

Labour and Employment Aspects of Doing Business in Canada

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LABOUR AND EMPLOYMENT ASPECTS OF DOING BUSINESS IN CANADA

Labour and Employment Aspects of Doing Business in Canada is intended as an introductory summary. Specific advice should be sought in connection with particular transactions.

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LABOUR AND EMPLOYMENT ASPECTS OF DOING BUSINESS IN CANADA

1. Introduction

Employment and labour law in Canada is designed to regulate both the conditions of employment and the relations between employers and employees. To understand Canadian labour and employment law, it is necessary to know about the constitutional division of power between the federal government of Canada and the governments of Canada's 10 provinces and three territories.

While labour and employment matters are principally within provincial and territorial jurisdiction, the federal government does have jurisdiction over certain industries that are viewed as having a national, international or inter-provincial character, such as banks, air transport, pipelines, telephone systems, television and inter-provincial trucking. All other employers are provincially regulated for the purpose of labour and employment matters. As a result, the vast majority of employers in Canada are required to comply with the employment standards, labour relations and other employment-related legislation of each of the provinces where it has operations.

Regardless of whether a business is provincially or federally regulated, or where in Canada it carries on business, Canadian employers should be familiar with the following types of employment-related legislation:

- Employment Standards Legislation
- Human Rights Legislation
- Federal and Provincial Privacy Legislation
- Occupational Health and Safety Legislation
- Workers' Compensation Legislation
- Labour Relations Legislation.

The legislation referred to above is only the start. Regulations made pursuant to this legislation also establish numerous rights and obligations for employers and employees. For example, there are detailed regulations made under both employment standards and occupational health and safety legislation, which give substance to the obligations contained in the statutes. When considering any labour and employment problem, it is important to ensure there are no additional regulatory rights or obligations that may impact on its solution. In addition to the statutory obligations discussed above, employers are also required to satisfy common law obligations owed to their employees in Canada's common law provinces, and to abide by the *Civil Code of Quebec*. The most significant of these obligations is to provide employees with reasonable notice of the termination of the employment relationship without cause, which notice is described in greater detail below in Section 2, *Common Law Obligations to Employees*.

2. Statutory Obligations to Employees

An employer's specific statutory and regulatory obligations will generally depend on the law of the province or territory where it has operations. As such, any particular issue or question will have to be answered with reference to the law of that jurisdiction.

2.1 Employment Standards Legislation

Canadian employment standards legislation sets out the minimum terms and conditions of employment federally and in each provincial and territorial jurisdiction. Employers and employees may not contract out of these minimum obligations, except to provide for terms more favourable to the employee than those contained in the legislation. Accordingly, any document or practice that establishes a term of employment that is less favourable to an employee than an employment standard has no force or effect.

Generally, employment standards legislation sets out minimum standards relating to matters such as wages, hours of work, overtime pay, public holidays, vacations with pay, various leaves of absence and notice of the termination of employment. Employment standards legislation and regulations include many exceptions to the statutory minimum standards for certain types of employees, such as managers and professionals.

2.1.1 Minimum Wages

The minimum wages that must be paid to employees vary by province and territory, generally ranging from a low of C\$8.75 per hour to a high of C\$11 per hour. There are also lower minimum wages for certain jobs and types of employees prescribed by the regulations. In addition to setting out minimum wages to be paid to employees, employment standards legislation also includes various provisions regulating how employees are paid and the records that must be provided to employees and retained by employers regarding the employment relationship, including documentation with respect to the payment of wages.

2.1.2 Hours of Work

Except in New Brunswick, the employment standards legislation in each jurisdiction provides that an employee's regular hours of work may not exceed certain daily and/or weekly maximums. For example, in British Columbia, Manitoba, Saskatchewan, the Northwest Territories, Yukon, Nunavut and the federal jurisdiction, maximum hours of work are eight hours per day and 40 hours per week.

Maximum hours of work in the remaining provinces vary. For example, in Quebec and Newfoundland and Labrador, the applicable employment standards legislation provides for weekly maximum hours of work of 40 hours. Weekly limits in Ontario, Nova Scotia and Prince Edward Island are 48 hours. In Alberta, maximum hours are eight hours per day and 44 hours per week. In certain provinces, these maximum hours of work may be exceeded if overtime is paid. In addition, in many jurisdictions employees can agree to work more than these maximum hours and may be required to do so to deal with emergency situations. Employment standards legislation also provides employees with entitlements to meal breaks, hours free between shifts, and days of rest during each week.

Each employment standards statute includes provisions with respect to the payment of overtime pay (or, in some instances, time off in lieu of overtime pay) after an employee works in excess of a certain number of hours per day and/or week. For example, in Ontario, an employee who works more than 44 hours per week is entitled to a premium of at least 50% of his or her regular rate for each hour worked in excess of 44 hours, unless excluded from this entitlement by the regulations.

Generally, employees are entitled to overtime pay, although certain employees, including managers and some professionals, are often specifically exempted from this requirement. Further, in many provinces, a written agreement between the employer and employee may provide for the averaging of an employee's hours of work over a period of time for the purpose of calculating his or her entitlement to overtime pay. There are also specific provisions permitting employers to implement work schedules that include "compressed" or four-day workweeks.

2.1.3 Vacations and Holidays

Employment standards legislation provides that employees are entitled to vacation time off work and vacation pay for each year worked. Except in Saskatchewan, employees are entitled to two weeks of vacation time annually for at least the first five years of their employment, with vacation pay of at least 4% of their annual wages. In most provinces, the minimum statutory entitlement to vacation time and pay increases with an employee's length of service to three weeks of vacation with vacation pay of 6% of annual wages. In Saskatchewan, employees are entitled to three weeks of vacation per year, increasing to four weeks after they have completed 10 years of service. In Ontario and the Yukon, employees are entitled to two weeks of vacation per year, with no mandatory increase based on service.

In addition, employment standards legislation recognizes a number of statutory holidays, including New Year's Day, Canada Day, Labour Day and Christmas Day. The number of holidays to which an employee is entitled will depend on the province or territory where he or she works, and ranges from six to 10 holidays per year. Employment standards legislation generally provides that employees must be paid for these statutory holidays. If an employee performs work on the holiday, he or she will be entitled to premium pay for hours worked. In many provinces, the employee is entitled to 1.5 times his or her regular rate for hours worked on the holiday, in addition to the holiday pay for the day.

2.1.4 Protected Leaves

Employment standards legislation also provides employees with a variety of protected leaves of absence. These leaves are protected in that an employer may not dismiss or penalize an employee who chooses to exercise his or her right to take leave under the legislation. Generally, employers are also required to continue to make contributions to certain benefit plans during the employee's leave, and the employee must be reinstated to his or her former position at the end of the leave. However, employers are not required to pay employees' wages during the vast majority of the statutory leaves as, in many cases, employees may collect benefits under Canada's federal employment insurance program while they are away from work.

The types of leaves of absences available to employees vary significantly depending on the province or territory where the employee works. However, all Canadian employees are eligible

for some type of pregnancy and parental leave, although most provinces require that an employee have worked for an employer for a certain qualifying period before a pregnancy or parental leave may be taken. In most provinces, pregnancy leave can last for 15 to 18 weeks, and parental leave can last for 34 to 37 weeks, depending on whether the employee has also taken pregnancy leave. In Nova Scotia, an employee who has not taken pregnancy leave may take up to 52 weeks of parental leave. Quebec also provides employees with more extensive pregnancy and parental benefits, permitting employees to take 18 weeks of pregnancy leave and 52 weeks of parental leave. Quebec employees are also entitled to a leave of up to five days upon the birth of their child, two days of which must be paid by the employer in certain circumstances.

In most Canadian jurisdictions, employment standards legislation also provides for leaves which allow employees to take time off to meet child care responsibilities or due to the illness of the employee or certain of his or her family members. These protected leaves vary from a few days to many weeks, and employees generally have an obligation to provide their employers with medical or other information substantiating their absence.

In addition, British Columbia, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Manitoba, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Yukon and the federal jurisdiction also provide employees with bereavement leave on the death of specified family members. These bereavement leaves last from one to five days and, in some instances, wages must be paid by the employer during that time. Ontario also permits employees to take unpaid emergency leave for up to 10 days in the case of a death of a family member or other individuals defined in the legislation, provided the employer regularly employs 50 or more people.

All jurisdictions in Canada, except Northwest Territories and Nunavut, provide employees with reservist leave. While reservist leave varies amongst jurisdictions, generally, it provides a protected leave for employees who are Canadian Forces military reservists and who are deployed to an international operation overseas or for certain operations within Canada. To be eligible, most jurisdictions require that employees have at least six months of continuous service with an employer before being entitled to reservist leave. Employees are generally entitled to leave for the duration of the service required by the Canadian Forces.

2.1.5 Termination of Employment

Critical to most employers, employment standards legislation in all Canadian jurisdictions sets out minimum notice obligations upon the termination of an employee's employment. The legislation requires employers to provide written notice or pay in lieu of notice in those circumstances. As a general observation, an employee's entitlement to notice of dismissal increases with his or her length of service.

For example, in Ontario, employees are generally entitled to one week's notice (or, alternatively, one week's pay in lieu of notice) for each completed year of employment, to a maximum of eight weeks. Although employees' entitlement to notice of the termination of their employment varies slightly from province to province, Canadian employment standards legislation establishes a maximum statutory notice requirement of eight weeks or less. Employees in federally regulated businesses with a minimum of three consecutive months of service at the time of dismissal have a minimum statutory entitlement to two weeks of notice (or pay in lieu thereof).

However, most employment standards statutes also include enhanced notice requirements for employers that effect a mass termination of employment, which is defined in most provinces and territories as the dismissal of 50 or more employees in a span of four weeks or less (although in at least two provinces the threshold is as low as 10 employees). Other obligations, including notice to government agencies, are also created should an employer initiate a mass termination or the discontinuance of its business.

For federally regulated businesses, under the *Canada Labour Code*, if an employer discontinues its business permanently or undertakes mass terminations (50 employees or more in four weeks or less), it must give the federal government 16 weeks' prior notice. In most cases, the employer must also establish a "joint planning committee", which must include employee and trade union representatives. The object of the committee is to develop an adjustment program to: a) eliminate the necessity for termination of employment; or b) minimize the impact of the terminations on redundant employees and assist them in obtaining other employment.

In Ontario and the federal jurisdiction, employment standards legislation also requires employers to provide employees with severance payments (in addition to notice or pay in lieu of notice) in certain circumstances. In Ontario, employees who have five or more years of service at the time of their dismissal are entitled to severance pay, if their employer has a payroll in Ontario of C\$2.5-million or more, or if the dismissal is part of a discontinuance of a business involving the termination of 50 or more employees in a period of six months or less. Severance payments equal one week's pay for each completed year of employment and a proportionate amount of one week's pay for a part year of employment, to a maximum of 26 weeks' pay.

In the federal jurisdiction, an employee is entitled to statutory severance pay if he or she has completed 12 consecutive months of employment with an employer prior to his or her dismissal. Severance pay is calculated as the greater of two days' wages for each year of employment completed by the employee and five days' wages.

Quite aside from the notice and severance pay requirements described above, the employment standards legislation in three Canadian jurisdictions also includes "unjust dismissal" provisions. In general terms, and absent serious misconduct or certain other conditions beyond the employer's control, these provisions permit certain employees to seek redress from employment standards tribunals or adjudicators following their dismissal. If the administrative decision-maker determines following a hearing that an employee has been unjustly dismissed, the employee may be reinstated to employment and/or receive compensation relating to his or her dismissal.

In the federal jurisdiction, non-unionized employees who have worked for an employer for at least 12 months in a non-management position may make unjust dismissal complaints. In Quebec, employees with two years of service can claim that they have been unjustly dismissed and, in Nova Scotia, employees with at least 10 years of service can do so.

2.1.6 Enforcement

More generally, Canadian employment standards legislation is enforced by way of a complaint made to the appropriate federal, provincial or territorial Ministry responsible for the legislation. In most jurisdictions, employment or labour standards officers investigate complaints and make

rulings if the matters cannot be settled. Appeals from those rulings are heard by labour relations boards or other administrative or quasi-judicial bodies established in each jurisdiction. In the case of unionized workplaces, bargaining unit members and their representatives generally enforce employment standards legislation by way of grievance arbitration.

2.2 Human Rights Legislation

Each Canadian jurisdiction has enacted human rights legislation that establishes a comprehensive system for the investigation and resolution of issues relating to discrimination. Although these human rights statutes deal with matters beyond the scope of the employment relationship, they also contain a number of provisions that deal with workplace discrimination.

Specifically, human rights legislation provides for an individual's right to equal treatment with respect to employment, and prohibits discrimination in the workplace based on certain "prohibited grounds", which are set out in the legislation. As a general observation, discrimination has been defined to include any distinction, exclusion or preference based on a prohibited ground as defined by the legislation.

Ontario recently enacted Regulations under the *Accessibility for Ontarians with Disabilities Act* (AODA) which apply in conjunction with human rights legislation in that province. The Regulations contain a number of significant employment-related obligations that will require Ontario employers to revise their employment-related documentation and accommodations processes. Employers will also be required to invest significant resources into training programs regarding accessibility matters in order to ensure compliance with the AODA.

2.2.1 Prohibited Grounds of Discrimination

The prohibited grounds of discrimination vary slightly from jurisdiction to jurisdiction, and include the following: place of origin; place of residence; creed; social conditions; social origin; source of income; language; civil status; sexual orientation; family status; political beliefs; ancestry; disability; criminal conviction; marital status; pregnancy; same-sex partnership; sex; age; religion; citizenship; nationality; national or ethnic origin; colour; race; and dependence on drugs or alcohol. As such, employers in Canada must be careful to ensure that they do not make employment decisions with reference to any of these characteristics. In this respect, employment decisions include a wide variety of matters relating to the employment relationship and the terms and conditions of employment, including hiring, compensation, promotion and dismissal.

Human rights legislation in many provinces and territories also prohibits the distribution of employment applications that express or imply a preference for an individual with certain characteristics related to prohibited grounds of discrimination. In addition, the human rights statutes of most Canadian provinces and territories contain a prohibition against sexual harassment and harassment based on other prohibited grounds. The legislation also seeks to protect employees who make complaints regarding discrimination or harassment by prohibiting reprisals of any kind against those individuals.

2.2.2 Exceptions

Generally, Canadian human rights statutes contain a variety of exceptions to their very broad prohibitions against workplace discrimination. The most used exception is one that permits an

employer to discriminate on the basis of disability with respect to employment because the person is incapable of performing or fulfilling the essential duties of his or her position. This exception is narrowly interpreted and is subject to an obligation to reasonably accommodate the individual in performing those essential duties, to the point of undue hardship. Many human rights statutes also protect affirmative action-style programs designed to relieve hardship or economic disadvantage, or to assist persons or groups to achieve equal opportunity by providing that their implementation does not constitute a discriminatory practice.

2.2.3 Enforcement

Enforcement of Canadian human rights legislation is essentially a complaint-driven process. Most jurisdictions have a human rights commission that will provide advice and assistance to individuals who believe they have been unlawfully discriminated against. If a complaint is filed, the human rights commission will investigate the complaint. If the complaint cannot be settled, the human rights commission may refer the complaint to a human rights tribunal for adjudication.

Generally, human rights tribunals have broad remedial powers, including the power to award damages for loss of employment or wages, and damages relating to loss of enjoyment or hurt feelings. Human rights tribunals may reinstate an employee to his or her employment or require an employer to take steps to ensure that discrimination does not continue.

For example, in some jurisdictions an employer may be required to institute an anti-discrimination policy, report periodically to the human rights commission, and make specific changes to its employment systems or practices. Further, most human rights legislation provides that those persons who infringe the rights provided for by the legislation are guilty of an offence and liable to pay certain fines.

2.3 Occupational Health and Safety Legislation

Occupational health and safety legislation creates health and safety obligations for both employers and employees to minimize the risk of workplace accidents. In all jurisdictions, employers are required to take all reasonable precautions to protect the health and safety of their workers. In some provinces, this obligation extends to the protection of the health and safety of all individuals at or near the employer's workplace, whether or not those individuals are employees.

Aside from the general obligation to take reasonable precautions to protect employees, the regulations passed under occupational health and safety legislation contain many and very specific responsibilities that are imposed on employers to ensure that their workplaces are safe. Some of these responsibilities apply to specific industries. Other regulatory responsibilities relate to particular hazards that may exist in the workplace, including the use of toxic substances and hazardous materials or equipment.

Canadian occupational health and safety legislation also provides employees with certain rights designed to promote workplace safety. For example, employees have a right to be informed by their employer about hazards in the workplace and have the right to refuse work that they reasonably believe is dangerous. Although the right to refuse work is subject to very specific procedural requirements in each jurisdiction, employers cannot discipline employees for properly exercising their statutory right to refuse dangerous work.

Employees also have a right to participate in the creation of safe workplaces and the resolution of health and safety problems. Occupational health and safety legislation in all Canadian jurisdictions provides for the creation of joint health and safety committees, which are advisory groups of worker and management representatives. The statutes contain specific provisions with respect to the composition and operation of joint health and safety committees, including their size and the frequency of meetings. Generally, joint health and safety committees are required to meet either monthly or quarterly to discuss health and safety concerns in the workplace, and to make recommendations to the employer for the benefit of the health and safety of workers.

In Ontario, the scope of occupational health and safety legislation was recently expanded to require employers to conduct a formal assessment of the risk of violence occurring in the workplace. In addition, employers must prepare policies and programs on workplace violence and harassment and must provide information and instruction to employees regarding the contents of the policies and programs.

2.3.1 Enforcement

In all Canadian jurisdictions, government health and safety officers or inspectors enforce occupational health and safety legislation. These officers or inspectors typically have broad powers to investigate potential violations of the legislation, and may be called to the workplace by a worker or employer, or may audit the workplace without notice.

An officer or inspector who finds that an employer has failed to comply with occupational health and safety legislation also has broad powers to make orders to require the employer to rectify that failure. An officer or inspector will typically order that violations be remedied within a certain time-frame. They may also issue “stop work” orders and require the removal of hazardous equipment or material from the workplace. Subject to the specific procedural requirements in the governing legislation, the orders of an officer or inspector may be appealed by the employer to a labour relations board or other adjudicative body.

Canadian occupational health and safety legislation also provides for the quasi-criminal prosecution of individuals and corporations for violations of the legislation, resulting in the potential imposition of fines and/or imprisonment. Maximum fines vary greatly and can be significant, exceeding C\$1-million in some provinces. In addition to these quasi-criminal sanctions, the *Criminal Code* has been amended to expand both personal and corporate liability in the context of serious health and safety violations and workplace accidents. As such, employers and their representatives may also be subject to criminal sanctions with respect to a failure to ensure the health and safety of people in their workplaces.

2.4 Workers’ Compensation Legislation

All provinces and territories in Canada operate a no-fault insurance plan with respect to injuries and illnesses arising from employment. Participation is compulsory for most employers. These plans provide workers who become sick or injured at work with compensation for both economic and non-economic losses, in certain circumstances.

An employee can collect benefits for injuries causing temporary or permanent disabilities and make use of any rehabilitation services provided, but cannot sue his or her employer with respect to the injury. Workers’ compensation boards in each Canadian province and territory manage the insurance plans, and

most provinces and territories have workers' compensation tribunals to adjudicate disputes relating to benefit entitlements and other matters. Employees of federally regulated businesses are generally covered by the plan in the province or territory where they work.

Most employers are required to register with the applicable workers' compensation board and to pay premiums into the insurance fund. In some jurisdictions, employers who carry on business in low-risk industries are not required to participate, although they may choose to do so. The contribution an employer is required to make to the insurance fund will depend on the types of activities carried on in the workplace. In general, the greater the risk of accident in the workplace, the higher the premium that employer will be required to pay. In some provinces, workers' compensation legislation provides that an employer's claims history may also impact its premium, such that a surcharge is applied to the account of an employer with a poor claims history and an employer with a good claims history receives a rebate.

Workers' compensation legislation establishes many additional employer obligations. Generally, the legislation requires employers to report any accidents that occur in the workplace within specific time-frames. Employers are also required to work with employees to prevent injuries and to help injured employees return to work. In some provinces, workers' compensation legislation requires employers to reinstate certain workers who become able to return to work following a workplace accident to their previous or a comparable position, even if the employee has been absent for a significant period of time.

Employers must also comply with various administrative obligations relating to the investigation and adjudication of benefits claims and the payment of insurance premiums. These obligations may vary significantly in each of the provinces and territories.

Employers and their representatives must comply with all obligations contained in workers' compensation legislation. As with occupational health and safety legislation, workers' compensation legislation provides for the quasi-criminal prosecution of individuals and corporations for violations of the legislation, which may result in significant fines and/or imprisonment.

2.5 Labour Relations Legislation

Labour relations legislation in each province and under the federal jurisdiction regulates trade union organization, certification, and collective bargaining. The legislation entrenches the right of employees to organize and to be represented by a bargaining agent, without interference from employers, through a certification process and by prohibiting conduct that interferes with the exercise of that right. The collective bargaining process is regulated to provide mechanisms for achieving collective agreements. Employers carrying on business in more than one province continue to be subject to provincial regulation (unless their business is subject to federal regulation, as in the case of inter-provincial trucking).

If a provincially regulated employer carries on business in several provinces, a union must seek certification from the labour board of each province in which the employer is located to require the employer to deal with the union in each jurisdiction. Because the *Canada Labour Code* only applies to certain industries and is broadly comparable to provincial legislation, the provisions of that Code will not be reviewed here.

Generally, Canadian labour relations legislation governs the conduct of unions and employers, and addresses various rights and obligations relating to collective bargaining and industrial disputes. It is important to remember that it is the right of every employee in each Canadian jurisdiction to join a trade

union, and to participate in any lawful activity of a trade union. Consistent with that right, employers cannot discriminate against an employee because he or she has joined a trade union or is participating in an organizing drive.

2.5.1 Union Certification

Labour relations legislation sets out the process by which a trade union may be certified to represent employees in a specific bargaining unit. Certification is generally approved by provincial and territorial labour relations boards, although the process used varies in each jurisdiction. In some jurisdictions, a certification vote is required, whereas, in other jurisdictions, the trade union need only sign up a certain percentage of the employees to be certified.

Although an employer in almost all provinces has the right to communicate with employees during an organizing drive, labour relations legislation limits such communication to ensure that the employer does not coerce or unduly influence employees. Further, an employer must be careful not to interfere in other ways with a trade union's organizing effort. If a trade union believes that an employer has committed an unfair labour practice during the certification process, it may file a complaint with the applicable labour relations board.

In many jurisdictions, labour relations boards may proceed to certify the trade union if it is determined that, as a consequence of the employer's inappropriate conduct, the true wishes of the employees are not capable of being determined by a vote.

2.5.2 Collective Bargaining

Once a trade union is certified, the union becomes the exclusive bargaining agent for employees in its bargaining unit, and the employer has an obligation to bargain in good faith with the union to achieve a collective agreement. During the life of the collective agreement, strikes and lockouts are not permitted and all disputes are required to be resolved through grievance arbitration. Labour relations legislation in each Canadian jurisdiction sets out the procedures that trade unions and employers must follow before they are able to engage in a legal strike or lockout.

Generally, labour relations statutes also include provisions regarding the termination of a union's bargaining rights. As a general observation, an employer cannot encourage employees to initiate an application for termination in any way. In addition, labour relations legislation in each Canadian jurisdiction specifically provides that if all or part of a business is sold, bargaining rights are protected.

2.5.3 Strikes and Lockouts

Strikes or lockouts are illegal during the life of a collective agreement. They can be undertaken only after the expiration of the agreement and after mandatory conciliation has failed to bring about an agreement.

2.5.4 Picketing

Traditionally, there are two forms of picketing. Primary picketing is lawful and involves picketing at the place of business of the struck employer. Where the employer has multiple places of business, picketing at other locations is considered to be primary picketing.

Secondary picketing, on the other hand, involves picketing third parties dealing with struck employers. Injunctive relief to restrain secondary picketing might be available from the courts or labour relations boards in appropriate circumstances.

Picketing is controlled by the criminal law and by the law of torts in addition to labour relations law, and is limited to communicating information. Forms of intimidation, including verbal threats, physical assaults or blocking of premises, are unlawful.

2.5.5 Will the presence of a bargaining unit affect the sale of a business?

Generally, the purchaser of all or part of a business is bound by existing collective agreements and must recognize the certified union. In some cases after a sale, where there has been an intermingling of employees, an application can be made to the Labour Board to determine if the bargaining units are still appropriate.

3. Common Law Obligations to Employees

Over and above the statutory obligations summarized above, employers in Canada are also required to meet common law obligations owed to their employees working in Canada's common law provinces and territories, that is, all jurisdictions other than Quebec. Common law is essentially a "judge-made" body of law consisting of judicial decisions and precedents, instead of statutes or codes created by legislatures.

In the absence of a written contract of employment, certain terms and conditions of employment between an individual and his or her employer are implied by common law. One of the obligations imposed upon employers by the common law is the obligation to provide employees with reasonable notice of termination of employment, or pay in lieu of reasonable notice, in the absence of just cause for dismissal. Given that just cause for dismissal exists in only the most exceptional cases (typically involving serious wilful misconduct on the part of the employee such as theft or sexual harassment), terminations of employment in Canada are generally effected without cause by providing employees with reasonable notice or pay in lieu of notice.

There is no fixed formula for determining reasonable notice in any given case. There are, however, many factors that have been taken into account by courts of law when determining reasonable notice, including the:

- Age of the employee
- Employee's length of service
- Position held by the employee
- Employee's level of compensation.

In essence, in each case, courts attempt to identify the length of notice that would be required to provide the employee with a reasonable opportunity to find alternate employment of a similar nature. Generally, notice periods determined by courts have not exceeded 24 months, but the trend is currently toward longer notice periods. Further, any aggravating or “bad faith” behaviour on the part of the employer when dismissing an employee may serve to entitle the employee to additional damages in litigation.

Reference was made above to written contracts of employment. Written contracts of employment may contain provisions which speak to an employee’s entitlement to notice or compensation upon the termination of his or her employment. In general terms, any obligations regarding dismissal described by a valid contract will govern the termination of employment, as long as minimum statutory obligations are met by the contracted provision.

Common law principles are not applicable in the province of Quebec. Rather, employers’ obligations are established by the *Civil Code of Quebec*. However, that legislation provides that an employee can claim reasonable notice (or compensation in lieu of notice) of the termination of his or her employment, such that an employee’s entitlements upon dismissal in that province are substantially similar to those of employees in the common law provinces.

However, Canadian employers should be aware of the fact that there are unique legislative and other requirements relating to employment in Quebec that are not necessarily present in the common law provinces and territories.

4. Conclusion

In Canada, employment obligations are imposed upon employers by statute, common law and, to a limited extent, the civil law. The most significant common law obligation is to provide reasonable notice to an employee of the employer’s desire to terminate the employment relationship. That obligation applies in the absence of any written agreement to the contrary, and in the absence of cause for dismissal without notice.

Statutorily, obligations are imposed upon employers by way of various pieces of legislation, the most significant types of which have been discussed briefly above. Navigating through labour and employment-related legislation is often difficult and time-consuming. However, it is important to ensure that the employment obligations set out in the legislation are satisfied. Failure to do so will quite often result in one or more complaints with various governmental agencies or tribunals, and a subsequent investigation and hearing of the substance of the complaint. Proactive employers that spend the time and effort to ensure that all of their employment obligations have been met will decrease the likelihood of such costly proceedings.

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