

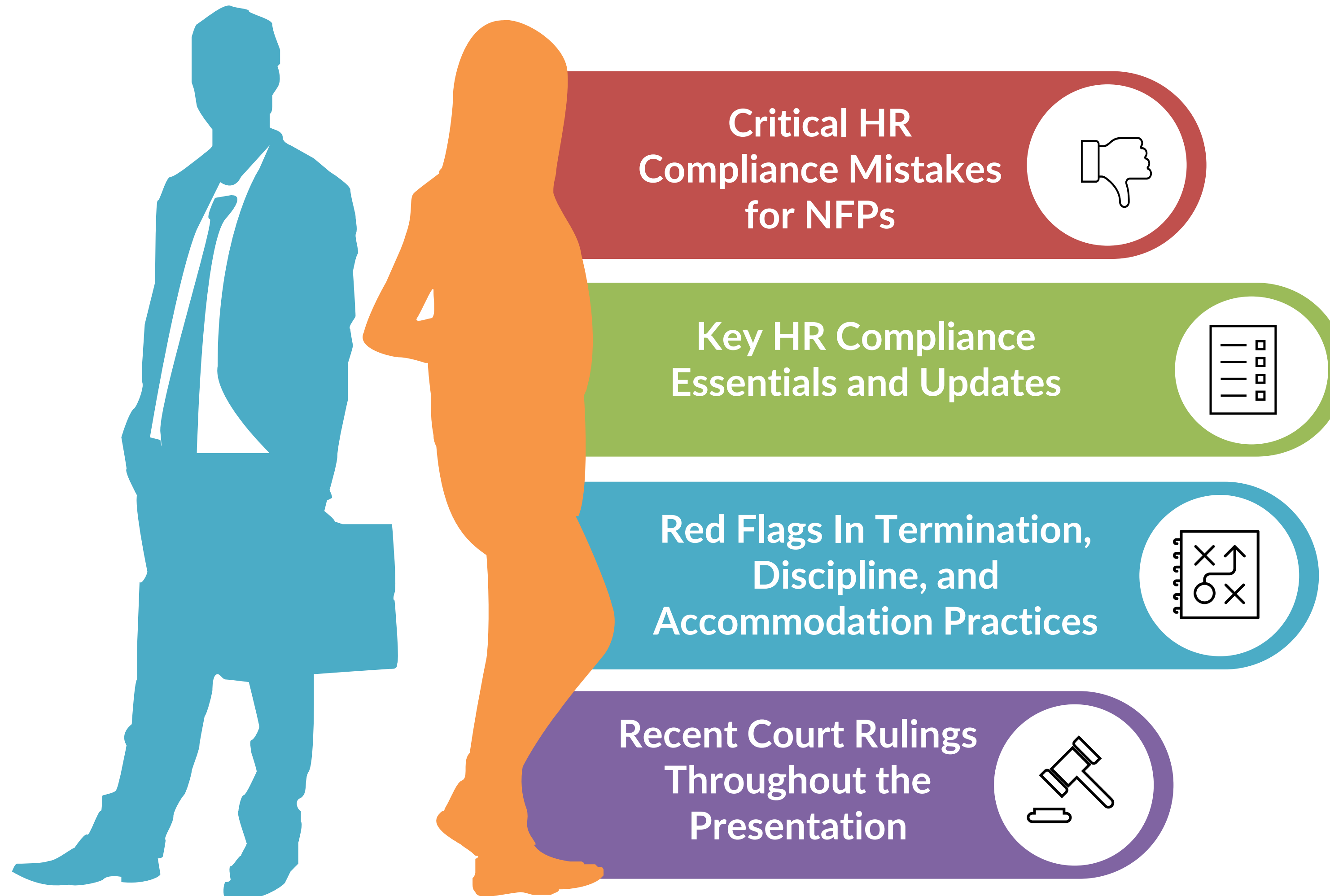
✓ HRCovered  
**Protecting Your  
Nonprofit from  
Costly Risks in 2026**



# Webinar Outline



Submit your Questions for the Live Q&A to Follow



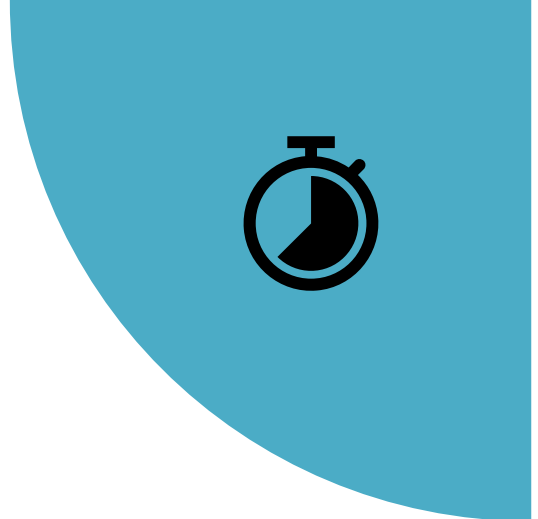
# Critical HR Compliance Mistakes for NFPs



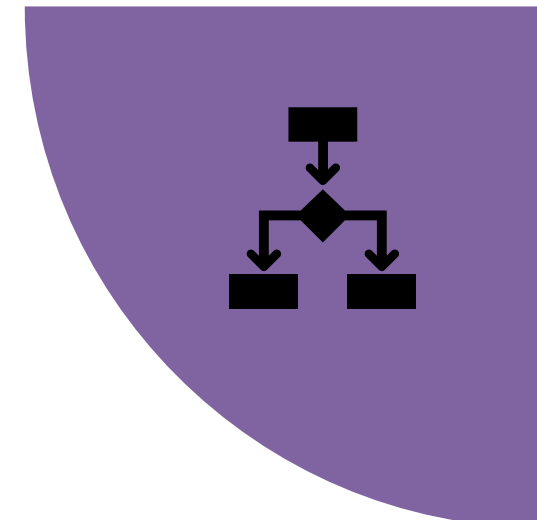
The same laws, legislation, and consequences apply to NFPs as they do to the public sector.



The danger of fixed-term contracts. Tying employment agreements to funding will not save you.



Misclassification  
The number one target for government agencies across Canada, NFPs are more susceptible.



Volunteers  
Training, adherence to policies and processes.



Reputational Harm  
NFPs have a greater responsibility and consequence for protecting their values and brand. Conduct outside of work, including politics, needs to be a policy.



Board of Directors  
Training, harassment, liability, governance vs operations, constructive dismissal.



# Key HR Policies and Processes

**Legislatively Required Policy**  
H&S, Workplace Harassment,  
Workplace Violence, WHMIS,  
pay equity.

Drug and Alcohol Policy and  
Reasonable Suspicion Checklist  
Appropriate Computer Use and  
Social Media Policy  
Code of Conduct



**Human Rights and Accommodation**  
Turnbull v Edmonton Pipe Trades  
Educational Fund o/a Alberta Pipe Trade  
College, 2021 AHRC 172 (Alberta Human  
Rights Tribunal)

**Operational Policies**  
Hours of work, Overtime,  
Vacation/PTO, Benefits, Performance  
Management, Progressive Discipline  
Policy and Letters.

# Important Legislative Changes in B.C.

Pay Transparency Act - Companies of different sizes have different deadlines to start publishing reports on pay gaps (pay data reports). By November 1, 2026: All employers with 50 or more employees. Pay data reports must include all wages, hours of work and are completely transparent.

July 1, 2025, employers are prohibited from requiring “Canadian experience” in job postings. This removes a significant barrier for internationally trained professionals seeking employment in BC.

Online platform worker classification - People who find work through online platforms are now clearly classified as *employees* under BC law, not independent contractors.



Employers cannot require a sick note for an employee’s first two health-related absences of five days or fewer, per calendar year. This applies whether the illness or injury is for the employee or an immediate family member.

Job-protected leave for serious personal illness or injury of up to 27 weeks within any 52-week period.

# Ontario

## Big Changes, Pay Transparency



### Pay Disclosure

Employers with 25+ employees must provide a salary range on all external postings. The salary range posted must be a maximum of \$50K and does not apply to jobs that are paid \$200K or more.



### Vacancy Disclosure

Job postings must include a statement that the job is an existing vacancy.



### International Experience

Employers are prohibited from requiring Canadian work experience in any publicly advertised job posting or associated application form.



### AI Disclosure

Employers must disclose if they use artificial intelligence (AI) to screen, assess, or select applicants.



### Mandatory Notification

Employers must inform interviewed candidates whether a hiring decision has been made in respect of the publicly advertised job post within 45 days of their interview.



### Retention of Record

Employers must retain copies of every publicly advertised job posting application form for 3 years after removal (inc. All info provided to applicants and documents for applicants who made it to the interview).

# Legislative Changes Across Canada



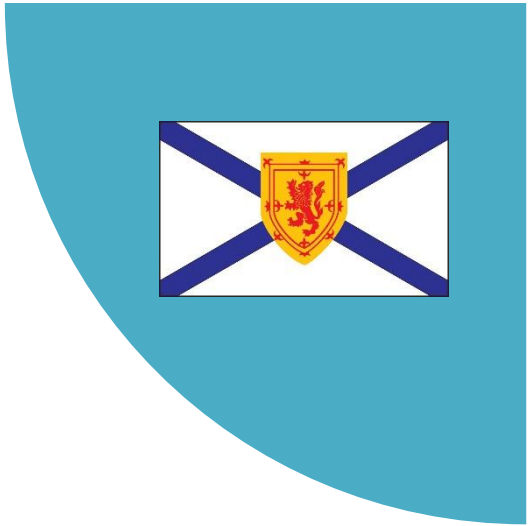
Requires a consolidated workplace violence and harassment prevention plan (effective March 31, 2025).



- Termination pay increases by a week per year, still up to a max of 8 weeks.
- The CLC now presumes anyone on an organization's payroll is an employee rather than an independent operator.
- New Leave of Absence: Pregnancy Loss Leave and Leaves for Placement of a Child.



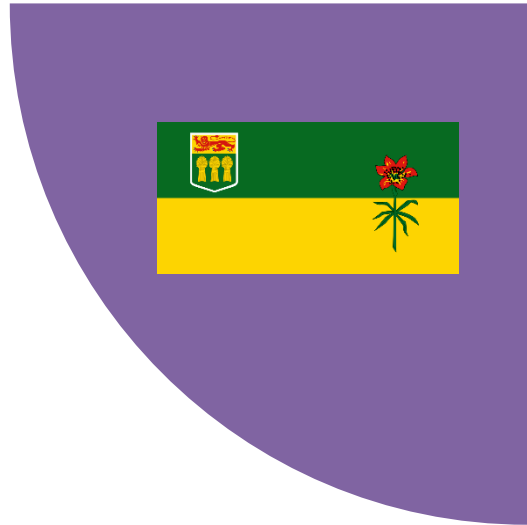
- Employees receive five unpaid sick days per calendar year, in addition to the existing three days of unpaid leave for medical appointments or family illness.
- H&S definition to include 'mental health,' and employers are required to have a harassment prevention policy.



- Unpaid, job-protected leave of up to 27 weeks is now available for employees.
- Employers cannot require a medical note for employees taking the existing seven days of unpaid sick leave or family responsibility leave.



- Employers cannot request a sick note unless an employee has been absent for five consecutive working days.
- Long-term sick leave has been extended to 27 weeks (Manitoba, BC and NS).



Employees earn paid sick days based on experience:  
**After 12 months:** one paid sick day.  
**After 24 months:** two paid sick days.  
**After 36 months:** three paid sick days.  
Employees are still entitled to three unpaid sick days after three months of employment.



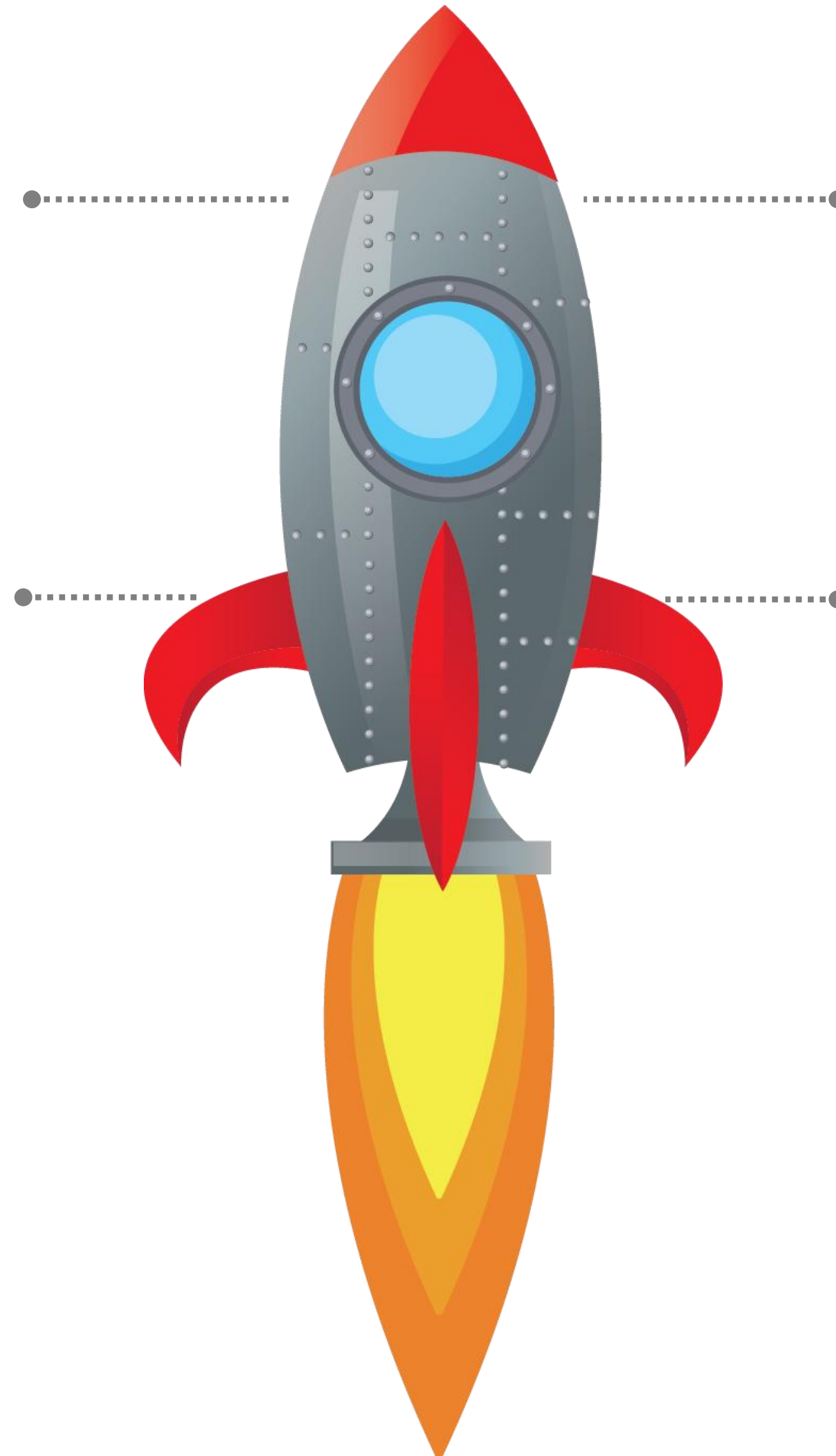
# Progressive Discipline - Key Considerations



## Not every infraction is worthy of discipline.

Being late does not necessarily warrant discipline. Being late numerous times over a small timeframe may warrant discipline. It is important not to 'water down' the outcomes. You must consider longevity as well. A third party will consider the entire body of work against any disciplinary conduct.

The progressive discipline process is a **specific path, not a catch-all**. Attendance and performance issues often get lumped into progressive discipline processes. Each is their own separate path. If you start down the formal progressive discipline path in those cases, getting a 'for cause' termination is nearly impossible.



The employer has a 'responsibility' to issue **more severe discipline when warranted**. Employers must issue consequences befitting of the seriousness of the conduct. Issuing discipline that is too lenient could be considered the same as not issuing discipline at all, or condoning a behaviour.

## Process is critical!

"The employer must show that the misconduct was intentional or deliberate. The employer must show that the employee purposefully engaged in conduct that (they) knew to be serious misconduct. It is, to put it colloquially, being bad on purpose".

# Accommodation – Must Knows



## Medical - Reasonable Inquiries

To determine if an accommodation is medically required and available, the employer is entitled to reasonable inquiries.

- Duration of absence.
- When an employee is being re-evaluated.
- Whether and when recovery is expected.

**ALWAYS USE A FAF!**

When requesting an accommodation based on **Family Status**, the employee must prove to the employer that they have made reasonable efforts to find a solution before asking for (i.e., other family, friends, babysitter, waiting list for daycare(s)). The employee should be provided with time to find an alternative solution.

## Failure to Make Reasonable Inquiries

- Undermine a frustration defence
- Breach of procedural component of the duty to accommodate
  - Cannot discharge the duty to accommodate without making reasonable inquiries.

***McKee v. Imperial Irrigation Co. (2010 HRT0)***



## Needs Not Wants

Employees often mistakenly assume that they are entitled to be accommodated based on their preference. Employees are not entitled to their preferred accommodation, but only to a reasonable accommodation that meets their needs (i.e., working from home).

The requirement to accommodate is 'not' static; it is not the bar of 'undue hardship' as many employers, HR and legal think. The doctrine of 'Undue Hardship' is a misused and misunderstood term by employers, HR and employees.

# Termination Traps



## How to Avoid Them



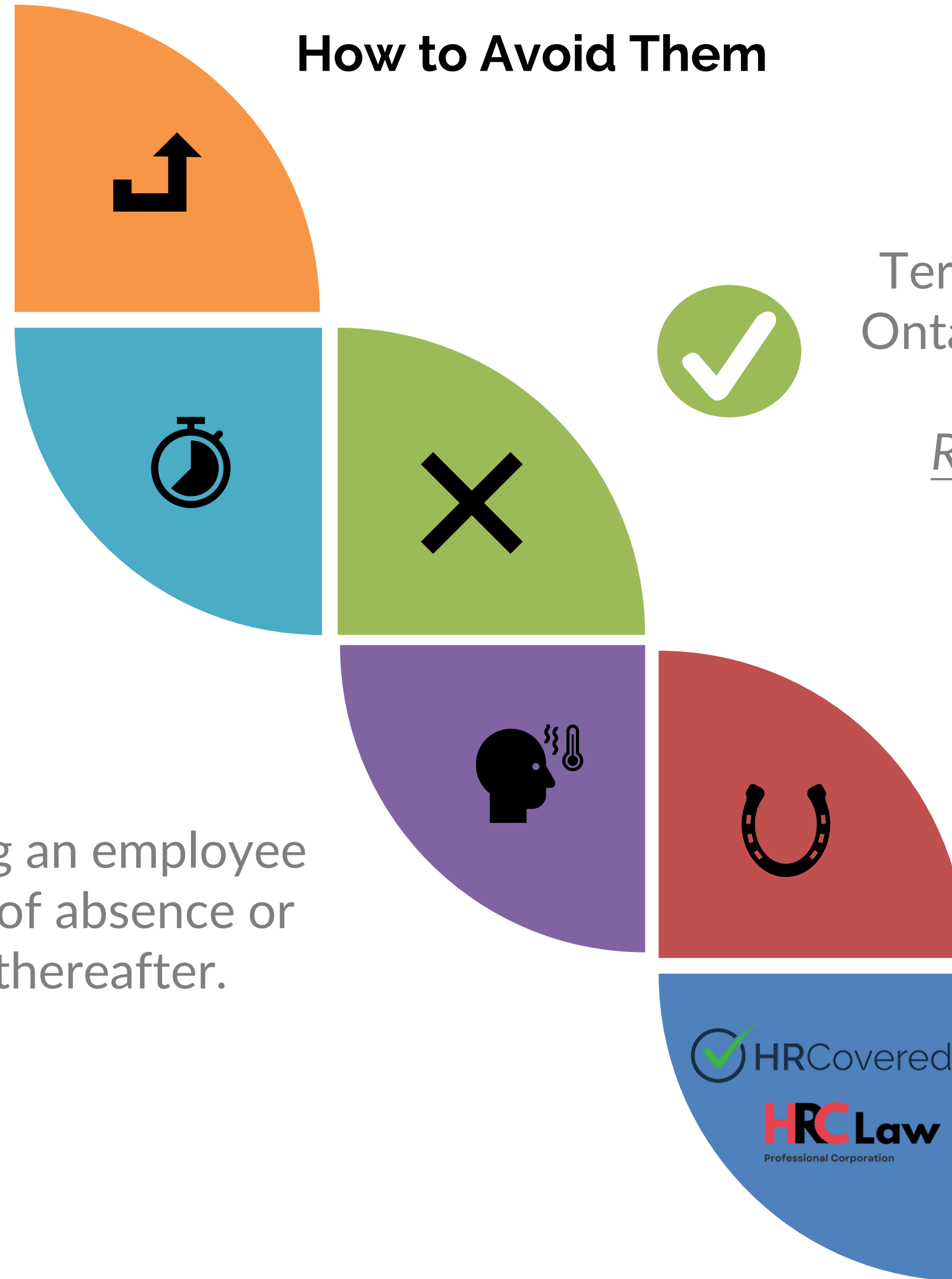
Layoffs are not terminations. The language matters.



Not making a reasonable offer at termination and/or failing to provide a reasonable time to consider and seek advice.



Terminating an employee on a leave of absence or shortly thereafter.



Terminating 'for cause,' especially in Ontario, where you need to reach the bar of 'Willful Misconduct.'  
Render v. ThyssenKrupp Elevator (Canada) Limited, 2022



It is not a game of horseshoes! You either have cause, or you don't.



Not seeking Expert HR or Legal advice.



# Evolving Case Law - Employment Agreements



## The Termination Clause

***Dufault v. The Corporation of the Township of Ignace, 2024 ONCA***

Court rules that the use of the wording 'at the sole discretion' or 'at any time' renders a termination clause unenforceable. The right of the employer to terminate is not absolute.

***Egan v. Harbour Air Seaplanes LLP, 2024 BCCA***

The court found the clause to be a clear intention to limit the employee to statutory minimums under the *Canada Labour Code* (or BC ESA).



## Fixed Term Contracts

***Kopyl v. Losani Homes (1998) Ltd., 2024 ONCA***

The Court of Appeal clarified that invalid termination clauses in a fixed-term employment contract do not invalidate the fixed-term nature of the agreement.

## Consideration

***Giacomodonato v. PearTree Securities Inc., 2024 ONCA 437***

Court of Appeal reaffirmed the long-standing rule that fresh consideration is required for new employment contracts, but courts will not opine on the sufficiency of such consideration.

## Offer Letters

***TAdams v. Thinkific Labs Inc., 2024 BCSC 1129)***

***Holland v Hostopia.com***

Where an offer letter sets out the substantial terms of employment and is accepted, the offer letter will be a binding employment agreement. This means that any subsequent employment agreement will require fresh consideration to be enforceable.

# When Does DIY Turn to Expert HR Help!

## Terminations

For cause, willful misconduct, not for cause,  
Common law,  
Continuation of benefits,  
Termination clause,  
Term contracts.

## Human Rights

Complaints found in human rights have increased significantly in Canada since the Human Rights process has become more accessible. Family status, accommodations, diverse workplace, etc.  
*The cost, both monetary and reputational, is significant via the Human Rights process.*



## Medical - Accommodations

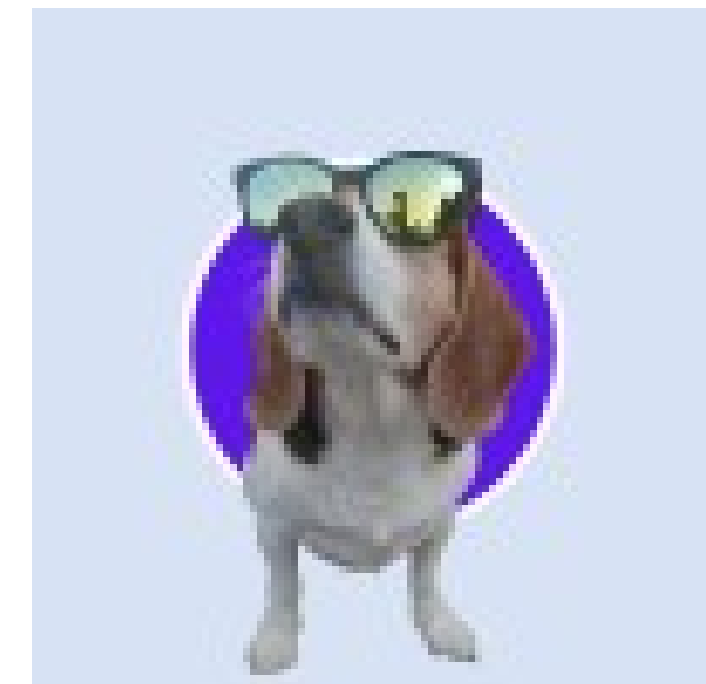
Effective claims management is not simple. Timing is critical. There are human rights and privacy considerations throughout. Most employers are not aware of what they are entitled to, what they can't do or ask, and do not realize the importance of starting the claims management process as soon as the worker leaves the workplace.

## Harassment

It is the obligation of the employer to investigate a claim of harassment if it is brought forward, OR they are aware that harassment in the workplace may exist. The investigation must be appropriate in the circumstances, which includes having an investigator who is skilled, knowledgeable, and unbiased (real and perceived).



THANK YOU



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