

EMPLOYMENT LAW OVERVIEW

CANADA 2021-2022

Filion Wakely Thorup Angeletti LLP / Proud Member of L&E GLOBAL



TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	05
III.	EMPLOYMENT CONTRACTS	08
IV.	WORKING CONDITIONS	10
V.	ANTI-DISCRIMINATION LAWS	12
VI.	PAY EQUITY LAWS	14
VII.	SOCIAL MEDIA AND DATA PRIVACY	15
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	17
IX.	RESTRICTIVE COVENANTS	20
X.	TRANSFER OF UNDERTAKINGS	22
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	23
XII.	EMPLOYEE BENEFITS	25



I. GENERAL OVERVIEW

1. INTRODUCTION

In Canada, the power to make laws is divided between the federal and provincial governments. Generally, for historic, constitutional reasons, provinces have jurisdiction over most employment matters, while the federal government has jurisdiction over employment only in respect of specific industries, such as airways, shipping and banks. Employment law in Canada is quite similar from province to province and is governed by both federal and provincial legislation as well as by the common law (judge-made law). Quebec is the notable exception to this rule, as Quebec operates under a civil law system based on a written “civil code” founded on France’s Napoleonic Code.

2. KEY POINTS

- “Employment law” concerns the relationship between an individual and an employer, while “labour law” regulates the collective representation of employees by trade unions.
- There is no “at will” employment in Canada. Dismissed employees are entitled to notice of termination or pay in lieu of notice, unless employment was terminated “for cause”.
- Provincial employment standards legislation establishes minimum standards for wages, vacation, leaves, notice of termination and severance. However, the common law provides greater entitlements upon termination and can otherwise regulate the employment relationship.
- Employment contracts can be used to set out the terms of employment for non-union employees. Provided that the contract’s terms do not violate applicable statutory minimum requirements, the terms of the contract will displace the common law. As such, employers are encouraged to utilise written employment agreements, particularly with respect to entitlements upon termination.
- All jurisdictions have legislation prohibiting discriminatory practices and harassment in the workplace. Employers have significant positive obligations to ensure equality in the workplace.

3. LEGAL FRAMEWORK

Canadian labour and employment law requires an understanding of the constitutional division of power between the federal government of Canada and the governments of Canada’s ten provinces and three territories. Labour and employment matters are principally within provincial and territorial jurisdiction; however, the federal government has jurisdiction over certain industries that are thought to have a national, international, or inter-provincial character. Examples of employment falling within federal jurisdiction include navigation and shipping, air transportation, railways and other inter-provincial connections, road transportation, banks, specified products such as grain and uranium, telecommunications, federal employees, and First Nations (aboriginal) activity. As a result, most employers that operate in multiple Canadian provinces are required to comply with a range of legislation in each of these provinces. For the most part, despite some significant differences, there is reasonable consistency in the legal principles that apply to employment and labour law in all Canadian jurisdictions, including Québec.

4. NEW DEVELOPMENTS

Recently, changes in provincial governments have resulted in an increase in employee entitlements. The country's largest provinces, Ontario, Quebec, Alberta and British Columbia, have all increased their minimum wage rates and extended leave of absence entitlements..

Social issues such as the “#MeToo movement” and “Black Lives Matter (BLM)” also continue to change the landscape of employment law in Canada, with an increased emphasis on issues of discrimination and harassment (including sexual harassment). Although Canadian jurisdictions have long had laws pertaining to discrimination and harassment, the number of claims now being made has increased significantly. This trend has led to a number of legal proceedings, including large class action lawsuits. Further, the continued trend toward workplace harassment legislation has dramatically increased the number of claims and investigations. Given that these claims are based on relatively new, untested legislation, the standards of conduct are still being developed by the litigation process, resulting in not only meritorious claims coming forward, but also a distinct trend of employees claiming harassment over what have traditionally been seen as normal management techniques and disciplinary measures, or simply in response to any critique of their work performance.

Finally, like many other developed countries, a large portion of Canada's workforce is reaching the age where people have traditionally chosen to retire. For a variety of reasons, many Canadians are opting to continue to work longer, creating new and complex issues for employers. These issues include structuring retirement packages, as well as terminating the employment of someone who is older, and consequently may have decades of tenure. Not only are the costs of terminating long service employees much higher, it often becomes a delicate balancing act when an employee's age begins to affect their work, and the statutory prohibitions against age discrimination may then trigger accommodation requirements akin to those for employees with disabilities.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Unlike most labour and employment law, immigration law is under the jurisdiction of the federal government and is subject to the Immigration and Refugee Protection Act (the “IRPA”). To be lawfully employed in Canada, one must be a citizen, a landed immigrant, or have a work permit.

There is some increased movement of professionals, executives and skilled trades through free trade agreements with other countries, particularly the United States. No work permit is required for business visitors who come to Canada to meet with Canadian clients or assess business opportunities; however, a work permit will be required for foreign nationals who will be providing their services in Canada. Unless an exemption applies, the employer of the foreign national must apply to Service Canada to obtain a Labour Market Impact Assessment allowing it to offer employment to a foreign national. The two main categories of exemptions are for intra-company transferees and the “professionals” category under Canada’s treaty with the United States and Mexico. Both of these types of exemptions are available only to managerial, specialised or professional employees.

Apart from senior executives, professionals and workers with specialised skill-sets, most foreign workers in Canada are employed in the domestic care or agriculture sectors. Temporary foreign workers are protected by the same laws as Canadian employees, including labour and employment legislation and the Charter of Rights and Freedoms.

The Canadian government recently introduced new legislation to govern Canada’s Temporary Foreign Worker Program, designed to better protect foreign workers and to address short-term labour and skills shortages. The new regulatory amendments seek

to rigorously assess the authenticity of employment offers in order to minimise fraudulent offers and better protect foreign workers from exploitation and abuse. A second element of the new rules seeks to bar employers from hiring temporary foreign workers when Citizenship and Immigration Canada has determined that the employer has failed to meet its commitments regarding terms and conditions of employment. Finally, according to the regulatory amendments, temporary foreign workers can hold a temporary work permit for only four years at a time. However, some workers are exempted from this limit, including most who occupy managerial, highly skilled, or other exempt positions.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

A foreign employer has several options when hiring a Canadian. One option is to hire the person as an independent contractor; however this means that the person is not technically an “employee” of the foreign company, and could work for other companies as well. Further, it can be difficult to impose the same duties (such as loyalty) on independent contractors. Finally, just calling someone a contractor does not make them one in the eyes of Canadian law. There are significant risks created by misclassification, making it a choice best taken only with great caution.

Another option is for a foreign employer to work with a Professional Employer Organisation (PEO) to assist in the hiring and other human resource related duties. PEOs are Canadian companies that help ensure foreign employers comply with the applicable laws of Canada.

It is also possible for a foreign entity to register with the applicable government agencies, so as to “do business” in Canada, which then allows them to employ workers. In other words, it is not essential that a foreign company create a separate Canadian affiliate or subsidiary. The choice is most often driven by corporate taxation considerations.

Finally, a foreign employer can create a corporation in Canada, which can then hire employees itself. This is the most common structure used by international employers of significant size, though new entrants hiring only a few employees in Canada often opt to simply register and employ staff directly. Again, the choice will be driven by corporate considerations, including taxation, regulatory requirements and other internal motives.

3. LIMITATIONS ON BACKGROUND CHECKS

In certain provinces (Alberta, British Columbia and Quebec), employee privacy legislation places limits on the collection, use and disclosure of personal information. Even when an individual has consented to a background check, the collection, use and disclosure of personal information must be reasonable under the circumstances, given the purpose for which it is being collected, used or disclosed. Employers must therefore have some justification for requesting that employees consent to a background check, criminal or otherwise, as they may be required to demonstrate that the check was reasonable and necessary in the circumstances.

Moreover, the provinces each have their own anti-discrimination legislation that may also apply to certain types of background checks. For example, British Columbia and Quebec require that any criminal background check and any decision relating thereto, must be directly relevant to the particular staff position at issue. At the other end of the spectrum, Alberta currently has no restriction on criminal background checks in its legislation at all. Other provinces are somewhere between these two extremes.

Further, as a matter of practice by law enforcement, a criminal record check can be obtained only with a prospective employee’s consent, and often only

by the individual (who would then need to disclose it to the employer). Other types of background checks, such as social media background checks, may be performed without an applicant’s consent, but this type of check carries its own risks, as it can disclose identifying information about things like an individual’s religion, national origin, ethnicity, sexual orientation, family or marital status, and other factors that cannot be used in a discriminatory fashion, and which an employer should not be considering prior to making an employment decision.

For the foregoing reasons, employers generally should not conduct record checks until a conditional offer of employment has been made, and then only with the employee’s consent (and, often, participation). Upon receiving the results of a record check, it may be possible to rescind an offer of employment depending on the details of the results and the applicable legislation.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Canadian employers are subject to a number of restrictions in the hiring process based on human rights and privacy legislation.

A. INTERVIEW QUESTIONS

Human rights legislation in Canada prohibits discrimination in the hiring process. Many questions an employer may be interested in asking during the interview process may unintentionally solicit information regarding an applicant’s disability, age, religion, or another protected ground. For example, requesting that applicants provide the dates they attended educational institutions may unintentionally solicit information regarding age. Asking an applicant if he or she is available to work particular shifts during the hiring process may solicit information regarding the applicant’s religion or family status. If an applicant is ultimately unsuccessful in obtaining employment, that applicant may claim that they were not selected based on a prohibited ground of discrimination. Most employers therefore seek to limit the amount of information sought at the

application stage that could unintentionally solicit disclosure of a characteristic that is protected by human rights legislation. More in-depth questions will be appropriate when a conditional offer of employment is made.

In Ontario, human rights legislation expressly recognises that a person's right to equal treatment with respect to employment is infringed where, during the hiring process, an employer makes an inquiry that "directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination". In a decision of the Human Rights Tribunal of Ontario ("HRTTO"), an employer was found to have violated its obligations by obtaining copies of an applicant's birth certificate and driver's license at the commencement of a job application process. The HRTTO found that the employer's request for this information indirectly classified the applicant by age, and noted that this type of request would also have classified candidates by other protected grounds, such as place of origin. The HRTTO stated that the employer was only entitled to request that type of documentation after a conditional offer of employment was made.

Additionally, in most Canadian jurisdictions, it is prima facie discrimination for an employer to refuse to hire someone because their relative works for the company. Whether or not this type of anti-nepotism policy can be justified will depend on the nature of the familial relationship (i.e. cousin vs mother), and the potential impact of having related persons employed by the company. Most employers therefore reserve this type of question until they are prepared to make a conditional offer of employment.

B. PRE-EMPLOYMENT DRUG TESTING

In Canada, employers are generally not permitted to test prospective employees for drug use, or to refuse to employ a person because of the results of a drug test. Adjudicators have found that pre-employment drug and alcohol testing is presumptively discriminatory on the basis of disability and/or perceived disability. Where a position is safety sensitive, drug or alcohol testing may be a valid requirement on the job, but is rarely permissible pre-employment.

III. EMPLOYMENT CONTRACTS

Every employment relationship is governed by an employment contract, whether it is written, unwritten or contains elements of both. An employment contract sets out the terms and conditions of the employment relationship. In the absence of a written contract, the employment contract will be made up of the oral representations the parties have made. Additionally, many terms may be implied at common law if an employment contract is either unwritten or only partially written. Further, several terms may be required as a matter of statutory law.

1. MINIMUM REQUIREMENTS

In order to be enforceable, an employment contract must fulfill the essential elements of a binding contract at common law, and must not contravene any applicable legislation. A binding contract must be formed by offer, acceptance and consideration. In the case of most employment contracts, the consideration is the exchange of remuneration for work. Courts have found that continued employment is generally not sufficient consideration, unless there is evidence that the employer intended to dismiss the employee if the post-hire agreement was not executed.

Employment contracts are subject to increasingly close scrutiny in Canada and will not be enforceable if they do not comply with minimum employment standards, occupational health and safety legislation and human rights legislation. An employee cannot waive or contract out of his or her minimum entitlements under the applicable employment standards legislation. Any ambiguity in an employment contract will generally be interpreted in the employee's favour by virtue of the application of the common law doctrine of *contra proferentem*.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

Most employment agreements are for an indefinite term. In the absence of an express agreement to the contrary, an employment contract for an indefinite term can only be terminated by the employer by the provision of reasonable notice at common law. However, the parties may agree to limit the employee's entitlements upon termination to the minimum entitlements provided for under the applicable employment standards legislation. In general, the statutory notice period is much shorter than the notice period at common law.

Where an employment agreement stipulates that employment will be for a fixed term, the employee may not be entitled to notice of termination if his or her employment is terminated when the contractual term expires. However, where an employee continues to be employed once the contractual term has expired, or where he or she continues to be employed by the same employer under consecutive fixed-term employment contracts, courts are likely to find that the employment contract was in substance one of indefinite duration such that notice of termination must be provided. Employment standards legislation may also establish maximum time frames for fixed term employment contracts to operate as such.

3. TRIAL PERIOD

A probationary term will not be implied in an employment contract. If an employer wishes to hire an employee on a probationary basis to determine their suitability for the position, this should be clearly set out in a written employment contract. Employment standards legislation in most provinces does not require the provision of notice

of termination or pay in lieu of notice for employees with less than three months of service. However, once a person has been employed for three months, the minimum notice requirements for termination will apply. Any agreement for a probationary period that exceeds three months should clearly state that the employee will be provided with his or her statutory entitlements upon termination.

4. NOTICE PERIOD

All employees must be provided with notice of termination or pay in lieu thereof in accordance with the applicable employment standards legislation. Unless the parties have expressly agreed otherwise, there is a legal presumption that an employee will also be entitled to reasonable notice period under common law, which is intended to approximate the length of time it would likely take an employee to obtain similar employment. Factors that will be considered by an adjudicator in determining the appropriate notice period include: the character of employment; the employee's length of service; the age of the employee; and the availability of other employment. The range of the notice period that may be awarded by a court generally may range from two or three months up to twenty-four months. In exceptional cases, a notice period exceeding twenty-four months may be awarded.

The parties may, however, agree that employment termination will be governed by the minimum applicable employment standards legislation rather than by the common law. If a written employment contract that is otherwise enforceable provides that the employee will receive only his or her minimum entitlements under the applicable statute, this may be sufficient to rebut the legal presumption that the employee is entitled to reasonable notice at common law.

IV. WORKING CONDITIONS

The specific obligations an employer owes to its employees will typically depend upon the jurisdiction in which it operates, be that federal, provincial or territorial. What follows is a general overview of the various workplace statutes, including employment standards, health and safety legislation, human rights, pay equity and workers' compensation.

1. MINIMUM WORKING CONDITIONS

Employment standards in each Canadian jurisdiction sets minimum legislative standards, or a "floor of rights", with respect to matters such as minimum wages, hours of work, overtime pay, vacations and holidays, and leaves of absences. Employees and employers may not contract out of these rights except to provide for terms more favourable to employees.

2. SALARY

Employees must be paid an amount equal to or greater than the applicable minimum wage. Minimum wages in Canadian jurisdictions range from \$11.00 per hour to \$14.00 per hour. Where employees are paid a salary rather than an hourly wage, the employer must nevertheless ensure that employees' compensation is at least equal to the minimum wage in light of hours worked.

3. MAXIMUM WORKING WEEK

Most jurisdictions have legislation governing the maximum hours of work that an employee may work. Generally, such legislation sets out maximum daily and weekly figures (typically 8 hours per day

and between 40 and 48 hours per week). In certain situations, these maximum hours of work may be exceeded, such as: where overtime is paid; where employees agree; or where there is an emergency situation. Specific provisions also exist in some jurisdictions, which permit employers to implement "compressed" four-day work weeks or "continental shifts" with 12-hour work-days.

4. OVERTIME

Each jurisdiction's employment standards legislation includes provisions governing overtime pay when an employee works in excess of a certain number of hours (typically time-and-one-half). Overtime entitlements apply to both salaried and hourly employees. However, most jurisdictions specifically exclude certain employees from this entitlement, such as managerial or supervisory employees and certain types of professionals.

5. HEALTH AND SAFETY IN THE WORKPLACE

The health and safety of workers should be a major concern for all employers in Canada. Each jurisdiction is governed by its own health and safety legislation, but generally they all have broad and sweeping powers to investigate and prosecute employers who fail to ensure a safe workplace.

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

Occupational health and safety legislation exists in all jurisdictions and places an obligation on both employers and employees to minimise the risk of workplace accidents, through the exercise

of “due diligence”. Regulations are enacted that create specific requirements for and expectations of each workplace, including industry-specific requirements governing the use of hazardous substances and dangerous equipment. These expectations are enforced through well-funded bureaucracies and the threat of quasi-criminal, or actual criminal, prosecution of the employer, management, or other workplace participants if there is a breach of the legislation or applicable regulatory provision. Legislation also provides employees with certain rights designed to promote workplace safety, including the right to be informed of hazards and the right to refuse work that they reasonably believe is dangerous. Finally, in many Canadian jurisdictions, there are laws that require that employers assess the risk of, and develop programs to deal with, violence and harassment in the workplace.

B. COMPLAINT PROCEDURES

Complaints can be made against employers by contacting the appropriate government ministry depending on the jurisdiction they are in. The complaint process is designed to be easy and accessible for employees who wish to report a health and safety issue. Once a complaint is made to the appropriate government agency, they will almost always conduct an investigation. Depending on the findings of the investigation, quasi-criminal (regulatory) charges can be laid against corporations, their directors, as well as supervisors/managers. In the case of significant worker injury or death, criminal prosecution is also possible.

C. PROTECTION FROM RETALIATION

Employees are protected from retaliation (or reprisal) by their employers. This means that employers and their representatives are prohibited from dismissing, disciplining, intimidating or coercing employees for exercising their rights under such legislation.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

All jurisdictions have legislation and administrative agencies to deal with human rights complaints concerning harassment and discriminatory practices in the workplace. As a general statement of the law in Canadian workplaces with respect to human rights, employers have an obligation to offer employment without discrimination and to guard against harassment based on prohibited grounds. Specifically, in respect of disability, employers have a significant duty to accommodate employees to the point of undue hardship. This requirement is designed to ensure that employees with disabilities are offered accommodation that will enable them to meet bona fide occupational requirements. As might be expected, the defence of undue hardship is a high hurdle for an employer to overcome, and generally requires something more than the mere economic cost of achieving accommodation.

In each jurisdiction, human rights matters are adjudicated by specialised administrative bodies, usually referred to as human rights tribunals. Human rights issues are sometimes raised in employment litigation before the courts as well.

2. EXTENT OF PROTECTION

Each Canadian jurisdiction has its own human rights legislation, and the defined criteria or grounds for discrimination vary by jurisdiction.

A. PROTECTED GROUNDS

Generally, human rights legislation is applicable to the following grounds: race-related grounds, creed,

sex, disability, age, sexual orientation, marital status, and family status. Some Canadian jurisdictions also prohibit discrimination based on gender identity and expression, as well as discrimination based on criminal convictions that are unrelated to employment, or criminal convictions for which a pardon has been obtained.

B. DIRECT VS. INDIRECT DISCRIMINATION

Human rights legislation prohibits both direct and indirect or discrimination. Obviously, a rule or policy that is overtly discriminatory will offend human rights legislation. For example, a job advertisement indicating that no women need apply would likely be viewed as direct discrimination on the basis of sex. A policy that all employees must be available to work on Sundays may constitute indirect or constructive discrimination, as this seemingly “neutral” rule may have a differential and adverse impact on employees based on their creed or religion.

A rule or policy that is directly discriminatory will not be permissible unless an exemption under the relevant statute applies. For example, some religious, educational or social institutions or organisations that are primarily engaged in serving the interests of persons identified by race, sex, creed, etc. may give preference in employment to persons similarly identified if such preference is reasonable and bona fide in light of the nature of the employment. Direct discrimination is therefore only permissible in rare circumstances. Indirect or constructive discrimination may, however, be permissible only where the requirement is reasonable and bona fide in the circumstances, and where providing accommodation to the affected individual or group would cause undue hardship to the employer. Undue hardship is determined

based on factors of cost, outside sources of funding, and health and safety, and is a very high threshold for employers to meet. In many cases, the employer will be required to provide some form of accommodation to the affected employee or group of employees by, for example, allowing for some scheduling flexibility for employees based on employees' religious observance.

C. REPRISAL

Human rights legislation prohibits making any threats of reprisal or taking any action to reprise against an employee for claiming or enforcing a human right. An employee therefore cannot be disciplined or otherwise penalised for making a complaint regarding discriminatory harassment, or for requesting accommodation based on a protected ground.

D. HIRING QUOTA OR "AFFIRMATIVE ACTION" REQUIREMENTS

Most jurisdictions in Canada have some form of equal pay and/or pay equity legislation to ensure that wage parity exists between male and female workers. Such measures are intended to redress systemic discrimination. Although employers are prohibited from discriminating in employment, employers are generally not required to meet any particular quota for hiring historically disadvantaged groups. Employers do, however, increasingly face claims by prospective or current employees that they have been adversely affected by systemic discrimination. Many employers in Canada have recognised the benefits of employing a diverse workforce and have therefore voluntarily created goals or guidelines designed to increase diversity.

3. PROTECTIONS AGAINST HARASSMENT

Harassment is defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Harassment based on a prohibited ground of harassment will violate human rights legislation. Sexual harassment is a form of discriminatory harassment. Personal harassment is also prohibited

under occupational health and safety legislation in many jurisdictions.

Employers are obligated to have policies in place to prevent and address harassment in the workplace. In most cases, employers will be required to conduct an investigation into allegations of workplace harassment and take corrective or remedial action based on the outcome of the investigation.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

Employers are required to accommodate employees to the point of undue hardship. Employees are entitled to be provided with reasonable accommodation that is necessary in the circumstances. Employees are not entitled to their preferred or desired form of accommodation, although employers will often take an employee's wishes into consideration. Where an employer offers an employee a reasonable accommodation, it will have discharged its duty to accommodate, even if the employee would prefer to be accommodated in some other manner. A reasonable accommodation will be one that meets the employee's needs and does not impose undue burdens, financial or otherwise, on the employee.

5. REMEDIES

Employees who have been subject to discrimination may file a human rights complaint or, in some cases, a civil action or grievance. Employees may seek compensation for any lost wages that resulted from an employer's discrimination and/or failure to accommodate to the point of undue hardship. For example, if an employer refuses to provide modified work to an employee in order to enable him or her to return to work, the employer may be ordered to pay the employee for the period of time that he or she remained unable to work due to the employer's failure to accommodate. Damages may also be awarded for the injury to an employee's dignity, feelings and self-respect that may have been caused by the employer's actions.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

Canada is a country that takes pride in the diversity of its population. Although generally not required, many major companies in Canada have made concerted efforts to increase the diversity of their workforce. Certain federally regulated workplaces are also governed by the Employment Equity Act, which identifies and defines four groups (women, aboriginal peoples, persons with disabilities and members of visible minorities) and helps ensure they have fair representation in the workforce.

In addition, certain jurisdictions in Canada including Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Quebec also have pay equity legislation. Employees in jurisdictions without provincial pay equity legislation may seek equal pay protection under human rights legislation.

2. REMEDIES

Complaint mechanisms for pay equity concerns are different in each jurisdiction. Generally, employees are able to make complaints to regulatory bodies alleging that an employer is not implementing or maintaining compensation practices that provide for pay equity. Such complaints are investigated in due course, and a decision is rendered which determines whether an employer is in compliance with the requisite statute. Employers who fail to cooperate during the investigatory stage may be subject to financial penalties. In jurisdictions without pay equity legislation, complaints may be made under human rights legislation.

3. ENFORCEMENT/ LITIGATION

Across Canada, pay equity commissions and human rights bodies hear and adjudicate pay equity complaints. Most recently, in 2018, the Supreme Court of Canada rendered a seminal decision on pay equity. In interpreting Quebec's pay equity legislation, the Court recognised pay equity as a fundamental human right and expressly acknowledged the systemic nature of pay discrimination.

4. OTHER REQUIREMENTS

Employers in each jurisdiction must meet different statutory compliance requirements. For example, in Ontario, all private sector employers with more than 10 employees must establish and maintain compensation practices that provide for pay equity in every establishment of the employer. In addition, such employers must also prepare and post a pay equity plan. Employers are encouraged to review reporting and compliance requirements in each jurisdiction in which they operate.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

Social media and mobile technology play an increasingly large role in the lives of individuals. These developments have the potential to impact employment relationships both positively and negatively. Mobile technology can allow employers to maintain contact with employees when they are not in the workplace, which is convenient and can lead to greater efficiency. However, the presence of mobile technology in the workplace may also result in distractions and decreased productivity, and may also give rise to privacy concerns. Many employers have also had issues with employees using social media to discuss the employer's business, or to disparage the employer or other employees.

It is unlikely that an employer accessing publicly accessible information on the Internet could violate an employee's privacy rights. However, privacy concerns may arise where an employee uses an employer-provided computer or cell phone for personal matters, particularly if such use is permitted or condoned by the employer. The relevant question in such instances is whether the employee had a reasonable expectation of privacy in the computer or cell phone's contents.

Employers often have workplace policies that expressly advise employees that they will have no entitlement to privacy with respect to any activity engaged in on employer-provided technology. Employers may also have policies in place permitting the employer to monitor, search or otherwise police the use of employees' computers or cell phones. The existence of a policy will not always be sufficient to establish that an employee had no reasonable expectation of privacy. The question of whether or not a reasonable expectation of privacy

exists will depend on a consideration of all of the relevant circumstances. A balance must be struck by employers between the freedom of employees to use the internet on their own time, and their ability to damage an employer's reputation or workplace relationships by doing so.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

Employers are entitled to restrict an employee's use of Internet and social media during working hours. Employers may also place limits on the use of employer-provided technology outside of working hours. Like any workplace rule, an employer's Internet and social media policy must be clear and well-publicised in order to be relied upon by the employer in issuing discipline.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

It is not uncommon for employees to be disciplined or even discharged for just cause for publishing posts on social media that are insubordinate, critical of the employer, or breach employees' confidentiality obligations. Breaches of confidentiality by employees may be particularly serious for employers expected to safeguard the confidential information of patients or clients. Although employers are generally not entitled to discipline employees for

off-duty conduct, this will not be the case where an employee's actions are significantly injurious to the interests of the employer, or infringe the rights of other employees. For example, many employees have been disciplined or discharged for engaging in "cyber-bullying" or online harassment of other employees.



VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Employment can be terminated at any time if the employee is provided with appropriate notice of termination as well as any applicable legislative entitlements. However, if an employee engages in conduct that is incompatible with the fundamental terms of the employment contract, he or she may be dismissed without notice. It is very difficult to establish just cause for dismissal. Examples of the types of activities that may be found to constitute cause for dismissal, depending on the circumstances, include theft; workplace harassment; criminal activity; and significant dishonesty or fraud. Although employees may, in theory, be dismissed for poor performance, employers are rarely found to have had just cause for dismissal on this basis.

2. COLLECTIVE DISMISSALS

Federal and provincial employment standards legislation sets out specific rules applicable to mass terminations. Most pieces of provincial legislation provide that a mass termination will occur where 50 or more employees will be terminated at an employer's "establishment" within a four-week period. An "establishment" may, in some circumstances, include more than one location. Employers must provide notice to the appropriate provincial or federal official that a mass termination will occur. For example, in Ontario, this notice must be provided to the Director of Employment Standards. Any notice provided to employees will not be valid until the appropriate government official has been notified regarding the terminations.

Unlike the standards applicable to individual terminations, where a mass termination will occur, the amount of notice employees will be entitled to, is based on the number of employees who have been or will be terminated. In Ontario, employers must provide at least eight weeks' notice if 50 to 199 employees will be terminated, 12 weeks' notice if the employment of 200 to 499 employees will be terminated, and 16 weeks' notice if 500 or more employees will be terminated.

3. INDIVIDUAL DISMISSALS

The employment standards legislation applicable in each Canadian jurisdiction sets out minimum notice periods for termination, or pay in lieu of notice, and in some cases, statutory severance pay. Typically, these statutory notice periods range from one to eight weeks of notice (or pay in lieu of notice), depending on an employee's length of service. The statutory minimums apply so long as an employee is not terminated for wilful misconduct.

Employees under a fixed term contract are not entitled to reasonable notice. However, Canadian courts and employment standards programs will closely examine the overall character of the employment relationship to determine whether it is in fact of a fixed nature.

In addition to the statutory notice period and severance pay (if any), non-union employees in Canada's common law jurisdictions are also entitled to reasonable notice of termination at common law. Common law notice period awards are often much longer than those required by statute (but would incorporate any statutorily mandated payments). Depending on an employee's position and length of service, up to 24 months may be awarded and

greater notice periods have been awarded in some cases. However, unlike statutory entitlements to notice, employees and employers are entitled to contract out of the common law notice periods, provided that the contract provides for at least the statutory minimum entitlements and is otherwise valid and enforceable. Employers are also typically responsible for the payment of benefits and entrenched bonuses during the common law notice period.

A. IS SEVERANCE PAY REQUIRED?

Employees are entitled to statutory notice of termination or pay in lieu thereof in all Canadian jurisdictions, unless they have been terminated for “just cause” or “willful misconduct”. The statutory notice period is based on an employee’s length of service, but does not exceed eight weeks in any jurisdiction.

Ontario is the only Canadian jurisdiction that provides employees with severance pay, which is distinct from payment for notice of termination. Mid-size to large employers operating in Ontario will be required to dispense severance pay to persons who were employed for at least five years. The legislation requires a lump sum payment, which is calculated as one week per year of service to a cap of six months.

4. SEPARATION AGREEMENTS

Separation agreements are not required by law, but are often entered into at the time of dismissal in order to reduce the risk of litigation over an employee’s legal entitlements. A separation agreement may also provide an opportunity for an employer to obtain the protection of restrictive covenants that were not contained in an employment contract, such as a non-competition or non-solicitation clause.

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

A separation agreement is a contract, and must therefore meet the essential requirements for an

enforceable contract. In particular, the employee must be provided with some form of consideration for executing the agreement. The agreement will not be enforceable if it provides the employee with only his or her minimum entitlements under the applicable legislation, as this will not constitute valid consideration. The employee must be provided with some benefit in excess of the statutory minimum in order to make the agreement and any release of claims signed by the employee enforceable. The agreement must also be compliant with all applicable legislation.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

A standard Separation Agreement will generally:

- specify the period of time that an employee’s salary will be continued following termination;
- specify the period of time that an employee’s benefits will be continued following termination; and
- require the employee to release the employer from any claims relating to their employment or employment termination.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

In general, an older employee is entitled to a longer common law notice period than a younger, but otherwise similarly situated employee. Consequently, an employer who wishes to enter into a Separation Agreement with an older employee will likely need to offer a more generous period of salary and benefit continuation in order to induce that employee to accept the offer rather than pursue an employment claim in the courts.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

A Separation Agreement may include restrictive covenants that constrain the employee from soliciting clients or employees of the employer for a fixed period of time, or from going to work for a competitor. In order to be enforceable, any such covenants must be reasonable in light

of the character of employment. Additionally, the geographic and temporal scope of any such restrictions must be reasonable in the circumstances. Because such restrictions represent a restraint on trade, they must not exceed what is required in order to protect the employer's interests.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

When an employee has been dismissed and believes that he or she has not been provided with appropriate notice of termination, he or she is entitled to bring a complaint under employment standards legislation, or (in the case of a non-unionised employee) file an action in court. A court of law can apply both employment standards legislation and the common law, while the enforcement mechanisms established under employment standards legislation are limited to determining whether there has been a breach under the statute. Unless an employer has alleged just cause for termination and refused to pay the employee his or her minimum statutory entitlements, most dismissed employees will have been provided with those amounts on termination.

However, as noted above, an employee's entitlement to notice at common law will generally be greater than the employee's entitlement under employment standards legislation. Consequently, some employees will bring a court action to sue for the difference between the amount of notice provided or paid under the applicable statute and the amount of notice that would be found to be due at common law.

Most employees in Canada do not have a right to reinstatement if they have been wrongfully dismissed. The reasonable notice period is designed to compensate employees for their loss of employment and is based, in part, on the amount of time it will likely take for the employee to find similar employment.

6. WHISTLEBLOWER LAWS

Section 425.1(1) of the Criminal Code of Canada makes it a criminal offence for an employer to retaliate (or threaten to retaliate) against an employee in order to convince them "to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed". The maximum penalty for this offence is five years imprisonment.

There are also specific protections offered to employees under almost every employment-related statute, should they come forward with a valid complaint about their employer, or if they assert their statutory rights. It should also be noted that employees generally have a duty of loyalty to their employer. Depending on the facts of a situation, an employee may be in breach of that duty (which can be grounds for termination) if their "whistleblowing" is for political or other purposes, unrelated to asserting statutory rights.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

A restrictive covenant is a contract or contractual provision by which the parties agree that the future conduct of a party will be restricted in some manner. In the employment context, restrictive covenants are most commonly found in employment contracts. Courts have held that restrictive covenants are presumptively unenforceable on the basis that they are considered a restraint of trade contrary to public policy. However, restrictive covenants will be enforceable in certain circumstances.

Notably, certain employees will be subject to certain restrictions following employment termination even in the absence of any restrictive covenants. Such restrictions are based on the employee's character of employment. An employee whose position involves a significant authority and responsibility, may be a "fiduciary" and consequently have an obligation at common law to refrain from competing with or soliciting the customers or employees of the employer for a reasonable period of time after employment termination.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

A non-competition clause restricts an employee from becoming engaged in a business that competes with the business of his or her former employer following the termination of his or her employment relationship. This type of restrictive covenant is primarily designed to protect an employer's interest in maintaining its relationships with clients

who may follow the employee to a competitor, and protecting the employer's business opportunities and confidential information from competitors.

Like all restrictive covenants, in order to be enforceable, a non-competition clause must be reasonable between the parties having reference to the public interest, and be reasonable in light of all surrounding circumstances. An enforceable covenant must also be clear and unambiguous. The following factors will be considered by a court in determining whether a restrictive covenant should be enforced:

- did the employer have a proprietary interest entitled to protection?
- are the temporal or spatial limits of the covenant overly broad?
- is the covenant too broad because it proscribes competition generally rather than just the solicitation of the employer's customers?

Each of the above factors will be considered on a case-by-case basis. Some employers operate globally, which may justify a broader spatial scope for a restrictive covenant. However, if an employee operates only within a limited territory, even for a global operation, a geographically broad non-competition clause may not be justifiable. Canadian courts have recognised that because a non-competition clause is more restrictive than a non-solicitation clause, a non-competition clause will not be enforced where an employer's interests could be adequately protected by a non-solicitation clause.

B. NON-SOLICITATION OF CUSTOMERS

A non-solicitation of customers' clause will prevent a former employee from directly contacting or

otherwise soliciting clients or customers of the former employer for a period of time following employment termination. Courts will assess the reasonableness of such a restriction in light of the nature of the employee's role, and the scope of the restriction. In general, the more limited the scope of the restriction, the more likely it is that a court will be willing to enforce the restriction. For example, a restriction prohibiting a former employee from soliciting any customers they personally dealt with during a period of one or two years prior to termination will likely be viewed as more reasonable than a restriction prohibiting the former employee from soliciting any of the employer's customers. Additionally, a restriction period of a period of several months is more likely to be enforced by a court than a restriction period of a year or more.

C. NON-SOLICITATION OF EMPLOYEES

An employer may seek to restrict a former employee's ability to solicit the employer's employees in order to protect its business interests. For example, there may be some risk that a manager or executive may obtain employment at a competitor or establish his or her own competing business, and solicit some or all of the employer's staff to follow suit. Courts may interpret employee non-solicitation clauses more liberally than non-compete or non-solicitation of client clauses, as employee non-solicitation clauses are generally viewed to be less restrictive.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

Where an employer has reason to believe that a former employee may be breaching the applicable restrictive covenants, they will generally begin by sending a letter to the former employee reminding him or her of the restrictive covenants, and directing the former employee to cease and desist competing with the employer or soliciting the employer's clients or employees. If this course of action is not successful, an employer who wishes to enforce a restrictive covenant will generally seek an injunction from a court due to the time-sensitive

nature of the issue. Injunctive relief will be granted by a court only where the following "threefold test" is satisfied:

- the applicant has presented a serious issue to be tried;
- the applicant would suffer irreparable harm if the application were refused; and
- the applicant would likely suffer greater harm from the refusal than the defendant would suffer from the granting.

Courts have generally recognised that the diversion of customers to a competitor may have irreversible consequences to a business. However, a court will not grant injunctive relief unless the applicant is able to demonstrate a strong prima facie case that the terms of the restrictive covenant is reasonable, and that the defendant is in fact engaging in activities that breach the restrictive covenant.

4. USE AND LIMITATIONS OF GARDEN LEAVE

"Garden leave" is a period of time during which an employee is paid by an employer to refrain from commencing employment with a new employer. The employee therefore continues to be notionally employed and paid his or her salary without being required to perform any work. Garden leave is fairly uncommon in Canada, although some employers have begun to view garden leave as a viable alternative to restrictive covenants which are notoriously difficult to enforce. For example, the contract of employment may state that contract of employment may be terminated by either party upon the provision of notice, and that the employee may or may not be required to continue to provide active service during the notice period. A similar provision has been found to be enforceable in at least one reported decision in Ontario.

In the absence of any contractual provision contemplating that an employer may remove some or all of an employee's job duties, there is some risk that an employee placed on garden leave may claim that he or she has been constructively dismissed, and therefore entitled to treat the employment relationship as severed, and immediately begin seeking other employment.

X. TRANSFER OF UNDERTAKINGS

Employers cannot defeat legitimate bargaining rights held by a union either by organising their affairs in an attempt to change their legal identity or by selling the affected business to a third party (whether or not that third party has any relationship with the vendor). Labour boards take a wide, remedial approach in these circumstances insofar as their primary objective is to preserve acquired bargaining rights. As such, two or more legally distinguishable entities may be considered to be one employer for labour relations purposes and bind a third party to a pre-existing collective bargaining relationship.

Also, a purchaser may be bound to the collective bargaining relationship of the vendor. The term “sale” and related terms are given an expansive interpretation, so that various kinds of commercial transactions that transfer control of the core of a business as a going concern may be captured in such a way that bargaining rights continue to attach to the transferred business.

Similar considerations apply under provincial employment standards legislation, which generally contain a “deemed continuity” provision. Therefore, where a purchaser retains or hires the employees of a vendor company, the service of those employees may be deemed to be continuous for the purpose of calculating notice and severance, as well as other benefits linked to length of service under the applicable legislation.

1. EMPLOYEES’ RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

As noted above, employees of the vendor who are not employed by the purchaser are entitled to, at minimum, notice of termination under the

applicable employment standards legislation. However, if the employee is offered employment by the purchaser, employment will be deemed to be continuous for the purposes of employment standards legislation. Therefore, employees will be given credit for their past service, which may impact on their entitlements upon termination, which generally increase according to an employee’s length of service. In some cases, employment standards legislation may contain “deemed continuity” provisions where a building service provider takes over from another.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The liabilities of the vendor and purchaser depend on whether the transaction was a share purchase or an asset purchase. In a share purchase, the legal identity of the employer does not change, so there will be no change in the obligations and liabilities attached to the business. The purchaser will therefore acquire all obligations owed to employees, unless the parties have agreed otherwise under the agreement of purchase and sale.

In an asset purchase, the legal identity of the employer changes, such that the employment relationship will be severed. The vendor employer will be liable for any notice of termination payable to severed employees. However, if an employee of the vendor is employed by the purchaser, his or her employment will be deemed to be continuous for the purposes of employment standards legislation in most provinces.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

Each jurisdiction in Canada, including the federal jurisdiction, has legislation governing labour law. The labour legislation of the various Canadian jurisdictions governs how trade unions become certified, how they retain the authority to act as the exclusive bargaining agent for a group of employees, what obligations are created for the employer of those employees, and the framework to govern collective bargaining.

Labour law in Canada is founded on the Wagner Model, originating in the United States in 1935, whereby strikes and lockouts are prohibited during the term of a collective agreement and, in return, management is required to negotiate with a recognised bargaining agent, typically a trade union. This model is intended to ensure industrial stability. There is a single bargaining agent for each bargaining unit. Most bargaining units cover all non-management employees, regardless of trade, and are limited to a single employer at a single location or within a specified geographical area. In other words, Canada does not have multi-union, multi-employer bargaining units; however, some sectors (notably in the construction industry and sometimes in health care) feature industry-wide bargaining. The Wagner Model also features the concept of residual management rights, which ensures that employers retain an overriding measure of control over the means and methods of production, subject only to the limitations that are bargained with the union or otherwise exist as a matter of law or practice.

Collective bargaining provisions typically deal with both process and substance. Process provisions include work stoppages (strikes and lockouts) and the grievance and arbitration process, whereas substantive provisions include mandatory and permissive terms and conditions for the collective agreement. Labour statutes also place a duty of fair representation on unions with respect to the employees within a bargaining unit. Disputes between parties are submitted to arbitrators or to specialised administrative tribunals located in each jurisdiction.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Once a union acquires bargaining rights it becomes the legally recognised exclusive agent of all employees in the bargaining unit that is determined to be appropriate for collective bargaining. This exclusive representative entitlement for a certified union applies to all employees whether or not an employee supported the union during an organising campaign and even holds true in situations when an employee actively opposed the union. The union's legal status as agent is not affected by whether or not an employee chooses to be a member of the union. The only relevant consideration, once the union has acquired bargaining rights, is whether or not the employee falls within the bargaining unit for which the union has been recognised or certified as the bargaining agent. In most jurisdictions, all employees in the bargaining unit are required to pay union dues, regardless of their membership in the union.

An employee who is in a bargaining unit that is represented by a trade union loses the individual status of employment that pre-existed the trade union's certification. As such, any individual contract of employment is effectively terminated and replaced by the terms and conditions of the collective agreement. Moreover, an employee who is represented by a trade union loses the right to sue, in respect of a dismissal or in respect of some other alleged breach of terms and conditions of employment.

The various labour and employment statutes continue to apply to unionised employees; however, processes may be affected by the presence of a trade union. As such, applications arising under a statute (such as human rights, employment standards, and health and safety) may have to be processed through the grievance and arbitration procedure or often are pursued in that manner even if there is not a specific obligation to do so. Arbitrators appointed pursuant to the arbitration procedure have extensive authority to consider all matters related to employment.

The union has a duty to fairly represent all employees in the unit for which it holds bargaining rights. The union has carriage of individual grievances as well as group or policy grievances and has the final determination as to whether or not a grievance merits the time and expense of an arbitration proceeding. In practice, it is rare for a union to not proceed to arbitration with a discharge grievance that cannot be resolved; however, the theory holds true that the union retains control of the process throughout. Unless supported by the union, and subject to principles of fair representation, an individual grievor cannot force the union to take his/her case to arbitration. It should be noted that an individual grievor who does not have the support of the union may, in appropriate cases, have direct access to adjudication under human rights or health and safety legislation.

3. TYPES OF REPRESENTATION

Some non-unionised workplaces may establish a joint management-employee board or committee to address workplace issues. This type of process is not mandated by law and is entirely voluntary

for employers. Joint management-employee boards or committees are generally implemented by employers operating in industries that are largely unionised, in order to provide employees with some form of representation other than the representation of a trade union.

Each organisation that elects to establish such a committee or board may determine its own rules and procedures, including the tasks and obligations of representatives on the committee or board; how many employee representatives will be on the committee; and how those representatives will be appointed or elected.

4. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Some employers may be required under provincial health and safety legislation to establish a joint health and safety committee (JHSC). JHSC's are mandated for certain employers under the health and safety legislation of every province in Canada. In general, the requirement to establish a JHSC will be based on the number of workers the company employs, and the JHSC must be composed of both worker and employer representatives. The mandate of a JHSC is to improve health and safety conditions in the workplace by raising awareness of health and safety issues, identifying safety risks in the workplace and recommending solutions to the employer. In Ontario, employers with more than 5 employees are required to have a health and safety representative, while employers with 20 or more employees are required to have a JHSC. At least half the members must be workers employed at the workplace who do not exercise managerial functions.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

There are a number of “social safety nets” in Canada. The most significant is the federal Employment Insurance system, which provides benefits in the event of a loss or interruption of employment. Canada’s public health care system also greatly decreases the cost to employers of providing private medical insurance to employees, particularly compared to countries without such systems. Also, participation in a government-run workers compensation program in each province is either mandatory or optional, depending on the type of work the employer is engaged in.

2. HEALTHCARE AND INSURANCES

Citizens and landed immigrants have significant health care coverage, unemployment insurance coverage and pensions for retirement, generally covered by public funds and payroll taxes. Many employers provide additional benefits, dental care, disability coverage and pension contributions.

Most basic health care services are covered by provincial health insurance. However, prescription drugs are not paid for by the provincial health insurance plan. Many employers offer some form of insurance plan that employees are permitted to participate in. The employer may bear some or all of the cost of insurance premiums for employees.

Employment Insurance (“EI”) is available for Canadians who have lost their job and specialised EI may be available to employees who are unable to attend work for another prescribed reason, such as compassionate care leave. Some form of long-term disability insurance is also available in every province. Employers are required by law to deduct and remit EI premiums from their employees’ income and are also required to make contributions on behalf of their employees.

EI provides income replacement benefits for employees who have lost their jobs through no fault of their own. Therefore, EI is generally not available to employees who have been terminated for just cause.

The current weekly benefit amount for a claimant is 55% of the average weekly earnings from the previous calendar year to a maximum weekly benefit of \$573.00.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Employment standards legislation provides employees with a statutory entitlement to vacation and vacation pay for each year worked. In all provinces, employees are entitled to at least two weeks of vacation per year; in Saskatchewan, employees are entitled to three weeks per year. In many provinces this entitlement will increase with an employee’s length of service.

Employees are also entitled to between 6 to 10 paid statutory holidays per year. If an employee is required to work a holiday, the employee is entitled to premium pay (typically time-and-one-half) as well as to holiday pay for that day.

B. MATERNITY AND PATERNITY LEAVE

Maternity leave and parental leave are addressed under employment standards legislation in each province. EI is available for employees who are pregnant, have recently given birth, are adopting a child, or are caring for a newborn. Because EI benefits provide only a portion of an employee’s regular wages, many employers offer “top up” benefits to employees for some portion of their leave.

C. SICKNESS LEAVE

Many jurisdictions also provide a variety of leaves based on illness, disability, or the illness or disability of a family member. Employers are generally not required to pay employees for these leaves of absence, though employees may be entitled to EI benefits for some period of their leave. Many employers provide workplace sickness and disability insurance to employees in order to complement benefits payable under a federal or provincial statutory scheme; however, employers are not legally required to provide such additional benefits.

Specialised EI coverage is also available for employees who are unable to attend work because of illness because they have taken a compassionate care leave to care for a family member who is gravely ill with a significant risk of death, or a leave to care for a critically ill child, though employers are not required to pay employees during these types of leave, however many employers do provide additional benefits to employees.

D. DISABILITY LEAVE

Each province provides some form of support for persons with disabilities who are in financial need, but this will only be available to persons who have significant long-term impairments that restrict their ability to work, care for themselves, or take part in community life.

E. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

Each province in Canada operates a provincial workers' compensation system which is, in effect, an insurance system. There is no federal workers' compensation system and therefore, if eligible for coverage, employees in the federal jurisdiction are covered by the provincial workers' compensation system that exists in the province in which they are employed, and participation is compulsory for employers. The system creates a trade-off, whereby employees injured on the job receive coverage, and in return, lose the right to sue their employers with respect to the injury. The premiums paid by employers generally depend on the types of activities carried on in the workplace. In some

provinces, premiums are also affected by claims history.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

Almost all individuals who work in Canada contribute to the Canada Pension Plan (CPP), which is a defined benefit plan. Employers are required by law to deduct and remit CPP contribution from employees' income. Employers are also required to make contributions to CPP on behalf of their employees. Employees may apply for and receive a full CPP retirement pension at age 65. Alternatively, employees may receive a reduced pension at 60, or as late as 70 with an increase. Many employers and employees participate in workplace pension plans or group RRSP arrangements in order to supplement employees' CPP entitlements.

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

Different employers offer different benefit packages depending on their industry and what kind of employees they are hoping to attract or retain. Some common benefits include private pension programs, as well as supplemented health benefits (which cover costs of items or care that are not covered by Canada's universal healthcare system such as prescription drugs or vision ware).

Robert Bayne
Partner,
Filion Wakely Thorup Angeletti LLP
rbayne@filion.on.ca
+1 416 408 55 24



FILION WAKELY THORUP ANGELETTI LLP

CANADA

Filion Wakely Thorup Angeletti LLP has over 40 lawyers dedicated to the practice of labour and employment law in our three offices in Toronto, Hamilton, and London, Ontario. The lawyers at our firm represent and advise in-house counsels, executives, managers, and human resources professionals on all aspects of the law governing the employer-employee relationship. Our clients include some of the largest public and private sector employers operating in the country and internationally. The breadth of our work covers labour relations, employment standards, occupational health and safety, human rights, workers' compensation, pension, benefits, pay equity legislation and the common law. Filion is ranked as one of Canada's Top 10 Labour and Employment Boutiques (Canadian Lawyer, 2018-2019 and 2020-2021) and has been recognised as a leading law firm for labour and employment services by Chambers and The Legal 500, among others.

This memorandum has been provided by:

Filion Wakely Thorup Angeletti LLP
333 Bay Street, Suite 2500
Toronto, Ontario, Canada M5H 2R2
+1 416 408 32 21
www.filion.on.ca

CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org





L&E GLOBAL

an alliance of employers' counsel worldwide

This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.