

The New World of Work: 2021 HR Law Year in Review & Trends to Watch in 2022

February 24, 2022











2021 HR Law

Year in Review

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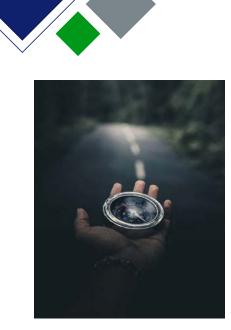
Trends to Watch

in 2022

Session Roadmap

- Bill 27
- Employment Agreements
- Harassment & Workplace Investigations
- Vaccination Policies

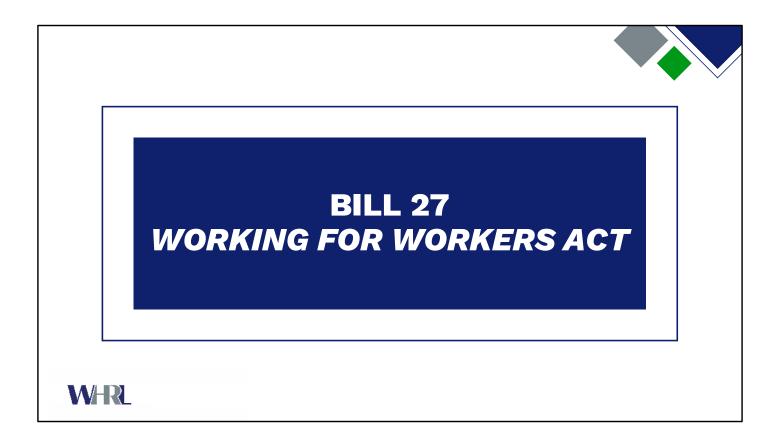
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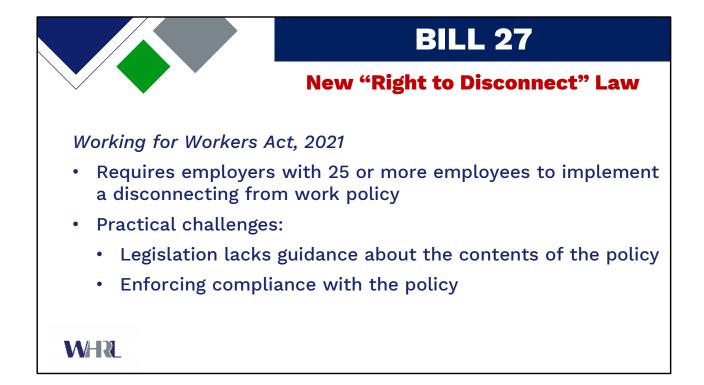


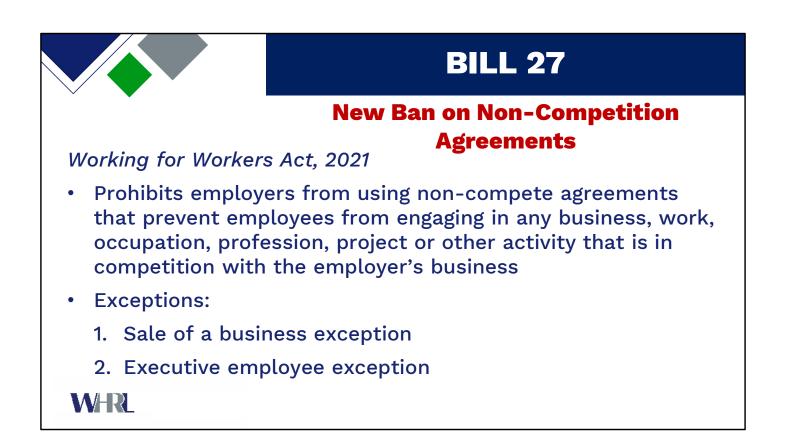
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General Snapshot

- COVID-19 on the decline in Canada
- Ontario lifting several COVID-19 restrictions effective March 1
- Developing body of COVID-19 specific case law
- Various legislative developments in Ontario and the Federal sphere









Takeaways



- Identify potential problem areas that may be affected by right to disconnect
- Monitor and stay on top of developments
- Proceed with caution when using noncompetition restrictions

	EMPLOYMENT AGREEMENTS	
WHR		



EMPLOYMENT AGREEMENTS

Enforceability of Termination Clauses

Waksdale v Swegon North America Inc

- SCC denied leave to appeal
- Ontario lower courts in 2021 have followed Waksdale
- Governs enforceability of termination clauses in ON for the foreseeable future
 - Increased judicial scrutiny of termination clauses in employment contracts
 - If one termination provision violates the *ESA*, it can render a separate termination provision unenforceable



EMPLOYMENT AGREEMENTS

Enforceability of Termination Clauses: Relevance of Employee Sophistication

Rahman v Cannon Design Architecture

• Upheld a termination clause because the employee was sophisticated and obtained legal advice

Livshin v The Clinic Network Canada Inc and Campbell-Givons v Humber River Hospital

• Both decisions found that employee sophistication and retention of legal advice does not impact the enforceability of termination clauses



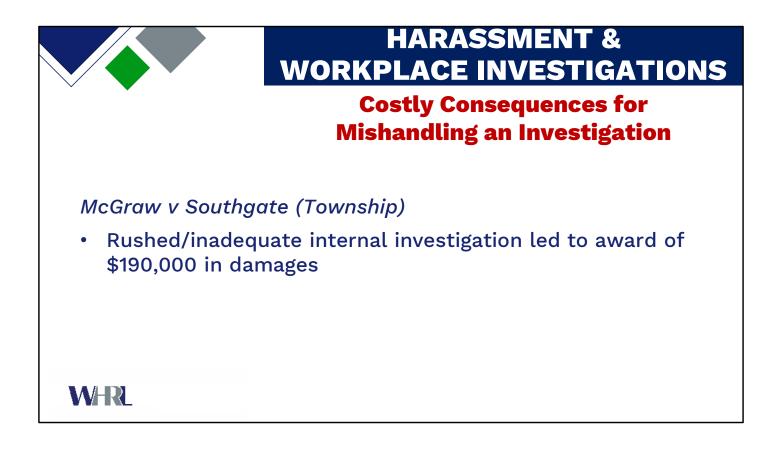
EMPLOYMENT AGREEMENTS

Takeaways

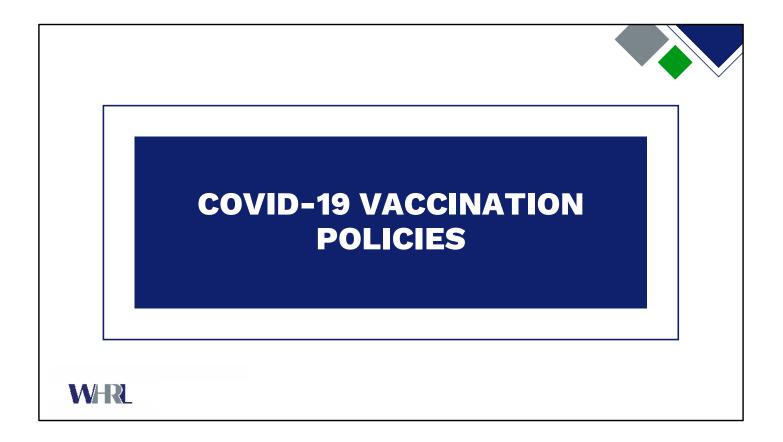
- Employment agreements must meet minimum employment standards
- Employee sophistication/negotiation may help employers
- Invalid termination provisions substantially increase termination payments
- Reassess employment agreements

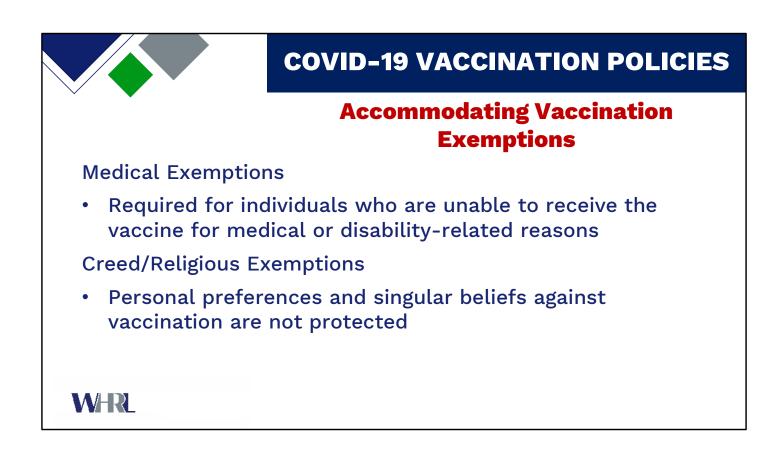
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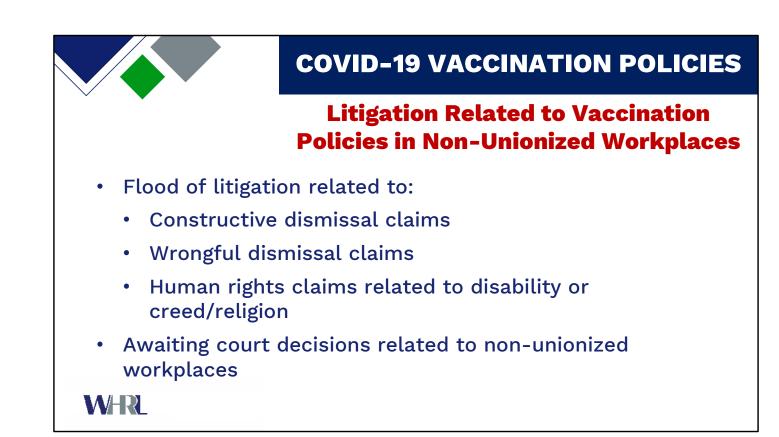




	HARASSMENT & WORKPLACE INVESTIGATIONS
•	Takeaways
	 Obtain legal advice to minimize exposure to costly legal liabilities
	Ensure procedural fairness
	 For serious and complex allegations, retain an independent investigator with expertise in the nature of the allegations
	 Consider undertaking a systems and processes review
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COVID-19 VACCINATION POLICIES

Litigation Related to Vaccination Policies in Unionized Workplaces

United Food and Commercial Workers' Union v Paragon Protection

• Mandatory vaccination policy was reasonable for security guards who performed work on client sites and interacted with the public

Electrical Safety Authority v Power Workers' Union

- Mandatory vaccination policy was unreasonable for a primarily remote, mostly vaccinated workforce
- Voluntary vaccination disclosure and testing policy was enough to address the health and safety risks

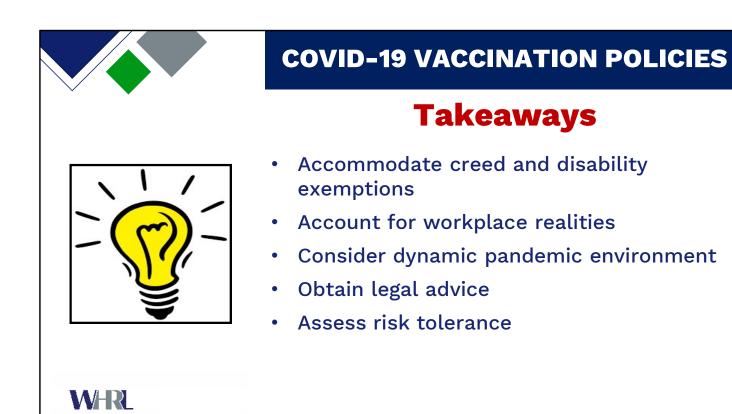


COVID-19 VACCINATION POLICIES

Litigation Related to Vaccination Policies in Unionized Workplaces

Ontario Power Generation v Power Workers' Union

- Upheld many aspects of a "vaccination or test" policy
 - Reasonable to put unvaccinated employees who refuse to test on an unpaid leave of absence
 - Failure to comply may provide cause for dismissal





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