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It has recently come to our attention that one of our managers might be involved in a romantic relationship with a woman who works for one of our suppliers. This manager has direct say in what supplier we choose, and has a good deal of latitude in determining how much business our suppliers receive. How should we proceed? Can we simply confront him? We don't have any concrete proof, but one of our employees (not in his department) saw the two at a movie theatre and they were acting like a couple. / 1-22

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A regional president plans to eliminate stock options for two levels of employees who have received options on a consistent, annual basis in the past (these options are worth about 10 per cent of the employees' total compensation package). He plans to award them this year's grant and then tell them they won't be receiving grants in the future. Besides the obvious morale issues this could create, I'm concerned this could be deemed constructive dismissal. Is this indeed the case and, if so, how much notice must be given? / 1-26.5

We're a private school that employs teachers on one-year contracts that expire at the end of every school year in June and we renew contracts or hire new teachers in September. We told a teacher after the expiry of her contract in June it would be renewed in September, but things changed and we notified her in August she was no longer needed. Is the school liable for any breach if there was no existing contract? / 1-28

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Many of our employees, particularly younger ones, have taken to wearing headphones while they work. It's an office setting, so safety isn't an issue. But our CEO thinks it looks unprofessional when clients come through and see people listening to music while working. He wants to clamp down on this, but we're not sure if we can dictate they not wear headphones. Are there any legal roadblocks we should be aware of before proceeding? / 1-37

Do you have some suggestions as to how I may best create a binding employment contract? / 1-38

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Our company policy manual has strict standards on conduct in the workplace, including a prohibition against any kind of gambling on company property. If a group of workers has an office lottery pool where they collect the money at work and pick the numbers through company e-mail, can we consider this a breach of the policy? What about office sports involving money? / 1-40

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1.14 Termination Clauses / 1-45

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2 PRIVACY

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There has been some discussion about conducting credit checks on all employees before they are hired. Is this legal? Is there anything we need to be aware of before we proceed? / 2-1

Can an organization perform criminal background checks on employees after they have started? What if they refuse? Our organization is not a union environment and has less than 50 full-time staff. / 2-3

I work for a municipality and I'm curious about criminal reference checks. What is the legislative context for doing them? For example, where does the law require it? What do employers need to do in order to enforce them? / 2-4

2.2 Personal employee information / 2-5

Can employee identification numbers be shared with vendors on invoices or with others within the company, or would that be considered a violation of privacy? / 2-5

In order to comply with our Customs-Trade Partnership Against Terrorism (C-TPAT) membership, we are supposed to conduct criminal record checks for all employees responsible for shipping goods to and from the United States. When is it permissible to conduct "mid-employment" criminal record checks and not violate Canadian privacy legislation? / 2-6

How does the federal privacy legislation affect the employer-employee relationship? I am specifically interested in how this legislation may affect an employer's handling of employee personal information, disclosed to third-party administrators for the purposes of such things as benefits, payroll and pensions? / 2-6.2

Can an employer refuse to provide information collected from employment references to a job applicant? Is the information provided by a former employer personal employee information? Is it important to let the former employer know this information can be requested and will be disclosed on request to the applicant? / 2-7

Our U.S. parent company has decided to scan and digitize all HR documents pertaining to our Canadian branch. Is it true that if a document is scanned, the original must be destroyed and the scan becomes the original? If not, what can the company do with the originals? / 2-9

Our company conducts Internet searches on job applicants, including checking out social media pages such as Facebook. Are there any problems that could

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2.3 Monitoring employees / 2-12

Does an employer need to get consent from employees if it wants to implement a system (such as time cards or finger scanning) that tracks entrances and exits to and from the workplace? / 2-12

We're concerned about an alarming level of theft of company supplies, to the tune of about \$10,000 last year. We're a small non-unionized company (40 employees) so \$10,000 is a significant loss for us. Can we install a surveillance camera to monitor employees in public areas? / 2-12.5

We are concerned that some of our employees may be using the Internet to visit non-work-related Web sites on company time. We would like to track Internet and e-mail use in order to determine whether these suspicions can be substantiated. Are there any legal issues we should be aware of with respect to privacy? / 2-13

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Can an employer request its employees undergo lie detector tests? / 2-16

Can an employee who is called in for an investigation record the interview on a digital handheld recording device? Does either party have to announce the intent of recording the meeting? If the device is placed on the table, in full view, is that sufficient notice? / 2-17

Can an employer search employees and their bags before allowing them to enter the workplace? Does having a clear policy on this communicated to employees make it more acceptable? / 2-18

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Is it legal to search an employee's personal property, including lockers, purses or desks, for drugs or alcohol while on company property? Is it different if we have evidence or witnesses that they are in possession of drugs or alcohol? / 2-21

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Can an employer view an employee's personal email, text messages and files if they are on company computers and equipment as part of an investigation into misconduct or otherwise? / 2-22.2

If an employee lists herself as an employee of the company on her personal social media account, does the employer have any right to monitor the employee's online activity or request certain standards to be maintained? / 2-25

An employee must attend counselling after a harassment incident and keep the employer notified of his progress. Failure to do so could result in dismissal. Can the employer do its own checking up to see if the employee is following through or would it be a privacy violation? / 2-27

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2.4 Off-duty behaviour / 2-32

What legal obligations or liabilities would an employer have if it becomes aware of domestic or other types of violence perpetrated by an employee while off duty? Can the employer use such off-duty behaviour as reason for discipline or dismissal? / 2-32

A casual employee who works on an on-call basis allegedly assaulted someone during a weekend party. The alleged victim is contemplating laying charges and has made a statement to police. Can we as the employer obtain the names of

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witnesses or any other information about the case from the police for our own investigation into the incident? / 2-32.2

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How much jurisdiction or liability does an employer have over an employee harassing another employee outside of the workplace? What about an employee who harasses a customer outside of the workplace? / 2-35

3 EMPLOYMENT STANDARDS

3.1 Legislation / 3-1

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In Ontario can an employee bring a claim under the *Employment Standards Act, 2000*, in addition to starting an action for damages for wrongful dismissal? / 3-1

3.2 Pay / 3-2

Our company has its payroll department in Edmonton. Employees are paid by direct deposit. We send out our pay slips by mail, and they do not arrive until after the payday in many cases. For example, in Winnipeg our workers are paid on a Friday, but their pay slips do not arrive sometimes until the Wednesday after. Is this against any rules? / 3-2

We have a sales executive who earns a flat annual salary plus a commission based on total sales figures, which is paid out quarterly. The quarterly calculation is based not on the total sales amount but what the client has paid at that point in relation to the total sales figure. For example, on a sale of \$50,000, if the client has only paid \$10,000 of the total, the commission in that quarter is based on the \$10,000. The employment contract only outlines simple remuneration such as total amount and payday. Is this method of commission calculation common or even legal? / 3-3

We are a non-profit organization funded largely by the provincial government, which has provided us with some additional funding for salary increases but not enough to cover the increase in the cost of living. We would like to use other funding sources to provide our employees with a cost of living "bonus" this year, but we may not be able to do it again in the future. The bonus isn't related to profits or performance and it will be across-the-board. We are looking for some wording other than "bonus" for this payment. / 3-4

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Our company uses direct deposit as the standard way of delivering paycheques. Does an employee have the right to demand a paper cheque or cash instead or can we refuse the request? / 3-5

Are there specific legal considerations or liabilities a company should take into account when offering employees the option of an electronic pay statement? / 3-8

Is there a legal requirement or accepted standard on how to pay employees their four per cent vacation pay? If an employee takes his allotted vacation and we terminate him before he earns all of it, can we deduct it from his final paycheque? / 3-8.1

How is holiday pay regulated for Canadian employees? If an employee works on a holiday, what is the minimum requirement for payment on top of regular pay? / 3-8.2

Within what time period must an employee who gives two weeks' notice receive vacation and severance pay? Normally our employees are given vacation pay once a year. / 3-10

Can you provide me with some direction as to the calculation of statutory pay for hourly employees in Ontario, especially in the retail industry? Can an employer use an employee's total hours worked over the four-week period divided by 20? / 3-11

I have a question regarding paying severance to retiring employees in Ontario, as some sources say we do have to pay severance to these employees and other sources indicate that we do not. I have been told that we must pay severance to retiring employees, with five years of service or more, if we do not have an actuarial reduced pension plan. Our company has a deferred profit sharing plan, but not a pension plan and therefore we have been advised that we do have to pay severance. Could you please clarify, if this is in fact true? / 3-12

When hiring someone on a permanent, fulltime basis, what are the pros and cons of the employer paying the employee salary as opposed to wages? / 3-13

As a way to improve our hiring process, we want to include a return interview where the considered applicant would visit our company to see the job and work on it for two to four hours. This way, the applicant can have a good understanding of the position they are being hired for. However, the company would not pay the applicant. Is this legal to do? / 3-14

My company is looking at implementing a company-wide salary decrease as an alternate measure to mass layoffs. The decrease will be across the board and

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based on each employee's compensation level. The reason is based on a business need due to economic hardship. What is the legal way to provide employees with reasonable notice of change? / 3-15

In our (non-union) company, we review each employee's job performance and rate of pay annually. An employee's review was two months late and he received a pay increase. Can we implement the increase effective on the employee's actual review date, or do we need to make it retroactive to the date when his review should have occurred? / 3-18

A company employs a 15 year-old for four hours a day and pays him \$25.00 in cash (\$6.25 per hour). The company is in Quebec where the official minimum wage is \$8.50 per hour. Is the company allowed to pay the student that much lower than the standard minimum wage? Is there a student minimum wage in Canada? / 3-18

3.2.1 Deduction of pay / 3-19

Is it legal to deduct amounts from a sales representative's commission when they order the wrong product? If so, do we need to take extra precautions in training employees to help protect against this type of error? / 3-19

Can an employer demand the repayment of expenses incurred in training an employee if the employee is terminated within a year of being hired? / 3-20

An employee has a debt of \$4,000 and his wages are going to be garnished to pay the creditor. Can the employer pay the sum upfront and then garnish wages until the debt is repaid to the employer? Can garnishment be used as a factor in dismissal? / 3-22

Our employees are subject to an employment contract that states, "upon termination, the employer is entitled to offset whatever amounts are owed by the employee to the employer from the employee's final pay cheque or from any amount of notice or severance pay owing to the employee." Our human resources manager has told me this provision is illegal. Is she right? / 3-23

Does an employee stealing money or not turning in monies owed for sales after quitting give an employer the right to withhold his final pay to reimburse it? / 3-24

If certain training, whether technical or safety, is required for an employee's job, is the employer required to pay for the training or can it tell the employee to pay for it out of her own pocket? / 3-24.1

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If an employee's paycheque was too much due to a clerical error, can the employer reduce the subsequent paycheque to even it out? The employee has a set salary and regular pay schedule. / 3-24.2(1)

3.3 Hours of work / 3-24.2(3)

If an employee is flying to another city for a meeting and back on the same day, does the travel time count as work time? That is, from leaving home early in the morning, waiting, flying, taxi to site, the meeting, and then back again - is the whole day deemed work? / 3-24.2(3)

We have three eight-hour shifts in our department at a hospital, each with an unpaid half-hour meal break. We also have a night shift that is 7.5 hours long. Do we have to provide a full meal break for the night shift that is less than eight hours? / 3-24.2(5)

3.4 Overtime / 3-24.3

When an employee is sent on a business trip requiring travel and overnight stays, how are the hours of work calculated for pay and overtime purposes? What expenses is the employer legally required to cover? / 3-24.3

Can an averaging agreement for hours worked be binding under Alberta labour standards rules? / 3-24.5

If an employee hangs around in the workplace after her shift and helps a co-worker without approval from the employer, is overtime pay owed? What is the overtime threshold between being physically present in the workplace and doing any work? / 3-24.6

Has the overtime exemption of information technology professionals been challenged? Is this law still in effect? Is there any reason we should not depend on using this exemption? / 3-24.7

Is an individual working as an independent contractor entitled to overtime pay if she works more than 44 hours in a week? / 3-25

We have negotiated a deal with our employees by which they have agreed to be paid at a regular rate of pay for any hours worked in excess of 40 hours a week. In order to implement this we had the employees sign an agreement which states they are willing to accept the above and to change their employment status to "salary" plus straight time for any additional hours worked. Is this permissible in Ontario? / 3-27

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What are the definitions of a manager or supervisor to be exempt from overtime? What other job classifications should be paid overtime and are there exceptions for any of them? / 3-28

A recently terminated manager said British Columbia Employment Standards informed him he is entitled to overtime pay as there was no written agreement averaging hours worked. Aren't managers excluded from overtime entitlements? Can he claim overtime now only after he has been terminated? Should we implement an averaging agreement for management positions? / 3-28.1

If an offer of employment states, "this position is classified as exempt, which means this position is not entitled to overtime pay," and the employee accepted the offer with that condition, would that cover the company from not having to pay overtime pay or does employment standards legislation always dictate what positions are exempt from overtime? / 3-28.3

Our organization is federally funded and on a reserve. Is there a difference between federal and provincial jurisdiction for overtime exemptions? Our organization uses time for time across the board for staff, including management, with the understanding the time is to be taken off within the pay period and/or the next payroll depending on the timing of incurring the overtime. / 3-28.4

3.5 Vacation, holidays and leaves / 3-28.6

We require supervisors to be available to respond to emergencies 24 hours a day. On a statutory holiday, the supervisor works from home and is only expected to respond to phone calls. We pay the supervisors for working the holiday but do not give a day off in lieu. Are we obligated to provide an additional day off? / 3-28.6

We operate a firm in Ontario. This year, Canada Day falls on a Thursday. Can we change the day off for July 1 to July 2? / 3-30

Our company currently offers two floating personal days to employees in addition to the regular statutory holidays. We are located in Ontario, which has just added a new statutory holiday in February. We are considering dropping one of the floating personal days. Do you see any issues with that? / 3-30

Can a company enforce a "use it or lose it" policy when it comes to vacations, if every employee is made aware of the policy in the employee handbook that states vacations may not be carried over to the next year, and no pay in lieu of holidays will be granted without the prior approval of the president? / 3-31

If an employee's vacation request has been approved under standard company policy, does the employer have the right to withdraw the approval or otherwise

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change the employee's vacation schedule unilaterally? Where approved vacation is revoked or amended, is the employer required to reimburse the employee for monetary losses, such as non-refundable airline tickets? / 3-34

Our company has a "use it or lose it" policy in regards to vacation time. Is this legal, assuming we give the employee her minimum entitlements under the employment standards act? / 3-36

What can an employer do if an employee quits or is fired and has used more vacation days than she has earned to that point in the year? Can the value of the excess days be recouped? / 3-37

If an employee has a vacation entitlement that is greater than the employment standards minimum but refuses to take all of it, is the employer obligated to pay vacation pay equal to that entitlement or is it only obligated to pay out an amount equal to the legislated minimum? / 3-38

How should an employer handle an employee who doesn't want to take her vacation? Should the employee be forced to take time off or should the employer just pay the employee vacation pay in lieu? / 3-40

What are the standards for allowing time off for fathers around the birth of a child? Is there a minimum amount of time worked to be eligible? / 3-40.1

Our company offers extra unpaid parental leave of up to 18 months. However, we require employees to have completed a specific number of consecutive months of employment before they are eligible. Are there any liabilities with this requirement? / 3-40.2

Can you tell me if an employer is able to terminate group benefit coverage for an employee who is absent from work and is not collecting short- or long-term disability? We have situations where the employee does not have medical evidence that is supported by our insurer, but they do have a doctor's note stating that they will be off work indefinitely or sometimes for weeks. Do we have to continue benefits in these circumstances? / 3-40.4

I work in British Columbia, and my mother is very sick. How much time am I entitled to take off to help her during her illness? / 3-40.5

Are there any liability issues in denying an employee an unpaid leave of absence (such as the reason for the absence)? Can an employer demand an employee use up all paid vacation before considering a leave of absence? If an employee continues to insist on a leave of absence, are there grounds for dismissal? / 3-40.6

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Is failure to return at the conclusion of an approved emergency leave just cause for dismissal? What if the employee notifies the employer he won't be returning yet despite the fact the employer hasn't approved additional leave? / 3-40.8

My company is going through a massive downsizing. We are not unionized, so we do have discretion regarding whom we will terminate. One of our employees is pregnant and on maternity leave. If she were not pregnant, it is clear she would be the logical candidate to terminate. Am I obligated to keep her on after she returns from her leave? / 3-40.9

I am aware that under Ontario's *Employment Standards Act, 2000*, our company is required to provide 10 days of leave to our employees for emergency time off. Are these days in addition to the regular paid sick days that our company already gives to employees? / 3-41

Is an employer in Ontario allowed to make employees take five days of mandatory unpaid leave? / 3-42

When a full-time salaried employee with four weeks' vacation (20days) reduces his work week to four days per week, do his vacation days decrease also? If the employee takes a week off, should it be considered four paid days, leaving 16 out of 20 still in the bank? / 3-42.1

Would it be considered constructive dismissal if the person hired to replace someone while on maternity leave was subsequently hired to be her boss upon her return? / 3-42.3

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What are an employer's legal obligations to an employee with jury duty? /3-42.6

If an employee is called to jury duty but doesn't want to go, does the employer have to do anything to ensure there isn't any liability on its part and make it clear it's the employee's choice not to go? / 3-43

Can an employer force an employee to reschedule vacation time that has already been booked due to a change in workplace circumstances or any other reason? / 3-44.1

What is a reasonable amount of communication to require of an employee on paid or unpaid leave? Would it be different if there is a specific return-to-work date compared to an open-ended leave? / 3-44.3

If a new employee becomes ill during a probationary period before the employee is eligible for sick leave or vacation, can the employer place her on unpaid leave?

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If the illness continues until the end of the probationary period, can the employer extend the probationary period (and the ineligibility for benefits) so it can properly evaluate the employee once she returns? / 3-44.4

Can we force employees to use their allotted vacation days if there's a deadline to use them? Can an employer tell an employee not to show up to work even if the employee resists taking the vacation days? / 3-44.5

3.6 Sick days / 3-44.6

If an employer is concerned an employee's doctor is simply filling out notes to cover for absences even if the employee isn't really sick, can the employer refuse to accept the note, even if it's a legitimate doctor's note? / 3-44.6

If a company has a set amount of sick days per year, how should it handle employees who exceed that amount? If the employee provides medical documentation, does the company have to allow unpaid sick days without discipline? / 3-44.8

Are contract employees entitled to the same sick leave as full-time employees? If a contract employee has excessive absenteeism, can an employer consider that a breach of the contract? / 3-44.9

Is a company required to give employees paid sick days? Is there anything in employment standards legislation to compel an employer to pay a full-time worker who misses work because he is sick? / 3-46

We provide all employees with five paid sick leave days per year. Is the statutory requirement to provide up to 10 unpaid emergency leave days per year in addition to our paid sick leave program? / 3-47

3.7 Short-term and long-term disability / 3-47

How long should we keep insurance benefits in force for an inactive employee who is receiving disability benefits in a non-unionized environment? Does it vary from province to province? Will outlining a certain period of time for insurance to continue in cases of disability in their employment contract assist us in shortening this period? / 3-47

Where a long-term disability program has been implemented, can deductions be made from the employees' wages to cover the costs of the premium? Furthermore, where such action is protested as per s. 13 of the *Employment Standards Act, 2000* of Ontario, what options are available to the company? / 3-50

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One of our employees had a car accident after commencing maternity leave. In addition to her physical injuries, she began suffering from post-partum depression. The employee went on long-term disability for about a year, but her claim has now ended because she has been declared medically fit to return to work. Can we require her to return immediately, or is she entitled to take the remaining portion of her maternity leave? / 3-51

We have a company policy that has no long-term disability (LTD) for employees over 65. Does an employer have a responsibility to offer LTD coverage for older employees past the traditional retirement age since the abolishment of mandatory retirement? / 3-53

We have an employee on partial disability who worked half days for four months for one-half salary along with short-term disability coverage. The employee has worked six hours per day for five days a week for the past month with the accompanying salary increase. The insurance company denied disability benefit payment even though ample medical documentation was provided. Is the employer obligated now to return to paying the employee full-time wages? Who is ultimately liable to pay the loss of income replacement? / 3-55

One of our employees went on long-term disability (LTD) with a back injury. While on LTD he began working a part-time job while collecting benefits. When his benefits ran out, he contacted us for a re turn-to-work date. He has been away from the job for three years, with no contact. Are we still obligated under the accommodation principles to bring him back? / 3-55

3.8 Change in employer / 3-57

If a company transfers assets of a department to another company in an outsourcing transaction and job offers are made to employees by the new employer, is it considered continuous employment? If the employees accept jobs with the new employer, are they owed severance payments from the original employer? / 3-57

3.9 Storage of records / 3-58

What documents must be stored in employee personnel files and how long after a person's employment ends must the employer hold the file? Is there a requirement the files be held in a confidential location at a corporate office, or can they be maintained regionally? / 3-58

How long do I need to keep unsolicited resumes and applications on file? How long should I keep resumes and interview notes for people we interviewed but did not hire? / 3-59

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3.10 Contractors / 3-61

What are the employment standards obligations to independent contractors where the deadline and work to be done is outlined in the contract, knowing the contractor will have to work long hours to get it done? / 3-61

3.11 Temporary Layoffs / 3-62

Our (non-union) company performs work under contract for several large corporate clients. We expect one of our clients will soon cut back on the services we provide, which would force us to lay off staff, and the length of layoff would be uncertain. At what point would we be required to pay severance? / 3-62

4 HUMAN RIGHTS

4.1 Legislation and jurisdiction of courts / 4-1

I've read that it is becoming more common for human rights cases to be heard by courts. What is the implication for employers? / 4-1

An employee whose employment was terminated brought an action against our company for wrongful dismissal. The claim was settled and as part of the settlement the employee signed a full and final release in favour of the company. The release included any and all claims related to the employee's employment or the termination of that employment, including any claims brought under human rights legislation. The employee has now made a complaint against the company under the *Ontario Human Rights Code*. Will the Human Rights Commission still consider the complaint notwithstanding the release which the employee signed? / 4-2

4.2 Job Applicants / 4-3

We have employees working overseas in a climate with extreme heat, dryness and exposure to direct sun. Can we conduct a pre-employment medical test to determine the candidate is not at risk for working in this environment? / 4-3

If an external candidate is unavailable for an interview at the time designated by the hiring manager, can the organization rescind their offer to interview the candidate? / 4-7

Can a company limit candidates for a position to a specific geographic area, or is that a form of discrimination? / 4-8

I am in the process of starting my own company and need to hire new employees. I have been told human rights legislation prohibits me from asking certain questions of prospective employees. Could you provide some guidance on how to write job advertisements and application forms that do not run afoul of human rights obligations? / 4-8.1

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What kind of requirements can be included in a job description or job posting, and what requirements should be avoided in order to prevent discrimination claims? Does including a requirement in a posting or job description before anyone applies support an argument that it is a bona fide occupational requirement? / 4-9

Can an employer refuse to consider a former employee for employment even if there is nothing negative on his employment record or is that a form of discrimination? / 4-10.1

Can a job applicant be asked in an interview if he has ever been terminated from a position? What kind of questions relating to employment history should be avoided? / 4-10.1

Can an employer ask for a job applicant's birthdate and social insurance number in order to perform background checks? What information can be requested and can the employer refuse to consider an applicant if they refuse to provide this information? / 4-10.2

Our company conducts Internet searches on job applicants, including checking out social media pages such as Facebook. Are there any problems that could come up if our hiring decisions are based in part on information we get from these searches? / 4-10.3

4.3 Accommodation / 4-10.5

4.3.1 Disabilities / 4-10.5

One of our unionized employees has suffered several injuries in a series of workplace accidents over the last 10 years. We have accommodated the resulting restrictions in his ability by assigning him modified duties, but he seems to be deteriorating further, both physically and mentally. Our work environment involves highly flammable chemicals, and we are concerned that this employee may injure himself or others. What should we be doing to protect him, others and our business? / 4-10.5

We are laying off several employees and have given them notice. However, one of the employees has suffered an injury and become disabled. Normally, we would be able to accommodate the employee by restructuring his job but since his time left is limited it might be more trouble than it's worth. How far do we need to go to accommodate an employee on notice who won't be around much longer? / 4-11

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Do sick leave credits, seniority and benefits continue uninterrupted while an employee is on workers' compensation or disability leave, or can they be frozen until the employee's return? / 4-12

Can an employee remain on long-term disability or sick leave if, as his condition improves, he can do a less demanding and lower paying job in the meantime? / 4-14

Is an applicant obligated to disclose a medical or emotional condition that will affect their ability to do their job? For example, if an applicant has been treated for depression and if this has been an issue in past employment. / 4-15

We are aware that employees must participate in the accommodation process. How much information about an employee's medical condition can an employer ask for when an employee needs accommodation? What should the employer do if a doctor provides too much information? / 4-16

One of our employees, who has been on long-term disability for 12 months, now wants to return to work with doctor's approval. This employee has been with the company for six years. The company, located in Ontario, has lost trust in the employee's ability to perform in his position and does not have a position for this employee. Can the company refuse his return to work? Can he be given a notice without paying severance? / 4-16.1

We had an employee go on a leave of absence due to illness not related to work. This leave extended to two years and the employee is receiving long-term disability benefits. The employee has been given the go-ahead to return to work with permanent medical restrictions. The employee has also been receiving training through the company's benefits. We have positions that meet the medical restrictions but the employee doesn't have the experience necessary to be successful in these positions. Does the company still have a duty to accommodate and employ this person? / 4-18

We have a salaried employee in Ontario who has given us a doctor's note that states he is only able to work 70 per cent of his previous capacity. While we are able to spread the added workload around for a short period of time, we do not feel it is sustainable over an extended period. Do we have to continue paying this employee full-time pay or are we able to scale his salary back? / 4-19

A part-time personal support worker, who has been off on non-workers' compensation-based disability benefits, has produced a doctor's certificate

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that she is able to return to work. But the doctor has restricted her from performing duties we consider to be vital to the job. How can I accommodate this disabled employee or, in fact, do I even have an obligation to accommodate this employee who is now unable to perform duties that are vital to her job? / 4-20

Our company is very labour intensive and we have a concern with respect to some of our older employees. We are finding it difficult to accommodate their physical limitations. Can you provide some information regarding the duty to accommodate an employee and explain what is meant by undue hardship? / 4-22

Can obesity be considered a disability under human rights legislation? / 4-24

If an employee has government permission to use medical marijuana, can an employer prohibit him from possessing or using it on its property? Could this be a mitigation factor if the employee is found to be under the influence of the drug at work? / 4-25

4.3.1.1 Addictions / 4-26

A worker who is very close to being fired following months of progressive discipline has just informed his manager that he is an alcoholic, is seeking treatment and gave him a letter stating: "I apologize for all of my recent problems at work, which are directly related to my alcoholism." Do we have to start from square one and accommodate him? Or can we proceed with a termination? / 4-26

If an employee has performance and behavioral issues in the workplace that are the result of drinking, but the employee doesn't make any claim that he is an alcoholic, does the employer have to consider the possibility of accommodation before considering discipline? What responsibility is there to determine if there is a disability? / 4-27

Is there a duty to accommodate if an employer learns of an employee's addiction through office gossip with no proof that it's true? We don't approve of gossip and feel acknowledging it would encourage more gossip in the workplace. / 4-29

One of our workers is a self-admitted cocaine addict. We want to help now, but the cost of an intensive treatment program is high — about \$15,000. Are we obligated to fund all or part of this treatment program? Or is our duty to accommodate met by holding her job open and reintegrating her

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back into the workplace when she's better? We're a non-profit organization that relies on government funding so money is an issue. / 4-30

4.3.1.1.1 Drug and Alcohol Testing / 4-30.1

What is the threshold for determining what is a safety sensitive position for the purposes of random drug and alcohol testing? / 4-30.1

If an employee who operates machinery and other equipment requiring a certain level of skill is involved in a serious accident at work, can the employer order the employee to be tested for drugs and alcohol? If the workplace is unionized and the collective agreement doesn't address the situation, what can the employer do? / 4-30.3

4.3.1.2 Medical absences / 4-30.5

Our question pertains to an employee who has worked for the company for more than two years and has been off on stress leave since the fall. The employee has supplied a doctor's note every 30 days and, due to the fact our company has no benefit plan, she is collecting employment insurance. / 4-30.5

An employee is on sick leave on a week-to-week basis. Each week she produces a doctor's note saying she needs another week off but says she could be back soon. Can we switch her from sick pay to short-term disability and then long-term disability, if necessary? Can we do it without her consent? / 4-32

I have a question concerning company policies with respect to benefit caps. Our broker has recommended, as a cost-saving measure, a time-limit cap on benefits when someone is absent from work. So, for example, if an employee is absent for more than one year they would be removed from the health and dental portion of the benefit plan as a corporate policy. Even though not explicitly stated, this would most impact someone on long-term disability who may have expensive drug claim needs. Could this expose us to a lawsuit in terms of human rights and perceived discrimination based on disability? / 4-33

We have several employees on long-term disability, some of whom may never return to work, who continue to be covered by our health and dental benefits plan. How long are we obligated to continue coverage for these employees? / 4-35

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We have a 20-year employee who is planning to return to work after being on long-term disability for several years because of stress. His previous office job no longer exists and we don't feel comfortable placing him in a job with a degree of responsibility similar to the level he was at when he left, even if one was available. We want to accommodate him, but we don't want to jeopardize our operation or trigger another episode of stress leave. What must we offer him in terms of position and compensation? / 4-36

If a doctor's note is required from the employee for a one-day absence, can the employer require the note to be provided and dated the same day the employee is absent? / 4-36.1

4.3.2 Religion / 4-36.3

We provide 10 paid miscellaneous days for employees to take care of sick days, child care, elder care, bereavement and religious holidays. I am told there was a Supreme Court ruling which decided that Jewish holidays are over and above any paid miscellaneous days we grant. So, in addition to the 10 paid days we provide, we have to provide our Jewish employees with additional paid Jewish holidays if they so wish. Can you confirm this? What case was it? Do other religious groups receive the same treatment? / 4-36.3

To what degree must an employer accommodate Muslim employees regarding their specific times for prayer (Salaah) and their pre-prayer washing rituals? / 4-39

4.3.3 Family status / 4-41

Two of our employees recently married each other. They don't work in the same department, but are on career paths that could eventually land them in the same area, with one potentially reporting to the other. One of our VPs is concerned and is wondering if the fact they are married could cause problems. Can we legally refuse to promote one of them or refuse them a position that would put them in a close working relationship? / 4-41

Does an employer have any legal obligation to accommodate an employee's personal or family needs by providing flex time or adjusting work hours? / 4-42

We are seeking to fill a secretarial position that requires the employee to work overtime hours on a regular basis. Is there a problem with asking any potential new hire whether or not she has any family obligations (such as children), which might prevent her from fulfilling the requirements of the job? / 4-44.1

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If an employer has a practice of giving less desirable shifts (evenings, weekends and holidays) to single employees and avoids giving them to employees with families, is there a risk of discrimination against single employees? / 4-45

Is there a risk of family status discrimination if an employee is only given unpaid leave to care for a sick child? / 4-46

4.3.4 Pregnancy / 4-46.2

Does an employer have to modify physical duties — such as carrying heavy items — for a pregnant employee if she doesn't request it? If she is injured doing regular duties, is the employer liable? / 4-46.2

We provide short-term disability benefits to our employees, which are self-insured. Our existing short-disability plan does not cover pregnant women who are medically unable to attend work for a period of time due to the pregnancy. Is this contrary to human rights legislation? / 4-46.3

Can an employer dismiss an employee who has become pregnant after she was hired for a personal service contract? For example, upon learning the employee is pregnant and will be leaving the workplace, can the employer say her contract will not be renewed because she is unable to fulfill the duties of the contract? / 4-48

4.3.5 Parental leave / 4-48.1

While the employee was on maternity leave, a replacement was hired and worked for most of the year performing all the functions that the employee did prior to her leave. The Friday before the employee was to return, the employer told her the person hired to replace her was now her manager and the major tasks in the department and other duties once performed by the employee would now be performed by the new manager. Are there any grounds for constructive dismissal, discrimination or some other legal action? / 4-48.1

What obligations does an employer in Ontario have to reinstate an employee coming back from a pregnancy or parental leave? Can an employee ever be terminated while on leave? / 4-49

Our organization has an employee in a same-sex relationship who has recently become a parent. Although she was not the party who gave birth to the child she is requesting a leave of equal time as her partner who actually had the baby. Granting such a leave is potentially devastating to our business. Must this leave of absence be granted? / 4-50

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Can an employer decide not to give an employee a merit increase if the employee was on maternity for most of the year, but met all her performance targets in the months she did work? In this case, the employee worked four of 12 months of the performance year. / 4-51

4.3.6 Return to Work / 4-52

We have an injured employee on a temporary modified work program approved by his physician. However, he's not doing a very good job. Is there a legal risk if we discipline the employee or remove him from the position? / 4-52

4.4 Harassment / 4-53

4.4.1 Verbal harassment and bullying / 4-53

What is the best way to handle an employee who accuses another employee of bullying in the workplace? What steps are a must to take? / 4-54

What are the most recent changes in employment legislation regarding work-related stress? / 4-54.1

A store employee who often works alone has been harassed repeatedly by a customer and we're not sure what measures we can take. We've told the employee to report the customer to police. To what extent are we responsible for dealing with the situation? How much liability does an employer have for a customer? / 4-55

What obligations does an employer have to protect a worker from bullying? We have a situation where the bullying by co-workers is not overt, but consists of exclusionary behaviour such as not speaking to the employee. The employee has tried to resolve this situation on her own without success. She claims it is now affecting her morale and mental health. Do we have an obligation to act? / 4-58

What obligations does an employer have to deal with bullying or harassment involving employees that occurs outside the workplace? Does it make a difference if some of the bullying or harassing behaviour happened at work? / 4-61

When a supervisor in a unionized environment criticizes or speaks to an employee in a manner she doesn't like about her job performance, can the employee claim harassment? What actually does constitute verbal harassment? / 4-62.1

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My manager always belittles me and my work to my co-workers when I am not around. Is there anything I can do about this? / 4-62.2

A department manager made a false statement about an employee with regard to his behaviour. The employee is now feeling harassed because of the false statement. What are the company's responsibilities to the manager and the subordinate employee, especially if the employee feels he has to resign to get away from the unfair situation? / 4-63

The president of our company looks over the shoulder of employees every day. He has yelled at the office manager, berated her in front of staff and undermined her authority. The office manager has written three letters to the Board of Directors but nothing has been done. Other staff members are starting to complain as well. What steps should the board take to deal with this situation? What liability could arise if the Board does nothing? / 4-64.1

4.4.2 Sexual harassment / 4-64.3

If an employee who has expressed concerns about sexual harassment declines to file a formal complaint under our harassment policy after we have made it clear that she may do so without fear of reprisal, will we be liable if the employee later decides to bring a human rights complaint? / 4-64.3

As an employer, I am unsure of how to deal with office romances. Do I have any obligations to institute workplace policies for romances between co-workers? Should I consider drafting a corporate policy that specifically addresses this issue? / 4-64.4

4.4.3 Policies / 4-65

To control costs, we are considering a policy that would require employees of the same sex to share hotel rooms when travelling on company business. What, if anything, should we be mindful of when considering such a policy and would such policy be outweighed by legal considerations to the contrary? / 4-65

We would like to institute a workplace harassment policy in our organization. What are some of the key considerations in implementing such a policy? / 4-66

If an employee is found to have harassed another employee, is there a legal requirement to keep them apart? If they continue to work together is their consent necessary? / 4-67

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4.4.4 Workplace Gossip / 4-68.01

Can co-workers gossiping about another co-worker be harassment? What if the gossiping isn't necessarily insulting, but the employee who is the subject of the gossip is bothered by it and has asked the employer to put a stop to it? What can the employer do if the gossiping employees don't stop after a warning? / 4-68.01

4.4.5 Workplace Harassment Investigations / 4-68.1

When should an employer officially launch an investigation into a harassment issue, particularly if there is no official complaint but it is aware of possible questionable conduct by employees through hearsay? / 4-68.1

Is an employer liable if an employee files a harassment complaint with a human rights commission before bringing the harassment to the attention of the employer, therefore not giving the employer a chance to act on the complaint? / 4-68.3

4.5 Discrimination / 4-68.4

4.5.1 Criminal record / 4-68.4

Can an employer dismiss an employee if, after conducting a criminal record check, the employer determines that the employee has been convicted of a criminal offence? / 4-68.4

Can we use a job applicant's criminal conviction as a reason for not hiring him? The conviction is unrelated to the job duties but we are concerned about being able to trust the applicant, which is important to the position. / 4-69

4.5.2 Age / 4-71

Can actively looking to recruit more individuals with certain characteristics (age, race, disability) to influence the diversity of an employer's workforce be considered discrimination itself? / 4-71

Our company policy requires that someone must be at least 21 years old to be in a management role. Is this discrimination? / 4-72

Our organization has a "Young Leaders Program" for employees under 35 to partake in mentorship programs and career tracking/planning. Anyone older than 35 is not able to participate. Would this type of age barrier be considered discrimination, particularly if it would have the potential of helping employees advance their careers? / 4-72.2

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Since mandatory retirement has been abolished, is it a violation of human rights law for employers to document and track an employee's age as part of a succession planning strategy? I have seen replacement planning charts listing potential successors for a position which include the candidates' ages. An employee's age provides useful information about how close that employee may be to retirement. However, don't all employees have the right to be treated equally without reference to age? / 4-74

Is there a way to make inquiries as to when older employees plan to retire for the purposes of resource planning without risking being seen as pressuring them and facing charges of age discrimination? / 4-76

4.5.3 Disability / 4-77

Our restaurant discovered one of the kitchen staff is HIV positive. How do we balance the privacy rights of the employee with health and safety standards? Is HIV a legitimate safety reason to remove him from the kitchen or let him go? / 4-77

We have performance benchmarks for merit salary increases, but some employees with disabilities may not be able to achieve those benchmarks because of their limitations. Is there a risk of discrimination if they have the same base salary and basic raises but little chance of getting the performance-based raises? / 4-79

We dismissed a non-union employee for poor performance and gave her severance pay in lieu of notice. The employee now claims her performance problems were caused by a disability and she has offered to provide a doctor's note. We didn't know about any disability when we terminated her. Are we required to do anything? / 4-80

4.5.4 Place of origin, nationality or ancestry / 4-80.2

Can an employer require proficiency in English? Communication is important to the job, but are there risks of discrimination? / 4-80.2

4.5.5 Employment Equity / 4-81

Can actively looking to recruit more individuals with certain characteristics (age, race, disability) to influence the diversity of an employer's workforce be considered discrimination itself? / 4-81

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4.5.6 Health Issues and Lifestyle / 4-83

Is it discrimination if an employer refuses to hire people with health issues due to personal choices (such as smoking) who could lead to extra health benefits costs? / 4-83

4.5.7 Social Media Background Checks / 4-85

Can an employer use a job applicant's social media activity as a factor in determining whether to hire her? Does the employer need permission from the applicant to look at social media? / 4-85

4.6 Retaliation / 4-86

We have an employee who has made multiple claims of discrimination which we consider frivolous. All of the claims were dismissed and we feel the employee is trying to cause trouble and disrupt the workplace. Would discipline or firing still be considered retaliation even though the employee's claims were without merit? / 4-86

What should an employer do if an employee makes an obviously false discrimination complaint, is unhappy with the result of the investigation, and then makes additional complaints? Is the employer required to launch further investigations, even where it knows the complaints are not valid? / 4-90

5 OCCUPATIONAL HEALTH AND SAFETY

5.1 Legislation / 5-1

I am an employer who operates a textile plant in Windsor, Ont. Recently, an Occupational Health and Safety inspector came to our plant unannounced. After completing his tour he provided me with an order to fix one of my machines immediately. In his opinion the machine was unsafe and could not be used again until it was repaired. This machine, however, is only five years old and I believe that it was, and still is, safe for use by my employees. Is there anything that I can do in order to appeal this decision and to continue using the device? / 5-1

If we determine personal protective equipment is required for our employees and we make it available, are we obliged to pay for it as well? / 5-2

What are the reporting standards for workplace injuries? Do they vary in different jurisdictions across Canada? Is there a difference depending on whether it is an employee or a nonemployee that is injured? / 5-3

If an employee needs a certain piece of equipment but the employer is slow to provide it, is there a potential for constructive dismissal or any other liability if the job is more difficult or more stressful because of the equipment's absence? / 5-4

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5.2 Workplace environment / 5-6

What are an employer's health and safety obligations for employees who work alone? / 5-6

With the hot weather, some employees have been claiming it is too hot in our plant. The plant is air conditioned to about 84 F which seems reasonable to us. It's very expensive to cool, because the building is not very efficient. An anonymous letter is threatening legal action if the temperature is not lowered. From what I know there is nothing "legal" that requires us to keep it cooler than 84 degrees. Am I wrong? / 5-6.01

Is there a law or standard regarding higher pay during extremely hot daily temperatures for workers such as carpenters, roofers or other employees who work in locations where the temperature gets very hot? / 5-6.03

What kind of health and safety standards does an employer have to maintain for employees outside the normal workplace, such as those driving company vehicles or going on business trips? / 5-6.1

If an employee is injured while commuting, in the parking lot or any other location on the way to work before she actually arrives, could the employee be eligible for workers' compensation benefits? Does the employer have to report the injury? / 5-6.2

Our workplace is fairly isolated and provides lunches (and sometimes breakfast and dinner) on site. Are there any requirements under health and safety legislation or employment standards that dictate a certain standard of food an employer must provide in such circumstances? / 5-6.2(1)

We are a grocery store and we encourage kitchen managers to have candidates perform a practical test as part of the interview process. For example, a cook may be asked to follow a recipe to help the company assess her knife and cooking skills. Is there anything the company should do to protect itself in the case of an injury and should the candidate be paid for the time? / 5-6.2(2)

Can an employer prohibit employees from smoking anywhere on company property, even if it's outside? How does the law on smoking in the workplace compare in different provinces? / 5-6.3

If the heating or air conditioning in our office breaks down, can we require employees to continue working for the whole day? At what point should the office be closed? / 5-6.5

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If the owner of a building, in which an employer is a tenant, doesn't keep everything in good repair, are there health and safety implications for the employer? What can the employer do to protect both itself and its employees? / 5-6.6

If one company's employees are performing work on the property of another business alongside employees of the other business, who is responsible for the occupational health and safety of the employees? / 5-6.8

5.3 Workplace violence, intimidation and bullying / 5-6.9

Is the employer liable if an outsider gains access to the workplace and assaults an employee, even if the employer increases security following the incident? / 5-6.9

What are an employer's obligations to protect a worker from violence in the workplace? Is it different across Canada? / 5-6.10

We have an issue with an employee firing a pellet gun. Our company has a policy against violence at work but it doesn't cover weapons and there are no previous such incidents we can draw upon. Does an anti-violence policy have to specifically refer to weapons like this or is it covered under more general prohibitions like physical threats or fighting? / 5-6.12

Employees can refuse work if they feel there is a health and safety hazard, but do they have the same rights if they perceive a threat of harassment or violence? / 5-6.14

If an employee threatens another employee with physical violence or takes a swing at him, should it remain an internal matter? At what point is it beyond the employer's jurisdiction and police should be called? / 5-6.16

If an employee is harassed or threatened by another employee at work, this raises concerns about harassment and workplace violence. Does this also relate to an employer's obligations under occupational health and safety legislation or are these things usually kept separate legally? / 5-6.19

Are there circumstances where it would be okay for an employer to use an investigator or mediator from within the company to deal with employee conflict or serious misconduct? What are the potential liabilities? / 5-6.20

Is harassment or bullying a legitimate ground for employees to refuse work for health and safety reasons? Can an employer face health and safety sanctions in a workplace with such behavior? / 5-6.22

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5.4 Workers' compensation / 5-7

In Ontario, does an employee's vacation time or sick day entitlements accrue while she is off on WSIB? / 5-7

One of our employees was injured at work and submitted a workers' compensation claim. The employee then gave us a medical note and requested paid sick leave. Does an employer have the right to turn down a sick leave claim when an employee has been injured at work? Should the employer accept medical documentation from an employee if workers' compensation is being sought? / 5-7

How is workers' compensation determined for an employee who is paid by commission and has significantly different amounts from one pay to another? Are performance and sales bonuses factored in? / 5-8.02

What kind of mental condition, if any, can an employee collect workers' compensation for if she takes a medical leave? / 5-8.1

5.5 Off-site employees / 5-9

We are looking at having some employees work from home. The employees really want this, but we have concerns about the issues and liabilities that may arise. What are the risks and potential pitfalls of allowing an employee to work at home? / 5-9

Is the company responsible for setting up an ergonomic environment for the employee at their home office? Also what if they fall down the stairs during their work day at home or have some other such injury — is it a WCB claim? Are we open to liability for not providing them with a safe work environment or not allowing them to work at home in an unsafe environment? Do we have to inspect their home setup before allowing off site work? / 5-10

5.6 Policies / 5-12

Are there any requirements to post health and safety information and company policies in languages other than English? Is there a different standard where the majority of employees have a first language other than English? / 5-12

Is an employer liable for a health and safety violation that is the result of an employee's choice to refuse to follow company policy (such as to wear protective head gear or follow a certain procedure)? / 5-13

5.7 Due Diligence / 5-14.1

What is the employer's obligation when an employee is depressed and threatens suicide? Is there a difference whether the employee says this to someone at work or the employer becomes aware of it "through the grapevine"? / 5-14.1

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5.8 Emergency and Pandemic Planning / 5-16

Are emergency procedures (for events such as earthquakes, hurricanes, tornadoes and floods) considered part of an employer's obligations to make the workplace as safe as possible under occupational health and safety legislation? If our emergency procedures aren't updated, does that create occupational health and safety liability, even if the everyday operation of the workplace is safe? / 5-16

Our employees have very specific individual responsibilities and too many absences can hurt the business. Can we require employees to get flu shots (if they're not allergic) to reduce the chance of them needing sick days or spreading it around the workplace? / 5-18

6 EMPLOYER LIABILITY

6.1 Recruitment and hiring / 6-1

Can an employer be held responsible for the actions of a recruitment agency that discriminates against job candidates without the employer's knowledge? / 6-1

Our company uses a headhunter when recruiting. If a headhunter makes a misrepresentation to a potential employee during the hiring phase which induces the employee to join our company, can we as the employer be held liable for such misrepresentations? / 6-3

What is a wrongful-hire lawsuit and how can employers guard against potential liability in these situations? / 6-3

I realize inducing an employee to leave a secure position can leave me liable for paying greater notice, but at what point is it considered to be inducement? For example, I post an ad in the paper and prospective employees apply for the position. I interview many candidates and tell them what our company is offering. When I offer the job to the potential new hire is this inducement? / 6-5

6.2 Office parties / 6-6

We're in the early stages of planning our annual holiday party. Our employee committee is tinkering with the idea of hosting the party in one of our large conference rooms at the office on a Friday night. Alcohol will be served — but not an open bar. But we still have some concerns about employees drinking and partying in a place where they normally work. Outside of our human resource concerns, does having the party on company property increase our liability in any way? Or is the liability the same regardless of where the party is? / 6-6

We are planning a Christmas party again this year, as we do every year, except that there has been some mention of drinking and employers' responsibility to

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employees, whether the party is held onsite or not. What do we need to keep in mind? / 6-6.1

What are some considerations for employers when trying to maintain a professional work environment during this festive time of year? / 6-7

Some of our staff stay and have a glass of wine at the end of the day on Friday. As a rule, no one drinks heavily, but what is the company's liability? Do we need to implement a policy? / 6-9

The employer (a college campus) has various locations on the employer's premises at which alcohol may be consumed, such as pubs and bars. If employees consume alcohol at lunch while at one of these places, and then return to work and injure someone or get into an accident, who bears the responsibility for any resulting loss or damages? What if the employer provides alcohol to its employees? / 6-11

6.3 Employee misconduct / 6-12

Our company recently started an employee newsletter. There has been some concern in management about the content of the newsletter, and who is responsible if something libelous is said about another employee, even in a joking manner. Can an employer be held responsible for the contents of an employee newsletter written by employees? / 6-12

Our organization stores boats in the winter. In each customer contract there is a clause limiting liability of damage to their boats to \$100. This past winter an employee caused more than \$5,000 damage to a boat by negligently moving it in our storage facility. Is my employee protected by the limited liability contract I signed with the customer? / 6-13

How much does an employee's conduct away from the workplace, but related to the employer (such as playing on a company-sponsored team), fall under the employer's jurisdiction? Can an employer discipline the employee or be liable for any misconduct in such circumstances? / 6-14

6.4 General / 6-14.2

What are the employer's responsibilities and which precautions should be taken to ensure the security and safety of employees when the employer wishes to rent office space to outsiders? / 6-14.2

What are the potential personal liabilities of officers and directors of a corporation if the corporation breaches an agreement? / 6-15

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We have a standard policy with respect to letters of reference whereby a written reference is provided to the employee containing the following information: employee name, employment dates, last position with the company and final salary. Recently some concerns have arisen as to the adequacy of this policy. Is the information we provide in the reference sufficient or are we obligated to comment on the employee's performance as well? / 6-16

If a prospective employer of a former employee calls for a reference and we have nothing good to say about the former employee, what is the advisable response? Is it safe to be honest and say unflattering things that could hurt the former employee's chance at a new job? / 6-17

Could an employer face any liability if it stays open during very bad weather conditions when authorities recommend staying home and an employee gets in a serious accident trying to get into work? / 6-18

Is an employer responsible if an independent contractor violates the employer's safety protocols? / 6-20

7 LABOUR LAW

7.1 Union Organizing Activities / 7-1

Can an employer publicly oppose a union organizing drive without interfering with the employees' right to organize? / 7-1

What can an employer legally do to discourage unionization? / 7-2.1

7.2 Collective bargaining / 7-4

In Ontario, after a union campaign has begun, is it a violation of Ontario's *Labour Relations Act* for an employer to have a "captive audience" meeting with an employee? / 7-4

During an interview, is an employer permitted to ask an applicant about past union affiliations? / 7-5

7.3 Collective agreements / 7-6

When a collective agreement is clear that a probationary employee does not enjoy grievance rights if the employee is released during the probationary period due to unsuitability, is the employer legally required to provide a reason to the employee for termination? / 7-6

When we concluded the last round of collective bargaining with our union, we agreed to implement the wage increases retroactively, going back to the expiry date of the old collective agreement. The memorandum of agreement clearly states that only current employees are eligible for retroactive pay. Notwithstand-

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ing that provision, are we required to make retroactive payments to employees who left the company after the old collective agreement expired but before the new agreement was reached? / 7-7

This is a unionized environment, which requires that all positions be posted internally, and that all qualified internal candidates be interviewed. On a number of occasions, these conditions have been waived when warranted (for example, when no internal candidates have the required qualifications) and candidates have been granted positions without having to compete or be interviewed. / 7-8

When a collective agreement doesn't contain a provision for termination (absolutely no reference to termination language in the agreement) and defers to the minimum requirements for both notice and severance payment under the *Canada Labour Code*, does a federally-regulated employer have to acknowledge "common law" statute? / 7-9

We are an employer with both unionized and non-unionized employees and we are in the process of instituting a workplace harassment policy for all our employees. What impact, if any, will the collective agreement of our unionized employees have on the workplace harassment policy? / 7-10

A new union business agent who was not involved in recent collective bargaining is telling employees to grieve everything and the union will send all grievances to arbitration because the company can't afford it. What can we do? / 7-11

Is there a way to determine whether work performed in a unionized environment can be reclassified to fall outside of the collective agreement? Can a collective agreement play a role in defining a position or work performed? / 7-12

If an employer requires a doctor's note and the doctor charges for his notes, would this be a personal expense to the employee or does the employer have to pay for it? / 7-12.2

7.4 Strikes / 7-12.2

How would benefits and employees' pensions be affected by a strike or layoff? For example, are employers obligated to continue coverage during the strike (in the case of unionized workers) or layoff (for both union and non-union employees)? I know in the non-union context, employers can be on the hook if an employee becomes disabled during the reasonable notice period. Could similar liabilities arise for unionized employees during a strike or layoff? / 7-12.2

Our collective agreement states that employees are entitled to statutory holiday pay if they have been employed for at least three months preceding the holiday.

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We just settled a lengthy strike, and a statutory holiday is approaching. Are we required to pay statutory holiday pay to the striking employees? / 7-15

Can a union fine employees for crossing the picket line during a strike? What is the employer's responsibility in this situation? / 7-16

7.5 Suspensions / 7-18

We recently suspended one of our unionized employees with pay, pending investigation of suspected misconduct. We have determined our suspicions were accurate, so we are about to fire the employee for just cause. Can we deem the employee's suspension to be disciplinary without pay, and seek to recover the wages we paid to him during the suspension? / 7-18

Can a unionized employer suspend an employee if the collective agreement doesn't mention suspension as a form of discipline? How should an employer approach disciplinary issues if discipline isn't adequately addressed in the collective agreement? / 7-19

7.6 Dismissals / 7-20.1

If an employee believes she was wrongfully dismissed but felt the union didn't properly represent her, can she take a wrongful dismissal suit to court instead of the labour relations board? / 7-20.1

7.7 Layoffs / 7-23

We need to lay off some of our unionized staff due to lack of work. One of the affected employees is currently on medical leave. Can we lay her off along with the others, or do we need to wait until she returns from leave? / 7-23

8 DISCIPLINE

8.1 Forms of Discipline / 8-1

Do we have the right to suspend a non-union employee without pay? / 8-1

Are there situations where an employer can dock an employee's pay for not following rules or causing unplanned expenses for the employer? Can employees be suspended without pay? / 8-2

Is the act of suspending an employee for punitive reasons enough to constitute constructive dismissal, for either a paid or unpaid suspension? / 8-4

Can an employer suspend a non-union employee without pay as a form of discipline and not have it considered to be constructive dismissal? / 8-5

Can a demotion be used as discipline for serious misconduct if the alternative is likely termination, or could it still be constructive dismissal? / 8-7

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8.2 Progressive Discipline / 8-8.01

Can a bad performance review qualify as a warning in a progressive discipline scheme? If a review states performance or attitude needs improvement and is unacceptable but doesn't indicate any consequences, can it be considered a warning? / 8-8.01

We have an employee who has not been keeping his files updated. We have given repeated verbal warnings about this problem and have introduced a company policy that says files must be updated. Consistent with the terms of this new policy, we have removed clients from his territory for files that have not been updated. The employee is now saying that we have fundamentally changed his job responsibilities because he had never been disciplined before or forced to keep his files up to date. Is he correct? / 8-8.02

If a worker shows up drunk at the worksite, what should an employer do? / 8-8.1

What are the restrictions and guidelines for using past disciplinary actions against an employee in determining current discipline? Can an employer use the number of past incidents against an employee rather than their severity? / 8-8.2

Our progressive discipline policy requires a final written warning before termination. If an employee has received a written warning for performance issues and is now being disciplined for threatening a co-worker, can we rely on the prior warning to dismiss the employee, or does the previous misconduct have to be related? Is one written warning enough before dismissal for subsequent misconduct? / 8-8.4

8.3 Grounds for discipline / 8-8.6

8.3.1 Absenteeism / 8-8.6

How should an employer deal with employee absenteeism during the holiday season? / 8-8.6

8.3.2 Breach of trust / 8-9

To what extent can an employer with no e-mail policy read an employee's e-mails that are not addressed to it but contain content regarding the employee's poor opinion on practices within the company? Can the e-mails be used as evidence of insubordination justifying discipline? / 8-9

8.3.3 Safety / 8-12

An employee filed a harassment complaint against a co-worker. The offending employee was disciplined according to company policy but the employee who filed the complaint is uncomfortable working with the disciplined employee. Are we required to accommodate by re-assigning one

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of them to another department? What if they aren't qualified to work anywhere else within the company? / 8-12

Our collective agreement requires that an employee "on request from the employer" provide proof of illness or accident from a qualified medical practitioner that is satisfactory to the employer. We recently received from an employee (who has been put on notice, due to her high absenteeism, that she must provide this proof of illness every time she is off sick) a medical note that is somewhat suspect. Are we within our rights to pursue this and require that the employee have the physician complete a more detailed medical certificate? Can a physician "certify" that an employee was absent due to medical reasons on a specific day if he did not see the patient until the next day? / 8-14

We have an employee who has been prone to making careless mistakes lately, some which could potentially threaten the safety of his co-workers. We've warned him about being more careful but have not instituted any formal discipline. Can we terminate him if he makes another dangerous error? / 8-15

We have a five-step progressive discipline process which includes a verbal warning, two written warnings, suspension with final written warning, and finally termination. However, our policy provides that for health and safety infractions, there is only one written warning, followed by immediate termination for a second offence. Would this be sufficient to establish just cause? / 8-16

8.3.4 Poor performance / 8-18

One of our employees, who has been with the company 13 years, has requested a transfer to one of our retail stores in another province. Are we within our rights to say no? Or are we exposing ourselves to a lawsuit? What rights does an employee have to request a transfer and what rights does an employer have to say no? (We are not unionized, if that makes a difference.) / 8-18

When the union steward in our workplace is absent, production is noticeably higher. Is this grounds for discipline or dismissal? Does her position as a union steward affect our ability to discipline or fire her? / 8-19

8.3.5 Legal offence committed at work / 8-20.1

One of our employees was charged for an offence he committed while at work. We investigated the incident according to company policy and found

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his conduct to warrant dismissal. Can we fire him before his legal case is decided? What happens if he's found not guilty? / 8-20.1

8.3.6 Harassment of co-workers / 8-21

Is it discriminatory to take action, such as discipline or termination, against an employee for misconduct at work that is based on religious beliefs? We have an employee who is bothering other employees who don't share her beliefs. She genuinely believes she is in the right but it's causing problems in the workplace. / 8-21

How much jurisdiction or liability does an employer have over an employee harassing another employee outside of the workplace? What about an employee who harasses a customer outside of the workplace? / 8-22

8.3.7 Breach of employee's duties / 8-22.4

Can a company legally ask all employees, including union representatives, to sign a statement confirming their commitment to being "on board" with the company's objectives? If any employee refuses, can this be a factor in dismissal? / 8-22.4

Can an employee's failure to report another employee's misconduct constitute misconduct justifying discipline itself? Are you aware of cases where an employee has been dismissed for remaining silent regarding serious misconduct by a co-worker? / 8-24

8.3.8 Dress Code / 8-24

How far can a workplace dress code and appearance policy go? Can an employer dictate what types of jewellery and clothing can be worn and what kinds of tattoos and piercings be visible? / 8-24

8.3.9 Breach of Employment Policies / 8-26

We're looking into giving new hires a USB stick instead of a large paper package with all the necessary information (benefits/policies) and have them sign a document stating they have received the USB stick, they have access to a computer and it is their responsibility to review the material on their own time. Are you aware of anyone else using this practice and are there any foreseeable legal issues? / 8-26

8.3.10 Off-Duty Employer-Related Behaviour / 8-28

How much does an employee's conduct away from the workplace, but related to the employer (such as playing on a company-sponsored team), fall under

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the employer's jurisdiction? Can an employer discipline the employee or be liable for any misconduct in such circumstances? / 8-28

8.4 Investigations / 8-30

What is a reasonable time to implement discipline for employee misconduct following the completion of an investigation? Should an employee always be suspended pending investigation or can the employee work during the investigation? / 8-30

What are the minimum best practices and legal requirements for employers in conducting investigations into employee misconduct before issuing discipline? / 8-30.2

9 TERMINATIONS

9.1 Notice of termination / 9-1

When summarily terminating an employee who has performance issues, is it acceptable to not say anything regarding the nature of the reasons for being terminated and just say the company has decided to go in another direction? Should we disclose some of the issues even if they aren't the main reason for termination? / 9-1

One of our company's supervisors accused an employee of using the company's instant messaging program for personal use. Should we investigate? If true, does this conduct warrant dismissal? Do we need to give a formal letter outlining the reasons for dismissal? / 9-2

Due to changes in the business, we no longer have a need for an employee who is supposed to start next week. We wish to terminate his employment before he starts. What do we do? / 9-4

Is it appropriate to dismiss an employee close to the holiday season? / 9-5

One of our employees was hurt in a non-work-related accident. She provided a doctor's note stating that her ankle is sprained and went on unpaid sick leave. We don't want her back for a number of reasons, including poor attitude and performance. We are a non-union company, so under our Labour Standards Act, she would be entitled to six weeks' notice or pay in lieu if we terminated her employment. Does she have any other entitlements? / 9-5

Is there a difference in the requirements for severance pay or notice of dismissal requirements between part-time and full-time employees, either in statutory minimums or the courts? Is there any variance between different Canadian jurisdictions? / 9-7

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What information is legally required in a termination letter? Does the employer have to give a reason if it's providing reasonable notice? / 9-8

9.2 Constructive dismissal / 9-8.1

If travelling isn't normally part of an employee's job, is there a risk of a constructive dismissal or an obligation for extra compensation, if the employee is required to take multiple business trips over a short period of time? / 9-8.1

If an employer tells an employee about a significant change to the job that the employee protests but the employer doesn't follow through, can that be considered constructive dismissal? / 9-8.3

What kind of notice does an employer have to give when making significant changes to a benefit, such as a pension plan or paramedical coverage? / 9-8.4

I've just joined a company that has a history of giving employees a bit too much freedom. Management wants to change that and start enforcing things like regular hours of work. Is it acceptable to change an employee's work hours from flex to regular 9 to 5 hours? Is that a fundamental change in the employment contract that might lead to a successful claim for constructive dismissal? / 9-9

If an employer decides to crack down on a certain type of behaviour that it turned a blind eye to before — such as lateness or absenteeism — and adds specific disciplinary consequences to its policy, how much leeway should it give employees who continue with this behaviour? Can it follow this disciplinary policy immediately once it is made clear to employees? / 9-10

Can an employer change the qualifications required for an employee's position? If so, can the employer dismiss those employees who do not meet the new qualifications? / 9-10.1

If operations are being moved from one location to another and the affected employees are being offered the same position at the new location, what is the maximum distance it can be from the "home" plant to be considered reasonable and not constructive dismissal? I once read that it must be within 50 kilometres of the "home" plant. Is that correct? Is there a minimum notice period required? / 9-10.3

Our company has two retail locations in the same mall. Can we unilaterally transfer employees between the locations without any consideration, since the locations are so close together? / 9-10.4

Can an employer unilaterally increase the standard hours of work from 44 to 48 per week or would this be a constructive dismissal? / 9-10.6

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If an employer wants to move an employee to a different position and department to try to fix a poisoned environment in his existing department, is there a risk of constructive dismissal? Or does the employer's obligation to try to make things better for the other workers take precedence? / 9-10.7

Does poor treatment by an employer entitle an employee to resign and seek damages for constructive dismissal? / 9-10.8

I work for a company that is expanding its operations across Canada. Does an employer have an inherent right to require the worker to relocate to a different branch or even to a different city or country? If the worker refuses the request to transfer, can he be dismissed for cause? / 9-11

We are reorganizing our company and have reduced the position of one of our managers to that of senior sales associate. As a manager the employee received a yearly salary. But the compensation for the senior sales associate position is commission based. We do not dispute the fact this employee has the right to claim constructive dismissal, but we would like to know whether this individual is obliged to accept the senior sales associate position in order to mitigate his damages. / 9-12

An employee recently left us after having made various complaints about her supervisor. In particular she complained about the tone and manner in which the supervisor spoke to her and claimed the supervisor was constantly making comments to her which she found to be rude and degrading. Although she resigned from her position about a month ago, she is now seeking damages for wrongful dismissal. Does she have a legal claim against us? / 9-13

We are an Ontario employer with eight different locations. The furthest two sites are each within one hour's drive of the next closest. Due to funding and/or service requirements, from time to time we move an employee's base office with usually one month notice. Is this considered constructive dismissal? How should this be handled? / 9-14

If an employee's job title and reporting structure changes but his main job duties and pay does not, is that considered a significant change that could lead to constructive dismissal? What kind of advance notice must we give for significant changes to an employee's job? / 9-14.2

If an employee needs a certain piece of equipment but the employer is slow to provide it, is there a potential for constructive dismissal or any other liability if the job is more difficult or more stressful because of the equipment's absence? / 9-14.5

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What would be an employer's best course of action and potential liability if it wanted to completely change an employee's job duties if the employee is reluctant to take on the new duties? / 9-14.7

We have undertaken a new project on a trial basis which required an employee to take on some new responsibilities and add a job title to his existing one. Because we are unsure of how the project will go, the employee agreed to take on the new responsibilities for the same pay for an undetermined trial period. If the project continues indefinitely, is there a risk of a constructive dismissal claim if we don't change the employee's pay? / 9-14.9

9.3 Reasons for dismissal / 9-14.11

9.3.1 Absenteeism and lateness / 9-14.11

I have just joined an organization that wishes to terminate an employee for absenteeism and persistent lateness. The employee is relatively new and following a successful three-month probation period, another letter was issued extending her contract for another three months. The reason for only extending a further three months was that the company did not want to commit to a permanent contract with the absenteeism problems, but this was not stated in the letter. / 9-14.11

If an employee stops coming to work, how long before we can assume the employee has quit? If we decide to fire the employee, do we owe any notice? / 9-16

Is there a standard rule of thumb regarding what length of unexcused absence from work constitutes job abandonment? / 9-18

We have an employee that is continually late to work. This has been going on for an extensive period of time and she keeps arriving later and later. Can we dismiss her for just cause because of this? / 9-19

9.3.2 Breach of trust / 9-20

Our HR policy, under rules of conduct, lists falsification of records as a serious matter resulting in disciplinary action up to and including termination. If we suspect that a manager is falsifying records and has instructed her staff to do so, can we terminate for cause? / 9-20

If an employer discovers after hiring that an employee lied on her resume, can it be grounds for dismissal even if the employee is doing a good job? / 9-22

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We are experiencing difficulties related to expense fraud with some of our employees. Can we dismiss an employee without notice for submitting fraudulent expenses? / 9-24

Recently we were alerted to the possibility that one of our employees was stealing company property. We investigated the allegation and have concluded there have been several instances of theft from the company by the employee. Based on the results of our investigation we intend to dismiss the employee for cause. Are we required to share our investigative report with the employee or can we simply terminate his employment for cause? / 9-25

A 10-year employee with our small company (three employees) just gave notice that he will be leaving in a few months to go into the same business for himself and plans to take customers with him. Can we dismiss the employee now without severance pay? / 9-26

9.3.3 Harassment / 9-26.2

We have a company policy which states we can monitor employee e-mails. But we do not do so unless we feel it is justified. If we find an e-mail that suggests an employee may be a physical threat to a co-worker, can this justify a termination for just cause? / 9-26.2

Is an employer required to fire an employee who harassed another employee to the point the harassed worker says she can't work in the same office as the harasser? We have moved the harasser to another department but he's still in the same office as we have no other locations. / 9-28

9.3.4 Misconduct outside of work / 9-28.1

A school employee, who must be a good role model both at work and in the community according to the school's policy, had his children taken away by Children's Aid due to a one-day drinking binge. Does this mean we have just cause to fire? / 9-28

An employee has gotten into some legal trouble outside of work. His sentence didn't affect his ability to report to work, but it has called into question his honesty and trustworthiness. His position involves a lot of responsibility and exposure to sensitive information and if we can't be sure we can trust him, it will cause significant problems for the company. Can his off-duty actions be considered breach of trust and cause for dismissal? / 9-31

One of our employees, who is required to drive a company vehicle to perform his duties, was charged at the end of his shift with impaired driving. Clearly

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he is now unable to fulfill his duties. In the event we decide to discharge this individual, what should we say regarding the reason for discharge? My instincts tell me that discharging him for the impaired charge would open us up for problems and that we should state something along the line that he is discharged for being unable to fulfill his job. This is a non-union environment. / 9-34

An employee was absent for more than 30 days because he was in custody for an alcohol-related assault charge. This is the second time in less than six months he's been under house arrest, but he is allowed to leave home to attend work. He's worked at our company for seven months and has never informed us of an alcohol problem. What are our responsibilities regarding accommodation? Can we proceed with his termination for culpable absenteeism? / 9-35

An employee was intoxicated on his day off and was unable to provide his home address to a taxi driver, so the driver took him to work, asked for the employee's address and took the employee home. Is an incident such as this grounds for discipline or termination? The employee works in the hospitality industry and there may have been customers who witnessed the incident. / 9-37

If we're unhappy with some of the things an employee is posting on Facebook and Twitter, what can we do? The employee identifies herself as working for our organization on both sites, though they are her personal accounts. / 9-38.02

9.3.5 Frustration of contract / 9-38.04

If the physician of an employee on long-term disability leave provides a note saying the employee is unlikely to ever be able to come back to work, can the employer terminate due to frustration immediately or is there a period of time it should wait? / 9-38.04

We have an employee who has been off on long-term disability for about two years due to mental illness. He has clearly been off for a considerable period of time and there are no signs he will be ready to return to work in the near future. Can we terminate his employment on the basis he is no longer able to fulfill the terms of employment? / 9-38.08

We have a unionized employee who has been absent from work for nine months following a motor vehicle accident, and a return to work is not

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expected in the foreseeable future. Do the principles regarding frustration of employment contracts apply to unionized workers? / 9-38.09

Can the employment and benefits of an employee who has been on long-term disability for more than two years be terminated and to what is he entitled? / 9-38.3

Does an employer have an obligation to hold a position to an employee who is serving a few months in jail? Is there a threshold for the length of a sentence before the employee can be dismissed? / 9-38.6

9.3.6 Insubordination / 9-38.7

What is the threshold for insubordination to warrant dismissal without previous discipline? We are concerned about a manager's authority being undermined if an employee is not dismissed after other workers saw the employee defy and embarrass him. / 9-38.7

Should an employer have policies protecting "whistle-blowers?" Is an employee who accuses a manager of serious misconduct legally protected from retaliation, or could the employee be discharged for insubordination? / 9-38.9

9.3.7 Incarceration / 9-38.12

Does an employer have to keep an employee's job open while he is on trial or in jail? If so, is there a cut-off on how long the employer is expected to hold the job if the employee is incarcerated for a long period of time? / 9-38.12

9.4 Just Cause / 9-38.13

Is there just cause for dismissal if an employer has definite evidence of one instance of misconduct that may not on its own be enough but also has circumstantial evidence of a large number of instances of other misconduct? / 9-38.13

Are zero tolerance policies enforceable? If an employer makes it clear to employees that a certain type of misconduct will result in immediate dismissal, can that misconduct constitute just cause? / 9-38.14(1)

If an employer has a specific code of conduct that prohibits certain behaviour, is there a lower bar for dismissal rather than other forms of discipline for violations of the code? / 9-38.14(2)

One of our employees punched a co-worker in the chest during a confrontation at work. The police were not called, at the victim's insistence, and no charges are expected to be laid. But we are concerned about this incident, and this worker has

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shown some violent tendencies in the past. But we have not documented any of it. Can we fire this worker for cause? Failing that, can we provide a very small compensation package that is just above the statutory minimum but less than one provided at common law? / 9-38.14(3)

When can an employer dismiss an employee for cause due to the employee's incompetence in performing her duties? / 9-38.15

Our company terminated an employee for falsifying time records and taking a company vehicle home. He was warned previously that further off-site use of the vehicle would result in termination. His employment agreement states we will provide two weeks' pay in lieu of notice unless terminated for serious misconduct including falsifying records, though we did give him one week's pay. Did we take proper action by providing pay in lieu when we really didn't need to? / 9-38.16

A two-year employee has been making errors at work and doesn't seem to care. We have worked to ensure instructions are clear and spoken to the employee about the errors but he just makes different errors each time. We have given him his first written warning and discussed suspension, but his attitude is that it will hurt us more than him. Business is slow but a layoff wouldn't be the answer because we don't want him back. What would he be entitled to if we dismissed him? / 9-38.18

Our organization follows a progressive discipline plan and one employee has received several verbal and written warnings for mistakes. Each mistake on its own is relatively minor, but it's apparent the employee is not going to improve and his mistakes are cumulatively costing the company. Is there a threshold where a number of minor infractions can amount to just cause for dismissal? / 9-38.20

Would multiple instances of falsifying time cards be just cause for dismissal? What if it is a unionized environment? / 9-38.21

Can an employer that serves the community terminate with cause based on a petition of community members? / 9-38.23

9.5 Wrongful dismissal / 9-39

An employee has been having performance issues for some time and we're thinking of firing him but are unclear on how bad things would have to be to not require notice. At what point would summary dismissal without notice be permissible? / 9-39

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We have several employees that just keep getting injured, repeatedly. These employees don't disregard safe work or lock-out procedures they just have a propensity for slipping and falling, banging their elbow, getting cut or scraped, dust in their eyes and so on. Can an employee be terminated for issues related to non-culpable safety performance? / 9-40

A co-worker took a stress test. The manager informed him that if it came back negative he would be fired. Is that allowed? / 9-42

9.6 Unjust dismissal under the *Canada Labour Code* / 9-42

In October 2006 we closed a satellite location and three employees were laid off. One employee filed and won an unjust dismissal complaint under the *Canada Labour Code*. We have now been asked to reconvene to discuss "lost wages and costs." How do we assess lost wages (the employee of 18 months is asking for 34 weeks' pay) when the function was discontinued? / 9-42

9.7 Severance and reasonable notice / 9-43

If an employee requests a termination or severance payment in a different form than his normal method of payment (such as a physical cheque instead of direct deposit), does the employer have to comply? / 9-43

How much notice is reasonable to give to a dismissed employee to avoid legal trouble? I have heard roughly one month per year of service is a safe assumption, and have seen court decisions approximating that amount. / 9-44

I have a question regarding termination pay and severance pay. (Company has more than 50 employees and more than \$2.5 million payroll.) If an employee worked for more than five years for a company, then resigned but returned two years later, to take a management position for more than five years with the company, what kind of termination and severance pay is required. (There is no malicious or willful negative behaviour and the employee is 40 to 45 years old.) / 9-44.1

Under our employment standards legislation, a company doesn't have to pay severance to terminated employees if the total annual payroll is less than \$2.5 million. However, some employees are paid by drawing from the firm's trust account and are responsible for all of their own deductions, such as CPP, EI and income tax, much as contractors would be. Should these employees be counted as part of the payroll when it comes to determining if severance must be paid? / 9-45

A worker we fired without cause is refusing to accept the severance package we offered. He has been with the company for about eight years, and we're offering him six months' pay plus a good reference and assistance in finding another job.

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We're even letting him keep the company laptop and Internet access until the end of the notice period to assist him in his job search. But he's demanding one year's pay or else he'll sue for wrongful dismissal. Should we cave and offer the extra notice? Or hold our ground? What might happen if it goes to trial? We think the offer is very reasonable. / 9-47

A dismissed employee has been offered a severance package with continuation of the employee's salary for a specified period. However, the employee has made a formal request to receive her severance in a lump sum payment. Is the employer required to comply with this request, or does the employer get to decide how to structure the package? / 9-48.1

Do terminated employees have any say in how their termination package is handled? If the employee makes a direct request, how should the employer handle it? / 9-48.2

We have a plant manager who is not in our future plans. He is in his late 50s and has been with the company for about 10 years. We would like to terminate without cause. How much time in lieu of notice would you recommend? What about severance? Is he entitled to severance above and beyond the reasonable notice period? We would extend his benefits through the reasonable notice period, but do we also have to cover the severance period? / 9-48.4

I know terminating employees just prior to or during a maternity/parental leave is not possible but what about an employee who is part of a scheduled downsizing who lets us know she is three months' pregnant? Her common-law based severance payment would only be about four months — not long enough to get her maternity leave. But she would have difficulty finding another job when she is pregnant. Does that increase the severance obligation? / 9-48.6

We have an employee who has been on maternity leave since early this year. We've been doing some downsizing of sales territories and re-aligning and would like to eliminate her territory as a separate sales region. Can we legally downsize this territory while she is on maternity leave? If so what steps do we need to take? What severance and termination should be offered? / 9-50

Our Canadian subsidiary of a U.S. company has been acquired by another company. Does the selling company have a legal obligation to offer employees the option of severance if they choose not to accept the buyer package? / 9-51

Can an employer lay off employees with a settlement package as a means of getting rid of them? If so, how much notice do they have to give them? / 9-53

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Would you please advise what notice is required during a probationary period of employment from both the employer and employee perspective. / 9-54

I run a small internet company in Ontario and have about 20 employees. The company is currently experiencing financial difficulties, and I am looking into the possibility of reducing some of my costs by terminating the employment of several junior employees. Would I be able to do so without running into any legal problems? / 9-55

I've been working at the same job for nine years, but I never signed an employment contract. I was dismissed last week, and paid eight weeks' salary in lieu of notice. I know that's enough termination pay under the *Employment Standards Act, 2000*, but I've heard I may be entitled to more. Is that true? / 9-56

We are an Ontario-based employer and we have an employee whose employment was terminated after he had been temporarily laid off for a short period. Is he entitled to severance pay? If so, should the period of time he was temporarily laid off be included in determining the calculation of severance pay? / 9-57

Two months ago we hired an employee for a position in our company. Unfortunately we have found this employee's performance to be substandard, and that overall she is not a good fit with the organization. Are we allowed to dismiss her because she is technically still on probation? / 9-58

Where there is a requirement for severance pay for dismissed employees if a company's payroll is of a certain size, how is this calculated if the size of the payroll fluctuates? / 9-60

If a summer student is hired on a contract a few months long but isn't working out, are there any notice or severance obligations if the employer wants to terminate the student's employment? Can the contract include a provision allowing termination without severance since the term is so short? / 9-60.1

What obligations does an employer have when providing severance to a dismissed employee who has received Employment Insurance benefits? / 9-60.2

When an employee has the use of a company car as part of his employment, should the value of this benefit be included in the calculation of his compensation when determining the appropriate amount of pay in lieu of notice? / 9-60.3

How do you calculate the pay in lieu of notice that a dismissed employee is entitled to when his earnings are commission-based? / 9-61

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Due to a persistent slump in the market we must close one of our satellite offices. Can we reduce the amount of notice each employee is entitled to since the reason for termination is an economic downturn? / 9-61

Our company has been severely hit by the economic downturn and it is necessary that we terminate a number of our employees. We intend to offer the dismissed employees severance packages. Should we require the terminated employees to sign releases or will this just invite legal intervention causing more harm than good? / 9-62

Is there any difference in the calculation of reasonable notice for a part-time employee as opposed to a full-time employee? / 9-63

After an employee is temporarily laid off, can we hire someone else to fill his old position before recalling him? Can we recall him to work in a different job? / 9-64

What are the implications in extending a new employee's probationary period? We have it written in the letter of employment the probationary period is three months with the possibility to extend it for another three months. Is this legal and can the employer still fire the employee without cause during an extended probationary period? / 9-66

What are the normal rights of employees during a probationary period? Can the employer dismiss a probationary employee without cause or notice? / 9-68

If an employee is hired with incentives to stay for a certain period of time, does that translate to extra severance or notice if the employer terminates the employment before that period of time is up? / 9-70

Is an employer always required to continue paying medical benefits after a dismissal without cause if the employee is no longer at the workplace? Can a termination clause in an employment contract eliminate benefits for the notice period if the employee agrees to it? / 9-70.1

When an employee is terminated, what types of benefits must always be continued for the duration of the reasonable notice period and what benefits can be discontinued without employer liability? Can these be set out in policies and employment contracts? / 9-70.3

How long can an employee's break in service be before it's not considered a continuous term of employment with the same employer? / 9-70.4

If we rehire a former employee, will that employee's previous service with our company be considered continuous service for the purposes of calculating

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reasonable notice for dismissal? Does the length of time the employee has been away matter? What if the employee has had multiple stints with the company? / 9-70.6

9.8 Working notice / 9-70.8

We are laying off several employees and have given them notice. However, one of the employees has suffered an injury and become disabled. Normally, we would be able to accommodate the employee by restructuring his job but since his time left is limited it might be more trouble than it's worth. How far do we need to go to accommodate an employee on notice who won't be around much longer? / 9-70.8

What are the necessary steps for giving a terminated employee working notice that is valid? / 9-71

Is it common practice to give outplacement counselling during a working notice period, even if the intention is to have the employee work right up until the end of the notice period? What happens if the employee finds another job before the end of the working notice period? / 9-72

If an employee is given notice of termination well in advance, does the amount of working notice affect the overall notice entitlement? For example, if an employee is told in November that she will be let go at the end of the year (allowing for the employee to make preparations and say goodbyes) as opposed to being removed from the workplace the same day, is there any difference in entitlement? / 9-74

9.9 Inducement / 9-74

If we aggressively recruit an employee from another company, are we opening the door to an increased severance package if things don't work out? / 9-74

If an employee is lured from a senior position with 12 years' experience at another employer but doesn't work out, what notice would he be entitled to if he is let go during the probationary period? / 9-76

9.10 Resignation of employee / 9-76.1

Does the nature of an employee's job (such as a key role in a team that the employer can't afford to be vacant) affect how long an employer has to wait to accept an employee's resignation that came in anger? / 9-76.1

Is an employer who normally pays profit sharing based on the previous year's results in the subsequent year, bound to pay that amount to a person who resigns effective at the end of the preceding year? / 9-76.3

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Although employees are not required by B.C. law to give the employer notice, is it acceptable to stipulate in a signed employment contract they must give one week's notice? If we can ask the employee to give one week's notice, can we also indicate that if it is not provided the difference between the one week and whatever notice is given will be recorded as time off without pay and the final cheque will be adjusted accordingly? / 9-78

How much notice of resignation must an employee give to her employer? / 9-79

An employee accepted a position, arrived for work, did some training, attended a meeting, left for lunch and sent an e-mail saying this job was not for her. Does our company have any recourse against this person? Since necessary documentation was not handed in, does the employee qualify for pay? / 9-79

We have had a number of problems with one of our employees but have not yet taken any steps to terminate her. Two days ago the employee left a letter of resignation on the desk of our HR manager, who was out of the office for the day. Before the HR manager had an opportunity to read the letter of resignation, the employee went to the president of the company and said she no longer wished to resign. The president said he would have to discuss the situation with the HR manager. Is the employee's resignation effective even though it was revoked before anyone knew about it? / 9-80.1

We put a statement in our contracts indicating we will only pay minimum employment standards requirements for termination. Would that not then assume the employee, by accepting that term, would also have the implied right to provide only the same minimum notice? Even if this clause is not in older employment contracts, if the company has a history of only paying the minimum termination/severance, can it also allow employees to give the minimum notice of resignation? / 9-80.2

Is there anything an employer can do if an employee in a key position quits her job and leaves immediately without notice? / 9-82

Senior employees are often expected to provide more than the minimum two-week notice period if they resign. If an employee provides, for example, six months' notice, can the employer then terminate with the minimum employment standards termination notice or pay? / 9-83

Can an employment contract require an employee to provide more resignation notice than the termination notice the contract requires the employer to give? Is there any reference to notice of resignation in employment standards legislation anywhere? / 9-85

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If an employee leaves work saying he quits and the employer's first couple of attempts to confirm the resignation are ignored, how long must the employer wait until it can be considered a resignation? / 9-88

What should we do if an employee clearly resigned — with a written resignation and repeated confirmation — but was later diagnosed with depression and anxiety and claimed she wasn't thinking clearly? It wasn't evident at the time she had any mental health issues, her position has been filled and we have no positions available for which she's qualified. / 9-89

9.11 Administration / 9-91

When is an employer obligated to issue a record of employment? / 9-91

What obligations does an employer have to provide a reference to a departing employee? / 9-92

If a dismissed employee signed a release and confidentiality agreement and was represented by his lawyer, does the employer have to give the ex-employee a copy of his personnel file? If so, does the whole file have to be turned over? / 9-92

Can an employer be legally obligated to provide services such as outplacement counselling, or be liable for not providing them to dismissed employees? / 9-94

9.12 Layoffs / 9-94.1

What is the difference between a termination and a layoff and how can the use of these terms affect the end of an employment relationship? / 9-94.1

Our company has been forced to lay off a few employees. They have been issued termination pay in lieu of notice as they are considered permanent layoffs. Since we are non-union and there are no provisions for recall in their employment contracts, are we free to replace them with someone new or do we have to offer them their job back when we need to re-hire for their old positions? Is there an unwritten time limit before filling the positions? / 9-94.3

In a non-unionized environment, can an employer lay off employees who voluntarily request it? If so, would it be only a temporary layoff or can it be a permanent layoff as well? / 9-95

As a result of the current economic downturn, our company will be implementing layoffs and we may need to close one of our plants permanently. We have several management and unionized employees who are currently absent on short-term or long-term disability leave. Can we lay them off or terminate their employment? If so, will this affect their ability to continue collecting disability benefits? / 9-96

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Our unionized plant is planned to close on Dec. 31, 2008, and employees will be offered a package. The contract with the union ends in July 2010. There is a possibility the plant could stay open longer and some jobs would remain while it stays open. Can a company file for plant closure and stay open after the closure date and would a new contract have to be negotiated for the period it remains open? / 9-99