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ILLNESS AND DISABILITY IN THE WORKPLACE

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Release No. 4, November 2026

What's New in This Update:

This release includes updates to Chapter 2 (Common Law) and new court cases and arbitrations under Appendix ND (New Developments).

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Highlights

Chapter 2—Common Law—IV. Termination of the Ill or Disabled Employee at Common Law—§ 2:9. Frustration Due to Permanent Disability—No frustration was found in *Hedrick v Johnston Meier Insurance Agencies Ltd.*, 2026 BCSC 1250, 2026 CarswellBC 2288 (B.C. S.C.), for good reason. Hedrick is an unfortunate tale that should serve as a reminder to employers about their obligations legally, but also morally. Ms. Hedrick, the employee, was being stalked by one of her clients. As is often the case, the police informed her that there was nothing they could do unless real harm arose, such as trespass. Ms. Hedrick informed her employer, JMI, of the stalker and that the situation was causing her mental distress. While JMI was initially supportive and her manager said that they would come up with a plan to try and help the situation, when he returned from vacation the tone changed. Ms. Hedrick was called into a meeting not about her stalker, but about an unexpected meeting about lowering her pay structure. Ms. Hedrick disagreed and the conversation shifted to her stalker, and she informed her manager that her mental health had significantly declined and asked if she could work remotely temporarily. Her manager declined this and threatened to take away her assistant. A week later, Ms. Hedrick's pay was lowered from $10,000/month to $7,000. When she raised this concern to her manager, he said he would raise it to $8,300 – still $1,700 short of what she was earning. By this point, because of these additional work-related challenges, Ms. Hedrick's mental health was at an all time low, and she requested a week of vacation. Her manager responded that she needed to go through human resources to go on leave benefits. "Ms. Hedrick clarified that she was going on "vacation", not "leave". Mr. Ebner sent an email in reply suggesting that Ms. Hedrick drop her "attitude."" Ms. Hedrick did contact HR and ended up taking a sick leave. Her mental health continued to deteriorate, and Ms. Hedrick qualified for short-term and then long-term disability benefits and was off work from October 2021 to August 2022. The B.C. Supreme Court held that JMI had directly contributed to Ms. Hedrick's illness and inability to return to work, and therefore she was wrongfully dismissed.

Chapter 2—Common Law—VII. Common Law Treatment of Certain Illnesses—C. Physical Illnesses—§ 2:35.50. COVID-19—Applying the Principles of Human Rights Legislation— The breadth of COVID-19 jurisprudence continues to expand. *Dunseith v. Calgary French & International School Society*, 2026 ABKB 272, 2026 CarswellAlta 884 (Alta. K.B.) provides an important look at the third prong of the *Moore* test for *prima facie* discrimination – where there is a connection between the protected characteristic and the adverse impact. The Alberta Court of King's Bench conducted a judicial review of an Alberta Human Rights Commission decision

that was subsequently statutory reviewed and upheld by the Chief of the Human Rights Tribunal (Chief's delegate). Both the AHRC and the Chief's delegate dismissed the complaint. The Applicant resigned from her teaching position at the respondent Calgary school rather than face a suspension without pay and possible future termination due to her refusal to get the COVID-19 vaccine. The Applicant claimed discrimination under s. 7 of the Alberta Human Rights Act on the grounds of mental disability for her anxiety. The school enacted a policy requiring employees to be vaccinated against COVID-19 by November 1, 2021. A grace period from September-October 2021 was provided with ongoing rapid testing until proof of vaccination could be provided. Consistent with the Alberta Health Services COVID-19 Scientific Advisory Group guidelines, the policy contained a medical exemption process for employees if they could provide evidence from a physician that they "had suffered either a severe allergic reaction or myocarditis from a previous vaccination". The Applicant did not claim she fell into either of these categories. Rather, she alleged that she required an exemption for mental health for having anxiety surrounding injections. The Applicant provided two letters from psychologists (not medical doctors) to support her claim. The first from May 2021 diagnosed her with generalized anxiety disorder, post-traumatic stress disorder in partial remission, and adjustment disorder with depressed mood. The second letter from October 2021 appeared to be tendered specifically for the policy exemption. It confirmed her diagnoses and added that the Applicant had "pervasive and persistent anxiety" that COVID-19 had increased and "anxiety specific to injections" recommending that the Applicant "be supported in her request for consideration for exemption from mandatory vaccination to retain her employment". Her request was subsequently denied, and the Applicant resigned and submitted the complaint. The Director dismissed the complaint. He did note the duty to accommodate, however concluded that reasonable accommodation does not require allowing an unvaccinated employee on the premises. The Chief's delegate reviewed the decision on its merits and upheld the dismissal, accepting that a psychologist can replace a medical doctor and the Applicant had a mental disability, however the disability did not prevent her from getting vaccinated and there was therefore no link between the disability and her resignation. He also noted again that the school was not obligated to otherwise accommodate the Applicant through continued rapid testing or remote work. The Applicant requested judicial review on the grounds that the decision was "unreasonable in the face of the Supreme Court's guidance that rights claimants need only show that there is a "connection" between the protected ground and the adverse effect". The central issue was therefore the third step of the Moore analysis: whether the evidence supported the Chief Delegate's conclusion that there was no connection between the Applicant's mental disability and the loss of her employment. The Court wrote:

> A clear line has emerged in disability jurisprudence separating employees who are unable to comply with neutral workplace

> rules and policies due to disability from those whose failure to do so is deemed a choice. This distinction appears to hold even where the employee's protected condition may make compliance more difficult or uncomfortable. The decision under review epitomizes the application of this distinction (para. 49).

After reviewing discrimination law, the Court concluded that the Applicant had the onus of providing evidence that her anxiety disorder made receiving the vaccine untenable rather than merely unpleasant such that the compulsion to do so would violate her human dignity – she failed to do so. The Chief delegate's decision was reasonable given the "modest and restrained medical description" of the impact of receiving the vaccine. Without that functional inability, the fact that the policy coincided with her anxiety disorder to an "unknown degree" is not enough to establish *prima facie* discrimination.

Chapter 2—Common Law—VII. Common Law Treatment of Certain Illnesses—C. Physical Illnesses—§ 2:35.50. COVID-19—Applying the Principles of Human Rights Legislation— Mask wearing was at issue in *Scuric v. Toronto Transit Commission*, 2026 ONSC 4170, 2026 CarswellOnt 12757 (Ont. S.C.J.). In *Scuric*, the plaintiff worked for the Toronto Transit Commission (TTC) for 17 years before alleging constructive dismissal due to TTC's failure to accommodate his disability. The disability at issue was a migraine disorder that the plaintiff alleged prevented him from wearing masks. TTC implemented a mandatory mask wearing policy in response to the COVID-19 pandemic in July 2021. In September 2021, the plaintiff informed TTC that he was unable to tolerate prolonged mask wearing due a medical condition and required accommodation. TTC requested that the plaintiff's doctor complete a medical questionnaire, which he did and returned. TTC's in-house medical consultant informed TTC that there were no known mask exemptions for what the plaintiff's doctor described and the plaintiff's request for accommodation was denied. After being off work since September 13, 2021, the plaintiff brought a claim for constructive dismissal in December 2021. The court was satisfied that a migraine disorder is a disability and that the plaintiff suffered adverse treatment by being on an unpaid leave since September 2021, which occurred because the plaintiff would not comply with the condition of being in the workplace of wearing a mask. What the court was not satisfied of was that there was a connection between the adverse impact and the disability.

> Accordingly, the plaintiff has not established *prima facie* discrimination. Mr. Scuric admits that TTC's mask policy itself was reasonable and valid. Therefore, while Mr. Scuric did suffer adverse treatment, it is from failing to comply with an essential condition of his work. While Mr. Scuric has a disability, there is no evidence tying that disability to the symptoms he says he

> experienced from wearing a mask. No medical evidence in the case, including from Mr. Scuric's own doctors, supports his argument about his condition. (para. 126).

The plaintiff's own doctor at trial admitted that he mischaracterized the plaintiff's symptoms, including that the plaintiff suffered from "palpitations" due to mask wearing, when this was actually a self-reported hyperventilating. Because there was insufficient medical information to substantiate *prima facie* discrimination, there was no obligation for TTC to accommodate the plaintiff. Concerning constructive dismissal, the court commented that ordinarily being put on unpaid leave would constitute a unilateral change to one's employment. However, the plaintiff agreed that the mask policy was not a unilateral change to his employment as it was a response to "the unprecedented situation wrought by the COVID-19 pandemic". Accordingly, the plaintiff's refusal to abide with the policy, with no duty to accommodate by TTC, left TTC with no choice but to put the plaintiff on an unpaid leave and "if anything, Mr. Scuric repudiated his own agreement".

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