

# What's new in HR law for 2026?

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## AUTHORS



### Torys' Pensions and Employment Practice

Evolving legislation, court decisions, and workplace practices are reshaping employer obligations and risks across Canada and the United States. With the first quarter of 2026 coming to an end, the following is a list of key employment law risks and developments that employers, sponsors, plan administrators, and in-house counsel should keep on their radar screens during the balance of the year:

- enforceability of termination provisions
- developments in restrictive covenants in both Canada and the US
- legislative updates and developments
- strategies for mitigating class action risk
- updates on the use of AI in the workplace
- trends in workplace investigations
- updates relevant for Québec employers

Each of these topics is discussed further below.

## 1. Enforceability of termination provisions

Employers should continue to monitor the enforceability and interpretation of termination provisions in employment contracts in 2026—particularly provisions intended to reduce or limit notice entitlements on terminations without cause. Canadian courts continue to scrutinize these clauses, with the degree of scrutiny appearing to vary by jurisdiction.

In Ontario, recent decisions confirm that even minor drafting deficiencies can invalidate a termination clause, exposing employers to liability for reasonable notice of termination under the common law. Among other things, some courts have found that termination clauses purporting to allow an employer to terminate an employee “at any time” or in the employer’s “sole discretion” may be unenforceable. Greater clarity is expected in 2026 when the Ontario Court of Appeal is scheduled to address the enforceability of termination provisions, including the use of “at any time” language.

By contrast, recent jurisprudence suggests that British Columbia courts are more likely to adopt a practical, contextual approach to interpreting termination provisions, while Alberta courts appear to occupy a middle ground between the

Ontario and British Columbia approaches.

Against this evolving backdrop, employers should regularly review and update their employment agreements to ensure alignment with current case law and to manage termination-related risk.

## 2. Restrictive covenants: Canada and the United States

In Canada, the enforceability landscape for post-employment restrictive covenants remains uneven, with legislative and judicial approaches diverging across jurisdictions. Ontario's statutory ban on non-compete clauses in the employment context has been in place since October 2021, and similar amendments to the *Canada Labour Code* are anticipated in 2026. Where there are no statutory prohibitions, restrictive covenants are assessed based on their reasonableness, with courts focusing on scope, duration, and geographic reach. Recent case law reflects increased scrutiny of "hybrid" covenants (i.e., covenants that have both commercial and employment elements, such as shareholder agreements applicable to shareholders who are also employees).

In the United States, the Federal Trade Commission's attempted nationwide ban on non-competes was struck down by the courts and ultimately abandoned; however, state legislatures remain active, resulting in an increasingly fragmented patchwork of state-by-state non-compete regimes.

Given these developments, employers—particularly those with cross-border workforces—should ensure restrictive covenants are carefully tailored to the applicable jurisdiction and evolving enforcement risk.

## 3. Legislative updates and developments

Several legislative developments warrant attention in 2026, which may require updated policies, plans, and employment agreements to ensure continued compliance and effective risk management. In Ontario, the *Working for Workers Seven Act, 2025* came into force on January 1, 2026, introducing new requirements for publicly advertised job postings. At the federal level, the November 2025 Budget proposes restrictions on non-compete clauses for federally regulated employers, along with increased penalties and enforcement related to employee misclassification, including enhanced data-sharing between the Canada Revenue Agency and Employment and Social Development Canada.

At the same time, both provincial and federal regimes continue to expand employee leave entitlements, including enhanced sick and medical leaves, limits on employers' ability to require medical documentation, new pregnancy loss and bereavement leaves, and expanded support for non-birth parents.

## 4. Employment class actions update

Employment class actions are increasingly focused on systemic, enterprise-wide practices. Wage-and-hour claims—particularly those involving overtime, vacation, and holiday pay—continue to drive much of this litigation. Courts have also shown an increased willingness to certify issue-based classes, expanding potential exposure. At the same time, class action risk is extending beyond traditional compensation claims into areas such as privacy, employee monitoring, and workplace culture, including ESG-related concerns. These trends highlight the importance of proactively reviewing payroll practices, employee classification frameworks, and centralized HR policies to identify and mitigate potential class-wide vulnerabilities.

## 5. AI in the workplace

AI continues to play an expanding role in the workplace, shaping how employers recruit, manage, and monitor their workforces. As AI adoption accelerates, existing employment and human rights laws continue to apply, and employers

should approach AI-enabled tools with the same compliance rigour as any other employment practice.

Some of the legislative developments discussed above—including Ontario’s *Working for Workers* legislation—have direct implications for the use of AI in HR processes. In particular, Ontario employers are now required to disclose in publicly advertised job postings when AI is used to screen, assess, or select applicants. Practical challenges are expected, including uncertainty about which commonly used digital tools fall within the scope of the requirement. In the United States, recent executive actions have emphasized deregulation and AI innovation, resulting in a fluid and evolving regulatory landscape. Moreover, there is also an increasing trend of class action activity in the US (and, to a lesser extent, Canada) arising from algorithmic discrimination in employment and related issues.

Together, these developments underscore the importance of reviewing recruitment and HR technologies, understanding how AI tools operate in practice, and maintaining clear documentation and governance as AI use expands. We explore these themes in-depth in our comprehensive guide, [AI for employers: balancing risk and reward](#).

## 6. Trends in workplace investigations

Workplace investigations are increasing in both volume and complexity, underscoring the importance of clear investigation protocols, appropriate training, and early strategic planning. One emerging trend is a rise in benefits- and expense-related investigations, driven by tighter budgets, enhanced monitoring, and the greater availability of data analytics. This risk is compounded by the increasing accessibility of AI-enabled tools, which can be misused to generate realistic but fraudulent supporting documentation.

Procurement-integrity complaints are also becoming more common, reflecting the growth in large-scale infrastructure and capital projects, heightened expectations around transparency and fairness, and the complexity of multi-party procurement arrangements. In addition, cross-border investigations are increasingly frequent for employers with dispersed workforces, raising challenges related to differing witness rights, privilege rules, governing-law uncertainty, and data and privacy constraints.

## 7. Québec employment law update

Recently adopted Bill 101 introduced new amendments to some of the most important labour and employment laws in Québec. Among the key changes, Bill 101 modified certain rules applicable to reservist leaves, introduced a new unpaid leave of absence related to public health orders or disasters, and increased the penal sanctions under the *Act respecting labour standards and other laws* (the ARLS).

Separately, as of October 1, 2025, certain major sections of the ARLS, which modernize the occupational health and safety regime, are now also in force, namely those requiring employers to implement prevention programs or action plans. Subject to certain exceptions, employers have a period of one year to develop and implement a prevention program or an action plan once subject to that requirement.

Employers operating in Québec should monitor these developments and ensure their policies and practices keep pace with the evolving framework.

## Closing thoughts

The developments outlined above reflect continued refinement and clarification across key areas of employment law. As employers work to address these developments in 2026, periodic reviews of relevant agreements, policies, and workplace practices can help ensure they remain aligned with current expectations and evolving workplace norms.

The key developments discussed in this bulletin were summarized from our seminar, “Employment law trends, risks, and updates for your 2026 radar screen”. If you missed it, a recording is available through the [Torys CPD library](#). For more information about how these issues may affect your organization, please contact a member of Torys’ Pensions

and Employment team.

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

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