8. Labour & Employment

Legal Framework

Employment law in Canada is governed both by statute and, in nine of the 10 provinces, by common law. The province of Quebec differs in this respect in that it has no system of common law. Instead, it is governed by the Civil Code of Québec, which was originally modelled on the French Napoleonic Code, and the jurisprudence interpreting it.

While statutory provisions may vary from province to province, there remains a fair amount of uniformity across the country in employment standards, workers' compensation, occupational health and safety, labour relations and prohibitions on discrimination in employment.

An overall comparison between Canadian and US laws governing labour and employment also shows a considerable degree of similarity. One major difference between the two countries, however, is that there is no "employment at will" doctrine in Canada.

Employment Standards

All jurisdictions in Canada (federal, provincial and territorial) have minimum employment standards applicable to all employees within their jurisdiction. These minimum statutory employment standards include things like:

- The minimum wage for hours worked
- The maximum number of hours worked in a day and week
- Overtime rules
- The minimum time required off work
- Vacation and public holidays
- Equal pay for equal work
- Job-protected leaves of absence
- Notice and severance entitlements in the event of termination of the employment relationship

Employment standards legislation prescribes a minimum standard that employees cannot waive by contract. Higher standards are often customary in many industries in Canada, and lower standards are unenforceable.

Human Rights

All jurisdictions in Canada (federal, provincial and territorial) have passed human rights legislation prohibiting discrimination in the employment relationship based on grounds that usually include race, gender, age, religion, colour, disability (including drug and alcohol addiction), marital or family status, criminal record, ancestry or place of origin, sexual orientation, gender identity and gender expression.

Federal works and undertakings are subject to employment equity legislation, the purpose of which is to provide employment and promotion opportunities to members of four protected groups: women, Indigenous people, people with disabilities and visible minorities.

Pay Equity

In addition to employment standards legislation in many jurisdictions that requires equal pay for equal work and human rights legislation in each jurisdiction that prohibits discrimination based on gender, some jurisdictions have separate pay equity legislation.

"Pay equity" ensures that men and women receive equal pay for work of equal value. Such legislation exists in Manitoba (public sector only), New Brunswick (public sector only), Nova Scotia (public sector only), Prince Edward Island (public sector only), Ontario, Quebec and, as of August 31, 2021, the federal jurisdiction. Pay equity legislation provides a comprehensive regime by which an employer must develop a pay equity plan and, thereafter, engage in pay equity maintenance and reporting. Steps include: identifying job classes in the workplace and determining the gender predominance of each class, determining the value of work performed, identifying the total compensation for each job class, comparing the total compensation of the predominantly female job classes with the compensation of the predominantly male job classes, identifying wage gaps and making necessary adjustments. In many cases, employers must engage with a pay equity committee (including employee representatives) as they go through this process.

Occupational Health and Safety

All jurisdictions have legislation and other measures designed to reduce the incidence of occupational accidents and diseases in the workplace. Numerous obligations are placed on both employers and employees to create and maintain a safe workplace, including a workplace that is free from harassment and violence.

Health and safety authorities carry out inspections at construction sites, industrial plants and other workplaces to ensure compliance with the regulations. In some jurisdictions, joint employer-employee health and safety committees are required for larger workplaces.

Workers' Compensation / Workplace Safety Insurance

Workers' compensation is not dealt with in Canada through private insurance. Rather, workers' compensation is dealt with by way of statute and systems administered by government bodies or agencies.

Workers' compensation programs provide benefits for workers suffering from job-related injuries and diseases. These legislated regimes provide a public "no fault" compensation system, whereby injured workers receive benefits from the program but cannot take legal action against the employer. Certain employers pay premiums to provincial workers' compensation boards at rates determined primarily on the basis of the type of industry, size of payroll and the employer's claim record.

Employment Insurance

Employment Insurance (EI) is a federal initiative established and governed by the *Employment Insurance Act*. The statute is designed to help workers adjust to economic change, while maintaining the incentive to work. The legislation recognizes provincial responsibility for labour market training and allows for federal-provincial partnerships to create new programs to assist in this regard. The employment insurance system is financed through payroll taxes levied on both employees and employers, up to an employees' maximum insurable earnings. Maximum insurable earnings vary each year, but are $56,300 for 2021.

Premium rates also vary each year. The premium rate for employees in Quebec tends to be slightly lower than the rest of Canada because Quebec collects premiums from its workers to administer its own maternity, parental and paternity benefits under the Québec Parental Insurance Plan.

Collective Bargaining

Canada's system of collective bargaining is embodied in federal and provincial labour relations acts and labour codes. Canadian workers have the right to join trade unions, which may be certified to collectively bargain conditions of employment with their employers on their behalf. Slightly less than one-third of all Canadian employees are members of unions, with rates of unionization continuing to decline each year.

In general, the system seeks to minimize disruption by certifying trade unions as the bargaining agents for specific groups of workers, often all or part of the non-managerial employees in a company. Exclusions from the bargaining unit are also provided in certain jurisdictions for non-managerial employees who have access to confidential information relating to labour matters. Each jurisdiction has its own rules respecting the certification process.

Once a union has been certified by a labour relations board as an agent for a specific "bargaining unit", it has the exclusive right to negotiate with the employer on behalf of the employees, whether or not the employees are members of the union. In return, the union is obliged to represent all employees fairly.

Strikes and lockouts during the term of a collective agreement are normally prohibited in all jurisdictions. In some jurisdictions, for first collective agreements, there is a system of binding arbitration available to resolve disputes in a cost-effective and timely manner. Both the federal and provincial governments provide mediation and conciliation services, which can be mandatory before employees may strike or employers may lock out employees in furtherance of their bargaining aims.

Specific rules also regulate when a union can be decertified or replaced with another union.

Considerations for the Acquisition of a Canadian Business

Share Acquisition

When the shares of a company are purchased, the legal personality of the corporation does not change. All that has changed is who owns the shares. Thus, even though a shift in control has occurred, the corporation still continues to be the employer and generally there is no resulting reduction or break in service and seniority. Furthermore, any liabilities existing at the time of the sale of shares (such as claims for wrongful dismissal, human rights complaints, safety infractions, etc.) will also continue when the shares are acquired.

Asset Acquisition

In Quebec, a contract of employment is not terminated by the sale or alienation of the assets of a business. In the rest of Canada, however, each employee will need to be offered a new contract or offer of employment with the purchaser, as their employment will not automatically continue with the purchaser following the conclusion of the sale for common law purposes. However, most employment standards statutes do provide for continuity of service for those employees who accept offers of employment and continue in employment with the purchaser. The offer of employment is often based on the same or substantially similar terms, and the employees who accept the offer will likely carry over their accumulated service and seniority for most purposes.

Collective Agreements

Labour relations acts and labour codes usually require that the purchaser of the shares or assets assume any applicable collective agreements. This is an important consideration if the purchaser intends to reduce the workforce or transfer employees, as there may be restrictions imposed within the collective agreement.

Employment Termination

In Canada, an employment relationship may legally be terminated in one of two typical ways: for cause or by way of providing reasonable notice or pay in lieu of notice to the other party. However, the right to terminate the contract of employment in the absence of just cause by providing the appropriate notice of termination of payment in lieu is limited in certain jurisdictions (Quebec, Nova Scotia and federal). Cause for termination is a high threshold, but can include incompetence, insubordination, conflict of interest, theft or material dishonesty, and other judicially recognized misconduct that warrants discharge. If an employee is terminated for cause, there is no obligation to provide advance notice to the employee or payment in lieu thereof.

Termination without cause occurs where an employee is terminated from employment not necessarily because the employee has done something terribly wrong, but rather because the employer, for whatever reason, has decided that the employee's services are no longer required. This includes a redundancy or reorganization scenario.

For termination without cause, employers in all jurisdictions are required to provide advance notice of termination or layoff, or to offer compensation in lieu of notice. The applicable employment standards legislation mandates the minimum notice period and provides a "sliding scale" of notice depending on the seniority of the employee, which typically peaks at eight weeks' notice. These termination notice periods are simply the statutory minimum periods of notice required. Some jurisdictions, such as federal and Ontario, also have a minimum statutory severance pay entitlement that varies depending on the seniority of the employee.

In addition to the minimums set by statute, and absent a binding employment contract setting out termination entitlements, employers are generally required to provide reasonable notice under both common law and civil law, as applicable. In the event of dispute, courts may be called upon to determine how much notice an employee is entitled to receive. Although the courts have never used a "rule of thumb" approach in determining the reasonable period of notice, judicial awards reach a typical maximum of 24 months. The courts will award additional damages to employees where their employment has been terminated in bad faith.

Additional advance notice of "group layoff" or "mass termination" (generally 50 or more terminated employees) obligations are required in all Canadian jurisdictions except Prince Edward Island.