more prevalent and complex.** Internal investigations are on the rise and are becoming more complex due to increased judicial scrutiny and expanded organizational expectations. Companies need to strike the right balance on when and how to investigate.
7. **Getting CEO succession right remains business critical.** The use of a formal onboarding process and transition plan can significantly improve outcomes during a CEO transition, increase clarity around the role and its expectations, provide structure, and allow stakeholders to provide broad guidance to help proactively identify organizational risks and challenges.
8. **Ensure your director compensation programs work for dual taxpayers.** Differing tax rules in Canada and the United States could pose issues for dual-taxpaying directors. In the instance that a retiring board member is a U.S. and Canadian taxpayer holding DSUs, organizations need to ensure that the director's retirement doesn't trigger any unintended tax consequences.
9. **Increasing pay transparency obligations.** In the United States and Canada, legislation has been introduced in several jurisdictions to enhance pay transparency. Employers should familiarize themselves with the pay transparency requirements in their jurisdiction and ensure they comply, paying special attention to remote work positions and the additional jurisdictions this may entail.
10. **Income Tax Act changes are affecting pension arrangements.** The federal government made several amendments to the *Income Tax Act* and *Income Tax Regulations* that employers and sponsors will want to review to ensure their pension plans align with the new rules.

Watch members from our Pensions and Employment Practice discuss these trends, covering the changing expectations and developments around employment arrangements, executive compensation programs, workplace investigations and more.

08:02

Lisa Talbot (00:05): Hello, I'm Lisa Talbot, co-head of Torys' pensions and employment practice. We've just released our mid-year review where we share with you 10 key areas of importance to organizations this year, from tariff impacts and cross-border tax issues, to pay transparency and workplace investigations. We hope you will find our report useful as you reflect at the mid-point of what has already been a very eventful year.

Trend 1: CEO succession planning in focus

Lisa Talbot (00:30): One takeaway from our years of collective experience here at Torys is that getting CEO succession right is business critical. Planning for and executing the transition from one chief executive officer to the next is perhaps one of the most important functions of a board of directors. Effective CEO succession could be tied to strong corporate performance, investor and stakeholder trust, and share price stability.

Ineffective succession, as we've all watched play out, can lead to proxy fights, litigation, other executive departures and share price volatility—really adverse outcomes for the business and its stakeholders. Over the years, we've helped many of our clients behind the scenes plan for and execute this important transition, advising on process, governance issues, exit arrangements, executive compensation and contract negotiations, stakeholder communications and CEO onboarding.

We've witnessed firsthand that CEO transitions are becoming more complex and high stakes, and also more frequent with record breaking numbers of CEO transitions in North America in the past year. For these reasons, CEO succession is one of the 10 key issues that we've chosen to highlight in our Pensions and Employment mid-year review.

Trend 2: Complications from cross-border developments

Ellie Kang (01:46): The first half of 2025 has been very eventful for employers with cross-border businesses and operations in the US. Lisa and I are going to highlight two topics of interest. The first relates to the divergence of Canadian and US approaches to political leaders in the US have been questioning the legality and effectiveness of DEI programs, particularly affirmative action programs, putting pressure on US companies to revisit their DEI efforts.

Lisa Talbot (02:17): Meanwhile, Canada's legal framework supports affirmative action programs, and many diversity disclosure requirements remain in effect here, but Canadian companies with US operations now find themselves in a difficult position where enterprise-wide DEI programs may now create legal and business risks in the US. So a very careful and nuanced approach is needed to navigate through these divergent approaches to DEI programs in the two jurisdictions.

Ellie Kang (02:44): Another issue that we have identified is continuing uncertainty in the economy on both sides of the border, including as it relates to tariffs. Employers that are anticipating a downturn may wish to proactively consider cost-cutting measures. And inevitably, these measures will affect their workforces. Employers may consider layoffs, furloughs, pay cuts or pay deferral as potential ways to reduce costs.

Lisa Talbot (03:12): Generally, implementing these types of measures will be more difficult to do in Canada than in the US, and certainly more complicated for unionized workforces on both sides of the border.

Trend 3: AI risks in the workplace

Rebecca Wise (03:26): AI is becoming a bigger part of the workplace, and while it can absolutely improve efficiency, it also introduces real legal risks that employers need to be thinking about. One of the biggest concerns is around discrimination. AI tools, especially generative ones, can unintentionally make decisions that disadvantage individuals or groups that are protected under human rights laws. And if those tools are using personal data, you need to ensure that you're not violating privacy rights.

Irfan Kara (03:52): So even though federal Bill C-27 didn't pass, provinces like Ontario and Québec already have rules in place. That includes transparency requirements and recruitment and electronic monitoring policies. And of course, privacy laws like PIPEDA still apply. So what should employers be considering? First, disclose how AI is being used and get consent where required. Second, make sure employees know how to challenge decisions and access their data. And third, just don't rely on the vendor. You got to understand how the tool works.

Rebecca Wise (04:23): Employers using AI should also consider keeping a human in the loop as it relates to their tools, and also running bias assessments from time to time. And of course, make sure that your contracts with your vendors contain the right protections and indemnifications.

Irfan Kara (04:37): AI can be a really powerful tool, but only if it's used responsibly, with transparency, and with a clear understanding of the legal landscape.

Trend 4: Changing executive and director compensation expectations

Jennifer Lennon (04:48): When it comes to executive compensation, Ellie and I are going to highlight two trends we're seeing in this space. The first relates to ESG metrics and compensation plans, and the second relates to cross-border consideration and equity incentive plans. Over the past number of years, many companies have started including ESG metrics in both short-term and long-term incentive plans.

With the growing DEI backlash in the US, it's important to take a look at these ESG metrics to understand how they're being used, how they're being assessed, and where they're publicly disclosed. More and more, clients are looking to carefully balance their executive compensation philosophy with shifting views in DEI and ESG in order to determine what's best for the company and their organization.

So, Ellie, can you give us a rundown of what you're seeing on cross-border equity incentive considerations?

Ellie Kang (05:41): Sure. We're continuing to see significant mobility in our cross-border workforce, particularly in the talent pool for directors and executives. Although similar equity vehicles are used in both Canada, in the US, such as stock options, companies should recognize that different tax rules that apply in Canada in the US could create significant complexity in designing equity incentive programs that work for the cross-border workforce.

DSUs for directors and executives are one example in which a careful planning is required to avoid unintended tax consequences under both jurisdictions, particularly around the timing of the deferral election and payment trigger events.

Trend 5: Workplace investigations on the rise

Rebecca Wise (06:32): We're seeing a real increase in internal investigations, and they're not just more frequent, they're becoming more complex. There's more judicial scrutiny, and organizations are under increasing pressure to investigate everything, even when that may not be necessary. That's putting a real strain on internal resources.

Lisa Talbot (06:47): We're seeing a rise in conflict of interest investigations in particular, especially involving leadership that's likely driven by stronger corporate integrity, expectations and regulatory pressure. At the same time, whistleblower hotlines are being used more than ever. They're accessible, they're anonymous. That's great. They're also being misused from time to time, and that takes time and resources to manage.

Rebecca Wise (07:09): And it's not just the volume of investigations, it's how they're actually being done. Regulators and courts are looking more closely at process: was the investigation fair? Was it consistent? Was the investigator truly impartial? These are really important questions for employers to be considering.

Lisa Talbot (07:24): And that's why it's really important to start with a clear plan. Ask: do we really need to investigate? If so, think about privilege. Do you want it to apply? How will you maintain it? And also make sure the process is fair for everyone involved and that your investigators are trained, not just in process, but in things like bias, trauma-informed approaches and procedural fairness, which are areas in which there is increased judicial scrutiny.

Rebecca Wise (07:47): Bottom line is that workplace investigations are evolving. Organizations need to be strategic, not just reactive. That means knowing when to investigate and also how to do it right.

To discuss these issues, please contact the author(s).

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