

Employment Law Shake-Up

Key Changes in 2025 and What to Expect in 2026

HR LAW CANADA, January 29, 2026

Presentation Overview

A. KEY CASES IN 2025

1. Contradicting Decisions: Does “At Any Time” Violate the ESA?
2. Drafting Errors to Avoid: Global Contracts, Broad Definition of “Cause”, & Punctuation
3. Bright Side for Employers: ESA-Only Clause Upheld
4. Settlements: "Buyer's Remorse"

B. LEGISLATIVE UPDATES

1. Ontario (New Leaves & New Obligations Regarding Hiring Process)
2. Federal (New Leaves)

C. TIPS: MANAGING RISKS IN 2026

D. Q & A

A. KEY CASES IN 2025

1. Contradicting Decisions: Does “At Any Time” Violate the ESA?

- **The Question:** Does including a termination “at any time” in a termination clause render it unenforceable?
- **The “Unenforceable” Camp:**
 - [*Baker v. Van Dolder’s Home Team Inc.*](#), 2025 ONCA 578 (“*Baker*”)
 - [*Chan v. NYX Capital Corp.*](#), 2025 ONSC 4561
 - Held that “at any time” invalidates the termination without cause clause, since ESA does not allow termination “at any time”.
- **The “Enforceable” Camp:**
 - [*Li v. Wayfair Canada ULC*](#), 2025 ONSC 2959 (“*Wayfair*”)
 - [*Jones v. Strides Toronto*](#), 2025 ONSC 2482
 - Upheld similar clauses, distinguishing them based on context or the absence of “sole discretion” language. Termination can happen at any time for legitimate reasons.

1. Contradicting Decisions: Does “At Any Time” Violate the ESA? (cont’d)

- **Next Steps:** The Court of Appeal will hear ***Baker*** and ***Wayfair*** together in early 2026.

Takeaway:

- *Until the Court of Appeal rules, avoid risk.*
- *Remove phrases like “at any time,” “for any reason,” and “in its sole discretion” from templates.*
- *Use precise, ESA-compliant language to avoid invalidating the entire termination provision.*

A. KEY CASES IN 2025

2. Global Contract Held Unenforceable

- **Case:** [*Boyle v. Salesforce.com*](#), 2025 ONSC 2580
- **The Issue:** A global contract combined U.S. "at-will" language ("at any time, with or without cause") with local carve-outs.
- **The Ruling:** The court found the contract ambiguous because it was impossible for an Ontario employee to know which provisions applied. The entire termination provision was voided.

Takeaway:

- *One global contract rarely fits all.*
- *Employers operating in multiple jurisdictions must ensure Ontario contracts have termination language that specifically complies with the ESA.*

A. KEY CASES IN 2025

3. Arbitrary Definition of “Cause” Invalidates Clause

- **Case:** [*Ghazvini et al v. Canadian Imperial Bank of Commerce*](#), 2025 ONSC 5218
- **The Issue:** The “for cause” termination clause defined “cause” to include unsatisfactory performance, failure to complete training, etc.
- **The Ruling:** The termination clause was held to be ambiguous and defined more broadly than the “just cause” standard under the **Canada Labour Code** (“CLC”), and as such, the clause was held to be unenforceable.

Takeaway:

- *Federally regulated employers should keep “for cause” definitions simple.*
- *Avoid definitions that extend beyond the “just cause” standards in the CLC.*

A. KEY CASES IN 2025

4. Missing Comma Leads to Huge Payout

- **Case:** [*Brocklehurst v. Micco Companies Limited*](#), 2025 NSSC 192 (Nova Scotia)
- **The Error:** A clause limited entitlements to "minimum notice of termination, or pay in lieu thereof, and severance pay (if applicable) to which you are entitled..."
- **The Ruling:** A missing comma meant "to which you are entitled" only applied to "severance pay," not "notice."
- **The Cost:** The ambiguity resulted in **8 months' reasonable notice** instead of the 4-week statutory minimum.

Takeaway:

- *Clear, unambiguous language is non-negotiable. Even a grammatical error can lead to a huge payout.*

A. KEY CASES IN 2025

5. ESA-Only Termination Clause Upheld

- **Case:** [*Bertsch v. Datastealth Inc.*](#), 2025 ONCA 379
- **The Ruling:** The Court upheld a lower court decision enforcing a termination clause that limited entitlements strictly to ESA minimums.
- **The Result:** The Court held that the Company was only required to pay 1 week under the ESA (although they already provided 4 weeks), compared to the 12 months claimed by the VP.

Takeaway:

- *Properly drafted clauses that clearly exclude common law entitlements can withstand scrutiny.*
- *Seek legal counsel to draft these clauses effectively to mitigate the risk of significant common law payouts.*

A. KEY CASES IN 2025

6. “Buyer’s Remorse” on Email Settlements

- **Case:** [Johnstone v. Loblaw Companies Limited](#), 2025 ONSC 4755
- **The Issue:** An employee agreed to a settlement via email but later refused to sign formal minutes, attempting to renegotiate terms.
- **The Ruling:** The email agreement was binding. Unsigned documentation does not prevent a binding agreement if essential terms (notice, legal fees, release) are agreed upon.

Takeaway:

- *Informal agreements bind. Once parties confirm terms, you cannot withdraw due to "buyer's remorse."*
- *Maintain clear records of negotiations.*

B1. Legislative Updates Ontario

- **Leaves**
- **New Hire Info**
- **Job Posting & Pay Transparency**

B1. Legislative Updates - Ontario Long-Term Illness Leave

- **Effective:** June 19, 2025.
- **The Entitlement:** Up to 27 weeks of unpaid leave for employees with at least 13 consecutive weeks of service.
- **Requirements:**
 - Must be for a "serious medical condition."
 - Requires a medical certificate stating the duration of inability to work.
 - Records must be retained for 3 years.

Takeaway:

- *Update policies to reflect this leave and prepare for workforce coverage during extended absences.*
- *Record keeping*

B1. Legislative Updates - Ontario

Mandatory New Hire Information

- **Effective:** July 1, 2025.
- **The Rule:** Employers must provide written information to new employees **before** or **on** their first day.
- **Required Information:**
 - Legal and operating business names.
 - Contact info (address/phone).
 - Description of initial work location.
 - Starting hourly wage/commission, pay period, and payday.
 - Anticipated work hours.

Takeaway:

- *Even if exemptions apply (under 25 employees), it is best practice to include this in all offer letters/contracts.*

B1. Legislative Updates - Ontario Job Posting & Pay Transparency

- **Effective:** Coming in 2026 (for employers with 25+ employees).
- **Job Postings Requirements:**
 - **Salary:** Must disclose expected compensation or range (range max \$50k spread; excludes jobs >\$200k/year).
 - **AI:** Must disclose if AI is used in the hiring process.
 - **Vacancies:** Must specify if the posting is for an existing vacancy.
- **Prohibitions:** Strictly prohibits requiring "**Canadian experience.**"
- **Hiring Decisions:** Candidates must be informed of decisions within 45 days of interview.

Takeaway:

- *Make a checklist of new hires to ensure compliance*

B2. Federal Legislative Update

New Leaves

B2. Federal Legislative Update Leave Related to Pregnancy Loss)

- **Effective:** December 12, 2025 (*Canada Labour Code*).
- **Eligibility:** Employees whose pregnancy (or spouse/partner's pregnancy) does not result in a live birth, or intended parents (surrogacy).
- **Entitlements:**
 - **Stillbirth:** Up to **8 weeks** (after 20th week).
 - **Other Pregnancy Loss:** Up to **3 days**.
 - First 3 days are paid.

Takeaway:

- *Federally regulated employers should prepare to update policies and support structures.*

B2. Federal Legislative Update

New Leaves in 2026

- **Bereavement Leave:**
 - Expanded to **up to 8 weeks** for the death of an employee's child or the child of their spouse/partner.
- **Placement of Child Leave:**
 - New **unpaid leave of up to 16 weeks** for adoption or surrogacy placement.
 - Employees may access EI benefits during this leave.
- **Status:** Expected to take effect sometime in 2026.

Takeaway:

- *Stay proactive. Monitor these amendments to ensure your leave policies are compliant when the changes take effect.*

C. TIPS: MANAGING RISKS IN 2026

Audit Your Contracts:

- Immediately remove "at any time," "for any reason," and "sole discretion" from termination clauses.
- Avoid overbroad "for cause" definitions in federal contracts.
- Replace global templates with Ontario-specific agreements to ensure ESA compliance.

Manage Settlement Negotiations:

- Treat email settlement negotiations as binding, think twice before saying "yes".
- Keep clear, contemporaneous records of all agreed-upon terms, even if formal minutes are not yet signed.

C. TIPS: MANAGING RISKS IN 2026

Update Policies & Handbooks:

- Incorporate the new leaves (Ontario or Federal) into existing policies/handbooks.

Refine Recruitment Practices:

- Add mandatory new hire information (e.g., pay period, contact info) to all offer letters.
- Remove "Canadian experience" requirements from job postings.
- Indicate salary (range), vacancies, and use of AI in job postings.
- Notify candidates of results within 45 days.
- Keep records.

Seek Legal Review:

- Consult counsel to ensure compliance and avoid costly payouts.



Questions?
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