

The Dentons logo consists of the word "DENTONS" in a bold, white, sans-serif font, enclosed within a white arrow-shaped graphic pointing to the right. The background of the slide is a vibrant, abstract image of colorful, textured patterns in shades of purple, blue, and orange, resembling coral or a microscopic view of a biological structure.

DENTONS

WEBINAR SERIES
LEGAL UPDATES
FOR CANADIAN EMPLOYERS

Navigating the festive challenges this holiday season

November 29, 2024

Grow | Protect | Operate | Finance

Moderator:



Andy Pushalik

Partner and Co-lead, National Employment & Labour Group, Toronto

+1 416 862 3468

andy.pushalik@dentons.com

Speakers:



Craig Lawrence

Partner, Toronto, Canada

+1 416 863 4420

craig.lawrence@dentons.com



Denise Alba

Senior Associate, Vancouver, Canada

+1 604 691 6454

denise.alba@dentons.com



Claire Browne

Associate, Toronto, Canada

+1 416 863 4757

claire.browne@dentons.com



Jenny Wang

Associate, Edmonton, Canada

+1 780 423 7311

jenny.wang@dentons.com



How to avoid the naughty list with your holiday party

Claire Browne

Before celebrating the holiday season...

Preparing for the holiday party

DO:	DON'T:
<ul style="list-style-type: none">• Provide advance notice about the date, time, location and duration of the event.• Ensure the venue is accessible for all employees and inclusive.• Obtain information regarding food preferences, allergies and dietary restrictions.• Set clear expectations for employees regarding conduct at the holiday party.• Remind employees regarding the workplace policies and procedures that apply to company events.• Notify employees regarding the alternative transportation arrangements in place to/from the party.	<ul style="list-style-type: none">• Require employees attend the party.• Forget to ensure that the party does not coincide with cultural or religious observances.• Plan to serve alcohol without providing non-alcoholic beverages and food options.

Avoiding the naughty list for your holiday party

Host liability

- Employers can be held responsible for damage caused or suffered by employees that become intoxicated at a company event.
- To manage this liability, we recommend that employers implement the following strategies:
 - Retain a professional third party to serve and monitor alcohol consumption (if alcohol is offered).
 - Avoid promoting alcohol consumption.
 - Ensure that non-alcoholic beverage options and food is served and available.
 - Consider providing employees with a limited number of drink tickets (vs. an open bar).
 - Consider closing the bar before the event ends.
 - Make and communicate alternative transportation arrangements available to employees prior to the event (i.e. issuing taxi coupons, retaining a ride-share service, reimbursing employees for their transportation to/from the party).

Avoiding the naughty list for your holiday party

Health and safety considerations

- Employer obligations regarding workplace violence, harassment and discrimination continue to apply to social events.
- Availability of alcohol and relaxed nature of holiday parties can increase the likelihood of workplace violence, harassment and discrimination.
- Therefore, we recommend that employers:
 - Set and communicate clear expectations regarding conduct at the holiday party (including applicable workplace policies and procedures).
 - Remind employees that conduct at the holiday party, including social media use, may be subject to disciplinary action.
 - Ensure that employees are familiar with the employer's process for reporting incidents of workplace harassment.

Avoiding the naughty list for your holiday party

Human rights considerations

- Employers are prohibited from discriminating on the basis of a protected ground under applicable human rights legislation.
- Therefore, employers are reminded to ensure that their workplace holiday party is:
 - Inclusive;
 - Respects diverse cultural and religious backgrounds.
- Consider:
 - Date selected for the holiday party.
 - Ambiance of the venue (i.e. decorations used, music played).
 - Dress code selected for the holiday party.
 - Food and beverages served at the holiday party.

Avoiding the naughty list for your holiday party

Accessibility considerations

- Ensure the venue selected for the holiday party is accessible for all employees.
- Ensure that employee accessibility needs are canvassed and considered prior to planning the holiday party.

Avoiding the naughty list for your holiday party

Takeaways: Key “dos” and “don’ts” for employers

DO:	DON'T:
<ul style="list-style-type: none">• Provide employees with advance notice regarding the date, time, location, format and length of the party.• Ensure the venue is accessible for all employees.• Gather information regarding food preferences, allergies and dietary restrictions.• Set clear expectations regarding employee conduct at the party (including disciplinary action for misconduct).• Prevent workplace violence, harassment and discrimination.• Enforce workplace policies and procedures consistently.• Collect feedback anonymously following the party.	<ul style="list-style-type: none">• Require employees attend the holiday party.• Schedule the party on a day that coincides with a religious or cultural observance.• Ignore workplace policies and procedures.• Promote alcohol consumption and/or fail to monitor alcohol consumption.• Allow employees to drink and drive.



Understanding workplace drug and alcohol testing:

Power Workers' Union v Canada (Attorney General), 2024 FCA 182

Craig Lawrence

Drug and alcohol testing in the workplace

- The legal framework for alcohol and drug testing in workplaces has grappled with the balance between workplace safety and workers' rights.
- This is a prevalent problem in both unionized and non-union workplaces.
- In Canada, workplace drug and alcohol testing is considered on a case-by-case basis.
- Generally, random testing is not permitted in Canada in the absence of clear evidence of a problem in the workplace. However, there are limited circumstances where it has been considered permissible.

Power Workers' Union v Canada (Attorney General)

Background and issues



In 2021, the Canadian Nuclear Safety Commission (**CNSC**) introduced new requirements for individuals licensed to operate high-security nuclear facilities. This included a provision for pre-placement and random drug and alcohol testing for workers in "safety-critical positions".



The unions challenged the new policy on the grounds that it violated charter rights, or, in the alternative, the testing was unreasonable on administrative grounds.

Power Workers' Union v Canada (Attorney General)

Court of Appeal's analysis

Charter challenge	Court of Appeal's finding
Section 8 <i>Search and seizure</i>	<ul style="list-style-type: none">• Random testing engages but does not infringe section 8.• The workers have a diminished expectation of privacy due to the nature of their work.• The testing provisions are reasonable when considering all the contextual factors.
Section 7 <i>Life, liberty, and security of the person</i>	<ul style="list-style-type: none">• The testing is relatively non-invasive and there are no disciplinary consequences that arise from a positive test. As such, it does not constitute a deprivation of bodily or psychological integrity that engages Section 7.
Section 15 <i>Equality</i>	<ul style="list-style-type: none">• The policy creates a distinction among employees based on job category which is not an enumerated or analogous ground of discrimination for the purposes of section 15.

Power Workers' Union v Canada (Attorney General)

Conclusion and key takeaways

- Ultimately, the Federal Court of Appeal dismissed the appeal and upheld the requirement for random alcohol and drug testing of safety-critical workers in the nuclear industry.
- This decision marks a clear departure from Canada's conservative approach to alcohol and drug testing and emphasizes the importance of safety in the workplace.

It's all about context!

“the nuclear industry is unlike any other inherently dangerous industries in Canada, like railways or chemical plants, given the magnitude and enduring damages a nuclear incident can cause to people and the environment”

(Power Workers' Union at para 74).





A visit from the ghost of Christmas past

Denise Alba

Changes to immigration rules

Temporary Foreign Workers

- Several changes to various Immigration Programs for hiring temporary residents in Canada – return to a more restrictive regime.
- First time IRCC has put forward an Immigration Levels Plan that includes targets for temporary residents.
- Today we will focus on the Temporary Foreign Worker Program and the changes that employers now face when applying for Labour Market Impact Assessments (“LMIA”) to support work permits.

Changes to immigration rules

Temporary Foreign Worker Program – LMIAs-Supported work permits

Effective **November 8, 2024**, High-Wage LMIA's are only available for positions with hourly wages that are at least 20% above the provincial or territory median wage:

Wage threshold by province or territory		
Province/territory	For LMIA's received before November 8, 2024	For LMIA's received as of November 8, 2024
Alberta	\$29.50	\$35.40
British Columbia	\$28.85	\$34.62
Manitoba	\$25.00	\$30.00
New Brunswick	\$24.04	\$28.85
Newfoundland and Labrador	\$26.00	\$31.20
NWT	\$39.24	\$47.09
Nova Scotia	\$24.00	\$28.80
Nunavut	\$35.00	\$42.00
Ontario	\$28.39	\$34.07
PEI	\$24.00	\$28.80
Quebec	\$27.47	\$32.96
Saskatchewan	\$27.00	\$32.40
Yukon	\$36.00	\$43.20

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

- Effective **November 8, 2024**, Low-Wage LMIA's are generally not available for positions in census metropolitan areas where the unemployment rate is 6% or higher:
 - Vancouver: 6.5%
 - Edmonton: 8.7%
 - Calgary: 7.5%
 - Regina: 6.7%
 - Winnipeg: 6.6%
 - Toronto: 8.6%
 - Ottawa: 6.2%
 - Montreal: 6.8%
 - St. John's: 6.6%
 - Charlottetown: 6.5%

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Exceptions to Low-Wage LMIA refusal to process measure (high-demand occupations):

- All occupations under primary agriculture.
- Positions in construction (NAICS 23).
- Positions in food manufacturing (NAICS 311).
- Positions in hospitals (NAICS 622).
- Positions in nursing and residential care facilities (NAICS 623).
- Specific in-home caregiver positions (NOC 31301, 32101, 44100, 44101).

Return to more restrictive caps for Low-Wage LMIAs.

- Generally only 10% of workforce can be in Low-Wage LMIA positions in a specific work location.
- 20% cap allowed if employing low-wage occupations listed above (exceptions list).

Return to shorter duration for Low-Wage LMIAs.

- Low-wage LMIAs will again only be issued to support work permits for one year duration .

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Restrictions on Low-Wage LMIA Stream:

The challenge with the Low-Wage LMIA stream (if available) are the stricter requirements and employer obligations, including:

- A 10% cap on the proportion of temporary foreign workers (TFW) that can be hired in low-wage positions at a given work location (20% cap for certain sectors).
- Stricter recruitment requirements – in addition to advertising on the Canada Job Bank, employers must utilize at least two additional methods of recruitment that are consistent with the occupation, and which target different underrepresented groups
- Requirement to pay for the round-trip transportation costs for TFWs to the work location in Canada and to return to their country of residence at the end of their employment.
- Requirement to provide or ensure suitable and affordable housing for the TFW.
- Only permitted to hire the TFW in low-wage positions for one year duration.

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Examples of the impact of these changes on employers

Example 1:

- Company X wishes to hire a digital animator in Vancouver, BC. The company would typically utilize the High-Wage LMIA Stream as the prevailing wage for digital animators in Vancouver is \$32.50/hour (above the provincial median wage for BC which is \$28.85/hour).
- However, as a result of the recent changes, in addition to meeting all other existing stream requirements, the digital animator must be remunerated in the amount of at least \$34.62/hour (provincial median wage for BC + 20%) in order for Company X to submit an LMIA application under the High-Wage Stream.
- This is regardless of the level of digital animator (includes junior levels).
- A Low-Wage LMIA would not be an option because the unemployment rate in Vancouver, BC is above 6%.

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Examples of how the recent changes impact wage requirements

Example 2:

- Company Y wishes to hire an administrative assistant in Calgary, AB. The prevailing wage for administrative assistants in Calgary is \$26.00/hour. Company Y is offering a wage of \$28.00/hour for this position.
- Because the unemployment rate in Calgary is 7.5%, Company Y would not be able to utilize the Low-Wage LMIA Stream.
- In order to utilize the High-Wage LMIA Stream, Company Y would need to remunerate the individual in the amount of at least \$35.40/hour.

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Examples of how changes impact wage requirements

Example 3:

- Company Z wishes to hire a food service worker at its location in Toronto, ON. Company Z is offering a wage of \$25.00/hour for this position.
- Because the offered wage is below the High-Wage LMIA threshold for Ontario (\$34.07/hour), Company Z would not be able to utilize the High-Wage LMIA Stream, and because the unemployment rate in Toronto is 8.6%, Company Z would also be unable to utilize the Low-Wage LMIA Stream.
- Company Z would need to pay at least \$34.07/hour to support an LMIA-based work permit for the individual as a food service worker.

Changes to immigration rules

Temporary Foreign Worker Program – LMIA-Supported work permits

Examples of how changes impact wage requirements

Example 4:

- Company X wishes to hire a food service worker at its location in Victoria, BC.
- Company X is offering a wage of \$25.00/hour for this position (prevailing wage in Victoria area is \$24.95/hour). Because the offered wage is below the High-Wage LMIA wage threshold (\$34.62/hour) and the unemployment rate in Victoria is 3.9%, Company X would be eligible to apply for a Low-Wage LMIA.

Temporary Foreign Worker Program – LMIA Supported Work Permits

Resources:

- Wage threshold for High-Wage vs. Low-Wage LMIAs:
<https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage.html>
- High-Wage LMIA applications:
<https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/high/requirements.html>
- Low-Wage LMIA applications:
<https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html>
- Canada Job Bank to check median wage of occupations:
<https://www.jobbank.gc.ca/trend-analysis/search-wages>
- National Occupation Classification:
<https://noc.esdc.gc.ca/Home/Welcome/efe954f09f8e4f09b502f9038c7d2523>



Making a list and checking it twice

Jenny Wang

Lambert v Canadian Natural Resources Limited, 2024 AHRC 105

Complainant's obligation

The legislature clearly...[placed] an obligation on complainants to accept fair and reasonable settlement offers or risk dismissal of their complaints (at para 26).

Lambert v Canadian Natural Resources Limited, 2024 AHRC 105

Section 21(3) of the Alberta Human Rights Act

21(3) The director may dismiss a complaint or part of a complaint if the director is of the opinion that the complainant has refused to accept a proposed settlement that is fair and reasonable.

Lambert v Canadian Natural Resources Limited, 2024 **AHRC 105**

Relevant considerations

- Merits of the case.
- Respective risks of the parties.
- Range of what is fair and reasonable.
- A reasonable offer does not have to include all remedies the complainant is seeking or the highest award the complainant may receive at the Tribunal.
- Normal to resolve the dispute without either party admitting wrongdoing or liability.
- Not unreasonable to require a full and final release.
- A non-disparagement clause may be reasonable depending on the circumstances.

Lambert v Canadian Natural Resources Limited, 2024 **AHRC 105**

Takeaways

- Fact dependent
- Aggravating factors
- Accommodation/addressing concerns
- Assessment based on recent case law
- Consider all parts of the claim

Thank you



Partner, Toronto, Canada
Andy Pushalik

+1 416 862 3468
andy.pushalik@dentons.com



Craig Lawrence
Partner, Toronto, Canada

+1 416 863 4420
craig.lawrence@dentons.com



Denise Alba
Senior Associate, Vancouver, Canada
+1 604 691 6454
denise.alba@dentons.com



Claire Browne
Associate, Toronto, Canada
+1 416 863 4757
claire.browne@dentons.com



Jenny Wang
Associate, Edmonton, Canada
+1 780 423 7311
jenny.wang@dentons.com