EMPLOYMENT LAW - DOING BUSINESS IN CANADA FOCUS ON ONTARIO

Introduction

Employment law in Canada is a complex mix of contract, statute and the common law or, in the case of Québec, civil law. With the exception of federally regulated industries such as banks, telecommunications, railways and airlines, employment law in Canada is provincially regulated. While most provincial employment standards statutes share some common features, foreign employers operating in Canada should be mindful of the differences and ensure that their policies, practices and contracts are compliant with the legislation of the province in which they are operating.

Canadian Courts have made several broad statements regarding the primacy of work in the life of the individual, the inherent imbalance of power between individuals and their employees and the duty that all employers have to administer the employment relationship in good faith. The Courts consistently apply these principles to any litigation between an employer and its former employee and are loathe to enforce agreements that may be perceived to be unfair to employees.

No "At Will" Employment

The most profound difference between Canadian employment law and American employment law is that “At will” employment does not exist in the Canadian employment law context. Canadian law provides that every employee who is terminated without just cause is entitled to notice of termination or pay in lieu of that notice.

Statutory Notice and Severance

In general, an employee’s entitlement to notice is derived both from statute and the common law. The applicable provincial and federal employment statutes prescribe only the *minimum* period of notice or payment in lieu of notice that must be given to a dismissed employee. It is a common and serious mistake to assume that the statutory minimums are the only obligations on the employer in the event of a termination without cause. Statutory minimums usually range from one to eight weeks of notice depending on length of service. In Ontario, employees who work for a company with an annual Ontario payroll in excess of $2.5 million and who have five or more years of service are also entitled to an additional lump-sum payment known as “statutory severance”. Such employees can receive an additional 5 to 26 weeks of severance pay. It should also be noted that many provinces require employers to continue all benefits coverage for a period of time following termination.

There may be separate and additional obligations in situations involving the termination of a group of employees, including the obligation to provide additional notice and the obligation to provide advance notice to a specific government department.

Reasonable Notice

In the absence of a contractual stipulation to the contrary, judges will routinely imply an obligation on the employer to provide far more generous notice periods than the minimums prescribed by provincial statutes. The amount of notice to which an employee is entitled is determined with reference to the common law concept of "reasonable notice of termination." Factors that the courts have reviewed in determining what constitutes reasonable notice include:

- Years of service
- Seniority within the organization
- Salary and other compensation
- Employee's chances of re-employment upon termination
- Employee's health
- Employee's education
- Promises of job security, even if not enforceable at law
- Whether the employee was enticed from secure employment

There is no set formula for determining reasonable notice of termination but it can be as much as one month per year of service. While there is no recognized cap on notice, it rarely exceeds 24 months. Employers can meet their obligation by providing working notice or pay in lieu of such notice, at their option.

Employees who have been terminated have a duty to mitigate their damages arising from the loss of their job. The obligation to mitigate requires dismissed employees to take reasonable steps to limit their losses, usually by looking for other work. If an employee does not do so a court may reduce the damages that would have otherwise been owed. If the employee is successful in finding other employment, the earnings from mitigation will be deducted from any award otherwise payable by the employer. However, mitigation does not reduce the employer's obligation to provide the statutory minimum notice and, in Ontario, severance, if applicable. A failure to act reasonably in terms of mitigation can also reduce damages.

Provincially regulated employees outside of Québec can contract out of the obligation to provide reasonable notice at law. However, the contract cannot and should not make any effort to contract out of the statutory minimum notice or severance. Where a contract does not comply with the minimum standards in the applicable statute, the offending provision will be considered void. The courts will not simply impose the minimum statutory notice required by the statute, but will order "reasonable notice," which will likely be significantly greater than the notice period the employer intended. Employers should ensure that the contract is carefully drafted and signed by the employee before work begins.

Termination with Cause

If an employer wishes to terminate an employee due to the employee's conduct without providing notice or compensation in lieu, the employer must establish "just cause". This is a heavy onus to discharge in the courts and tribunals in Canada. Effectively, the employer must establish that the employee's conduct amounted to a repudiation of the employment contract. Examples of just cause include serious acts of dishonesty, gross misconduct such as violence or harassment, breach of the duty of confidentiality, persistent neglect of duties or gross insubordination.

Resignation

Employees may resign from their employment. While the law implies a duty to provide reasonable notice, there are very few cases where an employer has been able to obtain redress from the courts or tribunals due to inadequate notice. Successful cases usually involve high-placed executives or professionals, as well as sales representatives responsible for a significant portion of the employer's sales, and are often coupled with serious misconduct, such as theft of a corporate opportunity, flagrant solicitation of clients or misappropriation of employer trade secrets.

Resignation Due to Unilateral Changes to Employment Terms

In the United States, employment terms are generally subject to change or modification "at will". In Canada, an employer cannot unilaterally impose new terms into an employment contract without the employee's consent. This is called constructive dismissal. In order to make changes to the employment contract, an employer is required to provide new consideration, such as a small raise or bonus, or reasonable notice of the change. "Continued employment" is not sufficient consideration in Canada.

In certain cases, employees may resign from their employment on the basis that the employer has made unilateral and fundamental changes to the employment relationship. Examples of constructive dismissal include a significant reduction in pay, changes to the structure of compensation, a relocation outside the normal commuting area or a demotion in the corporate hierarchy (even if pay and job title are grandfathered). In some cases, employees have successfully argued that workplace harassment or discrimination constituted constructive dismissal. An employee who establishes constructive dismissal is able to sue for damages equivalent to the notice the employer would have had to pay upon termination of employment.

Employers contemplating significant changes to an employment relationship should implement strategies to avoid a claim of constructive dismissal, including providing advance notice of any changes. Written contracts of employment may also preserve an employer's right to implement certain types of changes that would otherwise be considered a constructive dismissal.

Confidentiality

All employees have an obligation to keep secret the confidential information of their employers. It is prudent to have a written agreement regarding what constitutes confidential information and to implement procedures to maintain the confidentiality of sensitive information. Courts are prepared to enforce the duty of confidentiality with an injunction, which is akin to a temporary restraining order.

Restrictive Covenants

Restrictive covenants are explicit contractual obligations that survive the termination of employment. American courts are generally more willing to enforce post-employment, non-competition and non-solicitation agreements where the agreement is reasonable in time and scope, and if the agreement is protecting the trade secrets or other proprietary rights of the company.

In Canada, these clauses are usually divided into two categories: non-solicitation and non-competition clauses, but may also include protection of the employer's intellectual property beyond those protections already afforded to employers by common law and statute.

The general rule is that any restrictive covenant must be what is strictly necessary to protect the employer's legitimate interests, must be reasonable and cannot be contrary to public policy.

Courts typically examine reasonableness in terms of duration, scope and geographic limits. The clause must be clear and precise. Courts will generally not "blue-pencil" or redact unenforceable clauses in order to make them enforceable. According to Canadian law, there is a strong public-policy interest in permitting individuals to work freely in the workplace.

Non-solicitation clauses limit the employee's ability to solicit customers or employees. Although the courts generally enforce well-drafted non-solicitation clauses, care must be used to ensure that the scope of the clause is not excessive.

Non-competition provisions are enforceable only in exceptional cases and the onus is on the employer to establish why the non-competition clause is necessary and why a non-solicitation clause is inadequate. Different rules apply, however, if the non-competition clause is part of an overall corporate acquisition, where it can be established that the purchaser required the clause in order to preserve the value of the assets or shares purchased.

In certain cases, courts will enforce a restrictive covenant with an injunction.

Legislation Governing the Employment Relationship

The Canadian workforce is heavily regulated. As previously discussed, depending on the industry and type of business, an employer may be regulated federally, provincially or a mix of both. The following are the main types of legislation that exist in virtually every jurisdiction.

Employment Standards

All jurisdictions provide standards with respect to the minimum terms of employment, including the notice and severance terms discussed. Typically, employees are not permitted to contract out of the minimum protections afforded by the statute. The specific provisions vary by jurisdiction, and should be verified before hiring personnel in the province in which the employer intends to operate.

Employment standards can be quite complex and the legislation can often be varied by obscure regulations that apply to specific industries. Certain exemptions apply to certain types of employees, such as managers or professionals, regardless of industry. There are often methods to obtain special permits to obtain exemptions to the minimum requirements by applying to the appropriate ministry or department.

Each province has a minimum wage rate as well as overtime pay requirements. The provincial legislation also places limitations on the amount of hours that can be worked in a week. For example, Ontario's *Employment Standards Act, 2000* (the "ESA") requires an employer to pay overtime wages at 1.5 times the employee's regular wage rate after an employee has worked more than 44 hours in a week. It is important to note that salaried employees are not automatically exempt from overtime entitlements. All employees are entitled to overtime, unless their role is managerial or they fall within certain regulated exemptions based on their profession. For example, accountants, information technology professionals and lawyers are all precluded from claiming overtime. Unpaid overtime has been a popular basis for attempted class actions in Canada, so it is wise to pay special attention to compliance with applicable regulations.

In addition to overtime entitlements, there are limits on the number of hours employees can work in any given day or week. Employees are also entitled to have a certain amount of rest between scheduled shifts. The maximum number of daily and weekly hours of work varies from province to province. In Ontario, it is eight hours a day and 48 hours per week. Exemptions are available to employees who fall within certain prescribed classes or where the employer has applied to the Ministry of Labour for permission to have its employees work extended hours

Public or Statutory Holidays

Canadians generally enjoy at least eight public holidays: New Year's Day, Good Friday, Victoria Day (last Monday before May 25), Canada Day (July 1), Labour Day (first

Monday in September), Thanksgiving Day (second Monday in October), Christmas Day and Boxing Day (December 26).

The first Monday in August is often observed as an additional holiday in many provinces. In certain parts of Canada, the third Monday in February is observed as an additional holiday. Remembrance Day (November 11) is a holiday that is observed by all provinces except Ontario, Québec and Manitoba. In Québec, according to the *National Holiday Act*, employees are also entitled to payment on St. Jean Baptiste Day (officially known as *Fête Nationale du Québec*), which is June 24. Some provinces permit employers to direct employees to work on statutory holidays but others do not. It should also be noted that employees who work on a statutory holiday will typically be entitled to both holiday pay and premium pay, resulting in a wage rate of 2.5 times their normal rate of pay.

Vacation

Employment standards laws generally prescribe minimum vacation entitlements. Vacation entitlements are broken into two constituent elements: vacation time and vacation pay. The minimum vacation time entitlement is typically two weeks per year. Some provinces, such as British Columbia, provide additional weeks of vacation after the employee has achieved a certain seniority. The employer may determine when employees take vacation.

Vacation pay is expressed as a percentage of the employee's wages. In Ontario, an employee is entitled to two weeks annual vacation, or 4% of regular wages. In other provinces, it may increase to three weeks of vacation or 6% of regular wages. A key compliance issue for employers is what kinds of compensation are included in "wages." The term does not just refer to base salary but often includes such things as commission, overtime pay and non-discretionary bonuses.

Protected Leaves of Absence

All provinces in Canada provide employees with certain job-protected leaves of absence, including pregnancy and parental leave. Ontario's ESA provides 17 weeks of unpaid pregnancy leave to employees who have 13 weeks of service or more, as well as 35 weeks of unpaid parental leave for both men and women.

At the end of the pregnancy and/or parental leave, an employee is entitled to be reinstated. The rules regarding the nature of reinstatement differ slightly across jurisdictions. In Ontario, the requirement is to reinstate to the same job if it still exists, or to a comparable job if it no longer exists. In Québec, if the employee has taken a parental leave longer than 12 weeks, the reinstatement obligation is to the same or comparable position. If the parental leave is shorter, the employee must be reinstated to the same position as before.

Other leaves of absence vary by province but include personal emergency leaves of between 8 and 12 weeks for reasons such as death or illness of a family member, illness of the employee, accidents, a household crisis or unexpected interruptions in child-care plans, jury duty, organ donor procedures and reservist duties. All of these leaves are unpaid but the employee may be eligible to apply for benefits from the government Employment Insurance Fund, depending upon the circumstances.

Time spent on leave is considered to be active employment for the purposes of assessing all seniority-based rights. Employers are prohibited from reprisals against employees for making use of these statutory leaves. Reprisal can take many forms, but most commonly includes dismissal during or immediately following the leave of absence, or a failure to return the employee to his or her former role. Employees who believe that they have been reprised against have the option of making a complaint to the applicable Ministry of Labour. In Ontario, employees who can demonstrate that they have suffered reprisal at the hands of their employers are entitled to claim reinstatement to their former position. Employers must tread very carefully when making any changes to the terms and conditions of employment for an employee on leave.

Equal Pay for Equal Work

Canadian employers are prohibited from differentiating between male and female employees who perform substantially the same kind of work in the same establishment, requiring substantially the same skill, effort and responsibility. Pay equity provisions under the ESA and Ontario's *Pay Equity Act* apply to all employers in the private sector in Ontario with 10 or more employees, and to all employers in the public sector. Different rates of pay are prohibited, except where differences are attributable to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any factor other than sex. The courts and tribunals have established that titles are not determinative and that careful regard should be paid to the actual duties.

The legislation is an effort to redress the gender gap in compensation. In essence, it seeks to ensure that there is equal pay for work of equal value. It requires employers to analyze jobs across their organization and review them for value (based on a number of statutory criteria) and examine whether there are compensation disparities between male-dominated and female-dominated jobs within the organization. Where female jobs are underpaid, the legislation prescribes a schedule for pay increments that have to be implemented to redress the balance. Although other jurisdictions have similar legislation, the scope is limited to the public sector.

Employment Equity

The federal *Employment Equity Act* provides for employment equity for women, Aboriginal peoples, disabled people and visible minorities. It is designed to remove inequality in the workplace by eliminating systemic barriers facing historically

disadvantaged groups. The Act applies to all federally regulated employers who employ 100 or more people. Employers must identify and remove offending policies and practices, and, in place of these policies, employers must institute positive policies and practices to achieve a proportionate representation of people from historically disadvantaged groups in the employer's workforce.

Such employers must also file annual reports concerning the number of persons they employ and the number of persons they employ in designated groups, with a breakdown by occupational groups and salary ranges.

Benefit Plans

Because Canadians have access to public health care for basic services, employers' benefit programs often include benefits which are not covered under the public system. Employers are not required to provide employee benefit plans, but many of them do. Generally, employers will offer extended health care coverage which includes drug, dental, paramedical and eye care plans. Spousal plans in Canada must cover both common-law and same-sex spouses. The costs of the extended health coverage may be at the employer's expense or a shared expense with the employee.

Employment Insurance

The federal government, through Human Resources and Skills Development Canada, administers a program called Employment Insurance (EI), which provides payments for a period of time to workers who lose their jobs. The purpose of the program is to cushion the blow of unemployment for a worker while also encouraging the worker to search for new employment. The program is paid for through premiums collected from employees and employers through a payroll deduction made by the employer and submitted to the government.

Almost all full-time employees as well as part-time and casual employees are covered under the Employment Insurance program, provided they meet specified minimum requirements. An employee will not be entitled to benefits if he or she resigned without good reason or was fired for cause.

Employment insurance also provides income replacement during maternity and parental leaves. In Québec, however, employees must apply to the Québec Parental Insurance Plan (QPIP), which provides more generous benefits to new parents. One interesting feature of the QPIP is that it provides certain benefits that can only be used by the new father and cannot be transferred or shared with the new mother. This benefit is designed to encourage new fathers to take an active role in parenting a new infant right from the beginning.

Canada/Québec Pension Plan

The Canada Pension Plan (or, in Québec, the Québec Pension Plan) is administered by the government and requires contributions from both employers and employees at prescribed rates. Employers are required to deduct a percentage of an employee's pensionable earnings and remit that amount to the federal government together with an equal amount contributed by the employer. For this reason, an employer is unable to extend or offer their United States pension benefit plans to their Canadian employees.

In 2016, the contribution rate was 4.95 per cent of annual income, to a maximum of $2,544.30 for both the employer and employee.

Ontario Retirement Pension Plan

The Ontario Retirement Pension Plan (ORPP) is a new, provincially managed pension plan being created for residents of Ontario. It is intended to cover people who don't have workplace pension plans, giving them extra income in retirement.

The ORPP is similar in many ways to the Canada Pension Plan. It requires contributions from workers through payroll deductions, as well as matching contributions from employers. It will pay a benefit in retirement that will vary, depending on how many years an employee contributes to the plan and how much he or she earns.

The ORPP will begin enrolling employers in 2017, with the first phase of contributions beginning January 1, 2018. By 2020, subject to legislative approval, every employee in Ontario would be part of either the ORPP or a comparable workplace pension plan.

Employees and employers would contribute an equal amount, capped at 1.9% each (3.8% combined) on an employee's annual earnings up to $90,000.

Private Pensions

Private pensions are heavily regulated. Federal and provincial laws regulate the terms, conditions and administration of private pensions.

Executive Compensation

Executive compensation refers to both financial payments and non-monetary benefits provided to senior management, such as corporate presidents, chief executive officers, chief financial officers, vice-presidents and other senior executives of the corporation. It is a typically a mix of salary, bonuses, shares of the company's stock, benefits, and other privileges. Designing, implementing and administering compensation and benefits arrangements for foreign businesses operating in Canada must take into account Canadian tax and employment laws, securities disclosure and compliance

requirements, and heightened scrutiny by shareholders and other stakeholders, regulators and the courts.

Director and Officer Liability

If a company fails to pay its employees due to insolvency or other reasons, legislation in certain Canadian jurisdictions can impose personal liability on directors and officers of the company for unpaid wages and other amounts that may be owing to employees.

Sale of a Business – Successor Employers

The purchaser of a business can inherit a wide variety of employment-related liabilities and obligations as a "successor employer" to the vendor. These can include termination costs, employment standards violations, workers' compensation costs, pay equity adjustments, collective agreements and union bargaining rights. Only careful due diligence can bring to light the liabilities being acquired along with a business. To reduce exposure for such liabilities, transactions can be structured in various ways and vendors may provide appropriate indemnities.

Human Rights

Human rights codes across Canada prohibit discriminatory practices with respect to employment. Ontario's *Human Rights Code* prohibits discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (e.g., sexual harassment), sexual orientation, gender identity, gender expression, age, record of offences (e.g., a conviction for which a pardon has been granted), marital status, family status or disability. This prohibition applies to all aspects of the employment relationship, including hiring, discipline, promotion, work assignments and firing. Discrimination on the basis of pregnancy is defined as discrimination on the basis of sex. Employees also have a right to freedom from harassment due to any of the foregoing prohibited grounds in the workplace by the employer, an agent of the employer or by another employee.

Provincial commissions and tribunals may investigate and award damages for loss of income and other damages arising out of a discriminatory practice. They also have the discretion to order non-pecuniary remedies such as training, apologies or changes to workplace practices and policies.

At one time, mandatory-retirement policies were very common across Canada. However, mandatory retirement is increasingly treated as a form of age-related discrimination, unless the employer can establish a bona fide occupational reason why an employee must retire at a certain age as opposed to undergoing individualized fitness or aptitude tests. There is no legislated mandatory-retirement age. In large part, however, pensions are structured around a presumed retirement date of age 65 and it may be financially disadvantageous for an employee not to start retirement at age 65.

Accessibility

Effective January 1, 2012, all private sector employers in Ontario who provide goods or services to members of the public or other organizations, and that have at least one employee in Ontario, must comply with the *Accessibility for Ontarians with Disabilities Act, 2005* (the "AODA") and specifically, the *Accessibility Standards for Customer Service* and the *Integrated Accessibility Standards.* The Customer Service Standard requires that employers establish policies and procedures which ensure that goods or services are provided in a manner that respects the dignity and independence of persons with disabilities and affords them equal opportunity to use or benefit from the goods or services. It also requires employers to train their employees with respect to these requirements. Organizations with 20 or more employees are required to file an AODA compliance report. The Integrated Accessibility Standards covers information and communications, employment, transportation and the design of public spaces. As of January 1, 2014, there are additional obligations that private sector organisations with 50 or more employees must meet under this Standard. The requirements under the AODA are being gradually phased in with full compliance targeted for 2025, at which time the expectation is that the province of Ontario will be fully accessible to disabled persons.

It should be noted that the Ontario Human Rights Code and the AODA both deal with accessibility, but are two very different pieces of legislation. The Ontario Human Rights Code is an individual, complaints-based legislation that addresses discrimination. The AODA and its regulations apply to all organizations in Ontario and are intended to increase accessibility for all Ontarians with disabilities.

Random Drug and Alcohol Testing

In the United States, it is common practice to require pre-employment drug/alcohol testing or random post-employment drug/alcohol testing. In Canada, pre- and post-employment drug/alcohol testing are considered to be violations of an employee's human rights and therefore not permitted. There are some exceptions to this general rule if the employer is able to demonstrate that the testing can be justified as a necessary and reasonable component to the employer's other policies aimed at protecting the safety of employees and third parties.

Occupational Health and Safety

Ontario's *Occupational Health and Safety Act*, and like legislation in the other provinces, provides comprehensive rules that impose duties on employers and employees in worker health and safety matters. Many provinces have included the prevention of and response to workplace violence and harassment as an employer obligation in their occupational health and safety regimes, and as of September 8, 2016, Ontario employers will be required to ensure that their workplace harassment policy includes workplace sexual harassment. There are stringent rules requiring the posting of safety

legislation, the existence and updating of written policies, the establishment of workplace safety committees, safety training, the use of personal protective equipment, and the handling of hazardous materials. It should be noted that a failure to maintain a safe workplace can lead to both civil and criminal consequences.

Under the *Criminal Code*, directors and executives may face criminal prosecution for negligence that leads to serious injury or death. Under the various occupational health and safety laws across the country, there are significant fines and penalties if an employer fails to comply with applicable legislation. Fines can be as high as $500,000 where death or serious injury occurs, and fines in the range of $100,000 to $150,000 are quite common.

It should be noted that occupational health and safety requirements apply to workers, not just employees. Independent contractors, agency and temporary employees and interns will all be protected by the legislation and should be included in all safety and training initiatives.

Labour Relations

Canadian law recognizes the right of employees to unionize. Each jurisdiction has enacted comprehensive legislation with respect to the right of workers to unionize that outlines the obligations of employers in a unionized workplace. The legislation also establishes how a union may be certified and decertified.

Once a union is certified, the employer must bargain with the union in good faith to reach a collective-bargaining agreement that governs the workplace. Once certified, an employer remains so, even if it sells its business. In most circumstances, the purchaser will be required to recognize the union and honour any collective agreement in effect as a successor employer. The legislation also provides for grievance arbitration of workplace disputes.

The legislation also forbids a broad range of unfair labour practices (ULPs) such as the use of threats, intimidation or coercion in the course of a union drive, which could result in automatic certification. Complaints about ULPs can be brought against both the union and the employer. Canadian labour boards have broad remedial powers. Successor-rights provisions are designed to ensure that bargaining rights survive the sale or divestiture of a business.

A sophisticated body of case law interpreting both federal and provincial labour laws has been developed by the Canada Industrial Relations Board, the provincial labour relations boards and various arbitration panels appointed pursuant to the laws. Although the courts have the power to review the decisions of the labour boards, considerable deference is given to their specialized expertise.

Privacy

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) sets out ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. PIPEDA also applies to federal works, undertakings and businesses in respect of employee personal information. The law gives individuals the right to access and request correction of the personal information these organizations may have collected about them.

In general, PIPEDA applies to organizations' commercial activities in all provinces, except British Columbia, Alberta, Manitoba and Québec, which have adopted their own privacy legislation that specifically regulates employers' collection, use and disclosure of their employees' personal information. Privacy issues typically manifest themselves when the employer tries to secretly monitor or record an employee's activities, whether in or out of the workplace, but can also be a concern when a company is performing due diligence in connection with a proposed transaction. Improper collection, use and disclosure of an employee's personal information can also lead to legal action based on the tort of invasion of privacy or intrusion upon seclusion.

Workers' Compensation

a. Introduction

Each province in Canada has created a provincial workplace insurance fund that provides employees who have been injured in the workplace with access to certain health care benefits and reimbursement for lost earnings. The scheme is intended to relieve the injured worker of the delay, cost and difficulty of suing an employer in a tort action or in a civil action for negligence in the workplace. Compensation is to be provided expeditiously and without proof of fault. In turn, employers are required to fund the system through payroll assessments, but are shielded from the risk of lawsuits and damages from employees injured on the job.

In practice, the Canadian schemes operate by having assessments levied upon employers, which are then gathered into a common fund from which benefits are paid to workers who are disabled as a result of their employment. Administration and adjudication are carried out by a statutory corporation, such as the Workplace Safety Insurance Board in Ontario and the *Commission de la santé et de la sécurité du travail* in Québec.

b. Determination of Employer Contributions

The legislation governing workers' compensation is provincial in scope, so the particulars of each statute may vary from province to province. However, the statutes generally apply automatically and the coverage is compulsory for most employers.

Where an industry is excluded from the compulsory coverage, it may be possible to opt in. The employer may apply to the appropriate board for the coverage of the business or undertaking. If the application is accepted, which is the normal practice, the business or undertaking of that employer will be covered.

Rates are usually established by examining the employer's industry group and then adjustments are made based on claims experience. Surcharges arising from actual claims can be significant. The money is collected into an accident fund from which benefits are paid. Employers are prohibited from seeking any indemnity or contributions from workers for assessments or other liabilities under the applicable legislation.

c. Benefits

Injured workers are entitled to income replacement if the injury results in an inability to work. In addition, benefits will cover health-care needs arising from the injury, such as prescription drugs, assistive devices and therapy. Workers may also be entitled to a lump-sum amount if the injury results in a permanent impairment.

Duty to Accommodate Rehabilitated Workers

The legislation generally requires an employer to re-employ a worker injured on the job either to the pre-injury position or to other suitable employment. This obligation is intended to reduce the accident costs arising from workers' compensation claims as well as to encourage reintegration of injured but rehabilitated workers into the workplace. Where reintegration into the former workplace is not feasible due to the nature of the injury, an employee may also qualify for job retraining.

Working in Canada

The Immigration and Refugee Protection Act governs the admission of foreign nationals into Canada. No work permit is required for business visitors who visit Canada to meet with Canadian clients or to assess trade or business opportunities. Work permits are required for foreign nationals who will be providing their services in Canada. A number of programs exist to facilitate work permits and entry to Canada.

Whistleblower Protection

In Canada, it is a criminal offence for an employer to take disciplinary measures, or threaten or adversely affect the employment of an employee, with the intent to stop an employee from providing information to law officials regarding wrongful activity. Anti-reprisal provisions that protect employees who report wrong activity of their employers are also found in various provincial employment standards legislation and human rights and workers' health and safety legislation.

Conclusion

There are significant difference between employment laws in Canada and other jurisdictions, including the United States. Before commencing operations in Canada, prudent employers should consult with a Canadian employment lawyer to avoid the missteps most commonly made by foreign employers expanding their operations into Canada.

Disclaimer

Employment Law-Doing Business in Canada provides a summary of various aspects of employment law of concern to businesses, organizations and individuals, and is not intended to provide legal opinions. Readers should seek professional legal advice on the particular issues that concern them.

Christine Jonathan has more than 20 years' experience assisting foreign employers setting up operations in Canada .

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