

Cross Border HR, Employment & Immigration Issues

**Hosted & Presented by Devry Smith Frank LLP
Guest Presenters from HR Options, Inc.
October 17, 2018**

HR Considerations when Moving an Employee to Work Across the Border in Canada

**Presented by Kathryn Benson, MIRHR, & Stacy
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October 17, 2018**

HR Considerations when Moving an Employee to Work Across the Border in Canada

Is a Work Permit needed?

Considerations: How long will employee be working in Canada? What type of work are they doing? etc.

► If Business Visitor:

- Can come to Canada without a work permit
- Employee must NOT enter Canadian labour market. E.g. Visit is for meetings, trainings, site visit
- Visitor must prove main source of income and business is outside Canada

► If Entering the Labour Market: Ensure compliance with CRA, Health & Safety regulators and Employment Standards and Human Rights laws

HR Considerations when Moving an Employee to Work Across the Border in Canada

How will the employee be paid?

Considerations: Does the employer have a Canadian division? Will the employer set up as a business in Canada? Other options?

► Use an Outsourced Employer:

- Employer-of-record
- Processes payroll, remits taxes to government agencies, provides Group Health benefits, Retirement Savings Plan, and handles HR
- Will work as partner to ensure appropriate work permit

HR Considerations when Moving an Employee to Work Across the Border in Canada

How will the employee be paid?

Considerations: Will the employer set up as a business in Canada?

▶ **If Employing directly:**

- Most commonly, the employee will be paid in CAD
- Set up with the Canada Revenue Agency (CRA) to remit applicable employer and employee taxes
- Register with the provincial Workers' Compensation Board
- Taxes and insurances to be remitted include CPP, EI, income tax, health tax etc.

HR Considerations when Moving an Employee to Work Across the Border in Canada

Other considerations

► If Employing directly or using an Outsourced Employer:

- When setting salary, consider:
 - exchange rate differences
 - Canadian benchmarking for the position
 - cost-of-living differences
- Ensure an updated Employment Agreement is signed prior to work starting in Canada

HR Considerations when Moving an Employee to Work Across the Border in Canada

How will the employee receive Health/Benefit coverage?

Considerations: In Canada,

▶ **Bridge or “Welcome” Benefit Plan:**

- Coverage for doctor visits, hospitalization, surgeries etc while waiting for provincial government coverage to take effect (usually approximately 3 month waiting period).

▶ **Employer sponsored Group Benefit Plan:**

- Coverage for dentist, prescription drugs, disability etc.

HR Considerations when Moving an Employee to Work Across the Border in Canada

How to Set Expectations?

Considerations: Work term and travel

▶ **Role in Canada:**

- Define what the employee is doing in Canada and their reporting structure

▶ **Length of Assignment:**

- Define the length assignment
- What if permits don't work out

HR Considerations when Moving an Employee to Work Across the Border in Canada

Where to live?

Considerations: Housing market and associated cost of living

▶ **Housing Market:**

- Canadian housing market is on a slow downward trajectory
- Look to the future

▶ **Cost of Living:**

- What is the difference in living cost from home State to new Province
- www.expatistan.com or www.numbeo.com
- Scoping Mission

HR Considerations when Moving an Employee to Work Across the Border in Canada

Acclimatizing to Canada:

► Schools:

- Ensuring employee has information on local schools and activities.

► Entertainment:

- Provide the employee with contact information to clubs or associations they may like to join when they arrive.

Great site to help answer some questions for employees

<https://moving2canada.com/questions-moving-to-canada-from-the-usa/>

HR Considerations when Moving an Employee to Work Across the Border in Canada

Culture & Norms:

▶ Make sure employees know Canadian standards

- Banking
- Cell Phone and Internet

▶ Make sure they are aware of Cultural norms

- Holidays
- Canadianisms

Questions?

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Business Visitors to Canada and Other Work Permit Exempt Categories



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SCOPE OF PRESENTATION

This presentation will provide an overview of:

- 1) Terminology and List of Visa Exempt Countries
- 2) Business Visitors
 - After-Sales Service
- 3) Activities Not Considered Work
- 4) Work Activities Not Requiring a Work Permit
- 5) Short-Term Work Permit Exemptions
- 6) Where to Obtain More Information



Terminology

- **Temporary Resident Visa (TRV)**

A foil containing security features stamped or embossed into the passport of a foreign national by an officer outside of Canada, authorizing the foreign national to enter and remain in Canada as a member of the visitor, worker or student class. Many foreign nationals are exempt from the requirement to obtain a TRV based on their citizenship or for other reasons. See the next slide for a list of visa exempt countries.

- **Electronic Travel Authorization (eTA)**

TRV exempt foreign nationals, except for U.S. citizens, must apply online for an eTA in order to board a flight to Canada or transit through Canada. The eTA process was set up to allow the Government of Canada to screen foreign travellers and ensure they are admissible to enter Canada before they travel.



List of Visa Exempt Countries

▪ Andorra ▪ Australia ▪ Austria ▪ Bahamas ▪ Barbados ▪ Belgium ▪ British citizen ▪ British National (Overseas) ▪ British overseas citizen (re-admissible to the United Kingdom) ▪ British overseas territory citizen (with citizenship through birth, descent, naturalization or registration in one of the British overseas territories of: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas), Gibraltar, Montserrat, Pitcairn Island, Saint Helena, Turks and Caicos Islands) ▪ British Subject (with a right of abode in the United Kingdom) ▪ Brunei Darussalam ▪ Bulgaria ▪ Chile ▪ Croatia ▪ Cyprus ▪ Czech Republic ▪ Denmark ▪ Estonia ▪ Finland ▪ France ▪ Germany ▪ Greece ▪ Hong Kong Special Administrative Region of the People's Republic of China (must have a passport issued by Hong Kong SAR) ▪ Hungary ▪ Iceland ▪ Ireland ▪ Israel (must have a national Israeli passport) ▪ Italy ▪ Japan ▪ Republic of Korea ▪ Latvia ▪ Liechtenstein ▪ Lithuania ▪ Luxembourg ▪ Malta ▪ Mexico



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List of Visa Exempt Countries (cont'd)

▪ Monaco ▪ Netherlands ▪ New Zealand ▪ Norway ▪ Papua New Guinea ▪ Poland ▪ Portugal ▪ Romania (electronic passport holders only) ▪ Samoa ▪ San Marino ▪ Singapore ▪ Slovakia ▪ Slovenia ▪ Solomon Islands ▪ Spain ▪ Sweden ▪ Switzerland ▪ Taiwan (must have an ordinary passport issued by the Ministry of Foreign Affairs in Taiwan that includes the personal identification number) ▪ United Arab Emirates ▪ United States (including lawful permanent resident of) ▪ Vatican City State (must have a passport or travel document issued by the Vatican).



Business Visitors

- A Business Visitor is a foreign national who seeks to engage in international business activities in Canada without directly entering into the Canadian labour market;
- The activity of the foreign national must be international in scope, generally involving a cross-border business activity;
- There must be no intent to enter the Canadian labour market, which means no gainful employment in Canada;
- There must be a foreign employer whose principal place of business is outside of Canada and thus, the primary source of the employee's remuneration is outside of Canada;
- The profits from the employee's activities in Canada accrue to the foreign employer outside of Canada.



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Business Visitor Activities – some examples

- Foreign nationals purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;
- Foreign nationals receiving or giving training within a Canadian parent or subsidiary of the company that employs them outside of Canada, if any production of goods or services that result from the training is incidental;
- Foreign nationals representing a foreign business or government for the purpose of selling goods for that business or government, provided the foreign national is not engaged in making sales to the general public in Canada.



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Business Visitors – After-Sales Service

- Services provided by a foreign national repairing or servicing, supervising installers, or setting up and testing commercial or industrial equipment, including computer software;
- Setting up does not include hands-on installation generally performed by construction or building trades such as electricians, pipe fitters, etc.;
- The services must be stipulated as part of the original or extended sales agreement, lease or rental agreement, warranty or service contract;
- The services may be part of a sales/lease agreement for a software upgrade of previously sold/leased equipment, provided the after-sales activity is clearly described in the new agreement.



Business Visitors – After-Sales Service (cont'd)

- Third party provision of after-sales service by non-employees of the contracting company may be permissible if the original agreement stipulates that a third party company has been / will be contracted to service the equipment;
- This category covers foreign nationals employed by a company outside of Canada who enter Canada to supervise the installation of specialized machinery purchased or leased outside of Canada from the company, or to supervise the dismantling of equipment/machinery purchased in Canada by the company for relocation outside Canada;
- This category also covers foreign nationals entering Canada to provide training or familiarization to users of specialized equipment purchased or leased outside of Canada.



Activities Not Considered Work

- Is the Activity “Work”
“Work” is defined as an activity for which wages are paid or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.
- Some Activities Are Not Considered Work
 - Volunteer work for which one would not normally be remunerated, e.g. sitting on the board of a charity or religious institution;
 - Long distance work done by telephone or internet in Canada where the employer is outside of Canada and the remuneration is sourced outside of Canada;
 - Self-employment where the work performed has no real impact on the Canadian labour market or on an opportunity for Canadians, e.g. a miner working on his own claim.



Work Activities Not Requiring a Work Permit

The Immigration and Refugee Protection Regulations list over twenty activities which appear to meet the definition of “work”, but, for which no Work Permit is required, some of which are:

- Foreign representatives;
- Family members of representatives;
- Military personnel;
- Foreign government officers;
- On-campus employment by foreign students;
- Certain performing artists or a staff member who is integral to the artistic performance;
- Participants in sports activities or events, either as an individual participant or as a member of a foreign-based team or Canadian amateur team;
- Foreign news reporters and media crews;



Work Activities Not Requiring a Work Permit (cont'd)

- Public speakers;
- Convention organizers;
- Clergy members;
- Judges, referees and similar officials;
- Examiners and evaluators of research proposals, academic projects or programs or university theses;
- Expert witnesses or investigators;
- Health care students for the primary purpose of acquiring training, if they have written approval from the body that regulates that field;
- Civil aviation inspector;
- An accredited representative or adviser participating in an aviation accident or incident investigation;
- Foreign crewmembers; and
- Providers of emergency services.



Short-Term Work Permit Exemptions

- no work permit is required to perform certain high-skilled short-term work
- the work must comply with the following conditions:
 - be of a short duration (15 or 30 consecutive calendar days);
 - be in an occupation that is listed in skill type 0 (management occupations) or skill level A (professional occupations usually requiring university education) in the National Occupational Classification (NOC).
- 15 consecutive days (and the foreign national has not been granted an exemption in this category during the prior 6 months)
- 30 consecutive days (and the foreign national has not been granted an exemption in this category during the prior 12 months)
- eligible researchers may be granted a work permit exemption for up to 120 days.



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Where to Obtain More Information

- Canada Border Services Agency's web site:
www.cbsa-asfc.gc.ca
- Immigration, Refugees and Citizenship Canada's web site:
www.cic.gc.ca
- Employment and Social Development Canada / Service Canada:
www.canada.ca/en/employment-social-development/services/foreign-workers.html



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Part I

Intra-company Transfers



Lloyd W. Ament, C.S.



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Requirements Which Apply to Intra-company Transferees

- Seeking employment in an executive or managerial capacity or one involving “specialized knowledge”;
- Transferring to an enterprise that has a qualifying relationship with the enterprise in which he or she is currently employed;
- Enterprises abroad and in Canada have a parent, branch, subsidiary or affiliate relationship;
- Continuous employment, in a similar position outside Canada, for at least one year (full-time) in the previous three-year period from the date of initial application; and
- Compliance with existing immigration requirements for temporary entry





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Documentation a Transferee must Present to Support an Application

- Confirmation that the foreign national is currently employed and has been employed continuously outside of Canada by the enterprise for one year (full-time) within the three-year period immediately preceding the date of application;
- Description of the relationship between the enterprise in Canada and the enterprise outside of Canada;
- Outline of the applicant's current position in an executive, or managerial capacity or one involving specialized knowledge, i.e., title, place in the organization, job description;
- In the case of “specialized knowledge”, evidence that the person has such knowledge and that the position in Canada requires such knowledge;
- Outline of the position in Canada, i.e., title, place in the organization, job description;
- Indication of intended duration of stay.





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Part II

Implications of Crossing the Canada / U.S. Border following the Legalization of Cannabis in Canada



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Legal Cannabis in Canada What About Crossing the Border into the U.S.?



- ▶ Serious implications of marijuana association at the U.S. Border.
- ▶ Marijuana use not federally legal in U.S.
- ▶ What if a person is questioned about smoking marijuana, presently, or in years past, or if a person is questioned about having ties to/employed by cannabis producers or retailers, could they find themselves banned from the U.S.? For life?



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Legal Cannabis in Canada

What About Crossing the Border into Canada?

- ▶ Never take it across the border.
- ▶ Canadian legalization is valid only for internal use within Canada.
- ▶ Transportation within Canada is limited to 30g.
- ▶ Minimum legal age is set by each province.



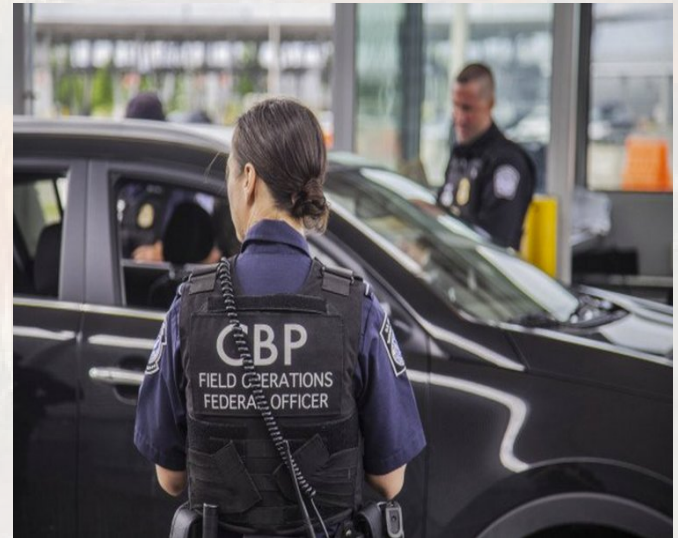


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U.S. Customs and Border Patrol

- ▶ The Officers allow entry based on the “circumstances” of each traveler.
- ▶ Latest policy update (October 10) – US government has clarified that Canadians who are employed in a legal cannabis industry **ARE** generally allowed to enter the US for **non-work** (i.e. reasons unrelated to the cannabis industry) purposes.
- ▶ The Canadian Federal Government has made it very clear that cannabis is absolutely not allowed to be taken out of the country.





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Canada Border Services Agency

- ▶ You cannot bring cannabis back from the U.S.
- ▶ This includes from any U.S. state which has legalized it.
- ▶ This also applies to medical marijuana.
- ▶ If you “accidentally” have cannabis in your car upon entering Canada, declare it to CBSA. It will be seized but that is preferred to being charged for attempting to smuggle.





Examples:



- ▶ A businessman from Vancouver, was banned for life from the U.S. as a result of his investments in U.S. marijuana companies.
- ▶ Individuals from Vancouver who were looking to sell agricultural equipment to a cannabis business in Washington State (where cannabis happens to be legal) were banned from the U.S. for life.
- ▶ A Canadian Olympic snowboarder, was banned from the U.S. for simply admitting that he had used marijuana in the past.



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So what should we do?

- ▶ Clients may need to consider or evaluate the risks in even attempting to cross the U.S. Border, as a result of their connections to the cannabis industry. If they do, they may be deemed (federally) to be “aiding and abetting” the U.S. marijuana industry.
- ▶ Canadians must never attempt to bring home some locally grown cannabis obtained during their US vacation under the misconception that it was legal in the state where they bought and used it.



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Networking & Coffee Break



lock

SEARCH

Electronic Searches at the Canadian Border

What employees should know to protect sensitive information when travelling to Canada for work



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Canada Border Services Agency officers have broad authority to search travelers' belongings at border crossings, **including electronic devices and data** stored on them.



Travelers have reduced expectation of privacy at border crossings (Supreme Court of Canada, *R v. Simmons*)



CBSA can search any goods brought into Canada incl. any document in any form (*Customs Act*). Incl. electronic devices and data stored on them (*R v. Gibson*)



CBSA can search any person seeking to come into Canada, their luggage and personal effects if reasonable grounds to believe person has not revealed identity/hidden documents or has committed, or possesses documents used in commission of, certain offences (*Immigration and Refugee Protection Act*)

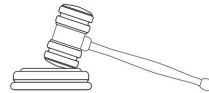
Power is broad, with few limitations

Legislative



While *IRPA* searches require reasonable grounds, *Customs Act* provides unfettered authority to officers to conduct searches of goods at random and “without individualized suspicion”

Judicial



- Routine searches may be random and do not require grounds (*R v. Sekhon*, BC)
- Searches of a laptop computer are routine searches (*R. v. Leask*, Ontario)
- Data must be in “actual possession of or in accompanying baggage of traveler at the time they arrive at border and commence dealings with customs officers” i.e. does not include data stored in the cloud, in social media accounts, or stored remotely on other devices not in traveler’s current possession (*R v. Gibson*, BC)
- Officers to set device to airplane mode to limit ability to connect to other services (*R v. Gibson*)

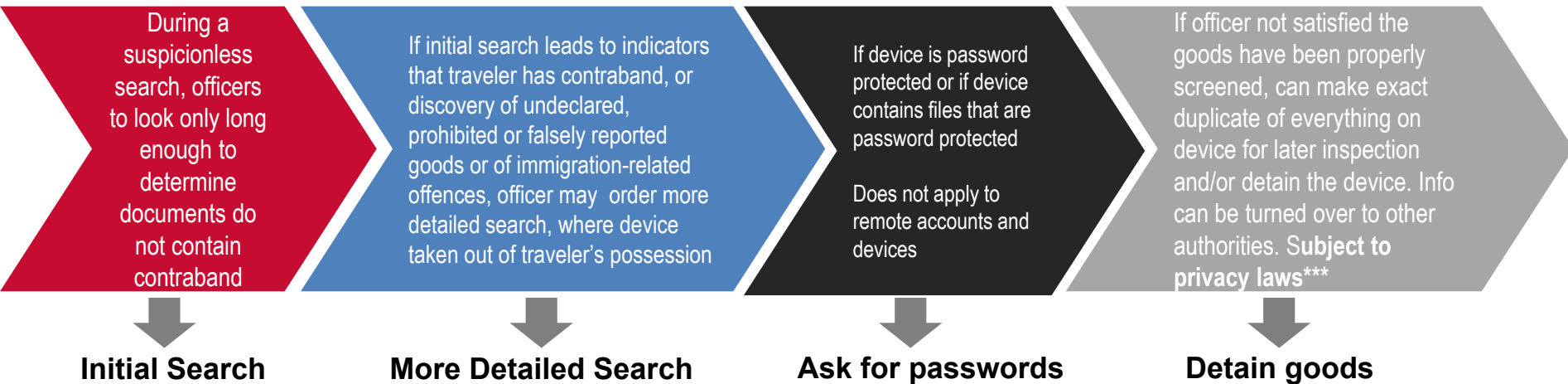
CBSA



- ✓ Examination of digital devices/media must always be performed with clear nexus to administering or enforcing CBSA-mandated program legislation that governs cross-border movement of people and goods
- ✓ Officers not to examine devices with sole or primary purpose of looking for evidence of criminal offence
- ✓ Officers must be able to explain reasons for examining a device
- ✓ Examinations to be conducted only if “multiplicity of indicators” suggest evidence of contraventions may be found on the device (e.g. electronic receipts for goods)
- ✓ CBSA to conduct examinations with as much respect for privacy as possible

What can they do with my data?

Per CBSA manual, officers are guided to take a progressive approach to searches

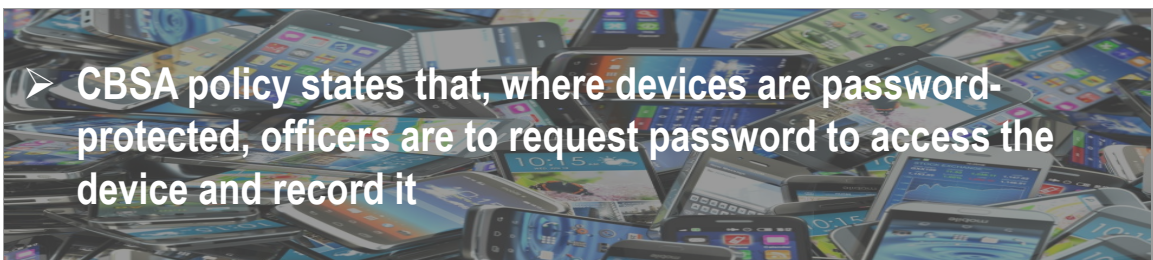


Do I need to relinquish
my password?

Enter Password



➤ *Customs Act* and case law silent on passwords



➤ CBSA policy states that, where devices are password-protected, officers are to request password to access the device and record it



➤ Passwords are not to be sought to gain access to accounts (e.g. social media) or files stored remotely



➤ Policy is silent whether CBSA officers will charge travelers with criminal offence for refusing password, though theoretically they may, as the *Customs Act* gives authority to do so

Tips for minimizing access to personal and confidential information

Best Practices

No devices	<ul style="list-style-type: none">• Leave devices at home if at all possible to travel without them
Backup	<ul style="list-style-type: none">• Consider making a backup and deleting data from devices so that devices are clear on inspection
Secure passwords, Encryption	<ul style="list-style-type: none">• If <u>device</u> or <u>file</u> requires a password, it may tend to dissuade an officer who is conducting a random investigation from pressing further. If it doesn't, refusing your password remains an option.• Full encryption of data will help to ensure that, even where a device is seized, officers will be unable to access information.
Airplane mode	<ul style="list-style-type: none">• If a device is set to airplane mode before arriving at customs, this will reduce the risk of data that has not already been downloaded being downloaded once in the hands of the officer.
Cooperation	<ul style="list-style-type: none">• Do not physically interfere with an officer's inspection; if hesitant about unlocking a device or providing a password, communicate this concern to the officer, even if ultimately agree to do so



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Employment Law in Canada: Hirings, Firings and Everything in Between

By: Marty Rabinovitch



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Wrongful Dismissal Law

- Main purpose of wrongful dismissal law is to protect employees
- Ensure that an employee who loses their job through no fault of their own is entitled to a salary for the period they will need to find a new job
- Termination for just cause = no severance package
- Just cause includes theft, insubordination, dishonesty, engaging in bullying/harassment of co-workers, etc.



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Wrongful Dismissal Law

- Termination without cause = entitlement to severance package
- Without cause includes restructuring, insufficient work, employee not getting along with co-workers, etc.



Termination for Cause: Common Law

- At common law, to constitute cause for dismissal, the misconduct must be sufficiently serious that it “strikes at the heart of the employment relationship”; the Court considers whether, in light of the circumstances, the wrongdoing is reconcilable with sustaining the employment relationship (*Dowling v. Ontario (Workplace Safety and Insurance Board)*, (2004) 246 D.L.R. (4th) 65 (Ont. C.A.))
- The common law test where an employee has been dishonest is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship (*McKinley v. BC Tel* [2001] 2 S.C.R. 161)



Termination for Cause: Legislation

- The common law test for just cause differs from that found in the *Employment Standards Act*
- Under the Regulations under the *Employment Standards Act*, employers need not provide notice or pay in lieu of notice where an employee has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer
- Similarly, where an employee is dismissed for misconduct, they will not be eligible to collect employment insurance (EI)



How to Determine the Severance Package

- Where an employee is dismissed without cause, they will be entitled to a severance package
- 3 relevant areas: a) *Employment Standards Act, 2000* (Ontario); b) Employment Contract; c) Common Law (i.e. court decisions)
- *ESA* entitlements are employee's minimum entitlements – employee and employer cannot contract out of these entitlements
- Contractual termination clauses may limit an employee's entitlement to the *ESA* minimums



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The *Employment Standards Act, 2000* (“*ESA*”)

- *Note: ESA* protections do not apply to independent contractors



Termination and Severance of Employment

- **Termination Pay – generally one (1) week per year of service, up to a maximum of eight (8) weeks**
- **Severance pay – an additional one (1) week per year of service, up to a maximum of twenty-six (26) weeks**
- Severance pay, in addition to notice: **s. 64** Entitlement when an employer severs employment relationship of over 5 years, where either:
 - (a) The severance was due to the discontinuance of all or part of the employer's business and over 50 employees were dismissed; *or*
 - (b) The employer has an annual payroll of \$2.5 million or more



Continuation of Benefits

- In addition to their salary, under the *ESA*, employees are entitled to continue to receive their benefits of employment throughout the notice period
- This may include health/dental benefits, RRSP matching and other “fringe benefits” including:
 - Car allowances: may be included, depends on whether the employee derived a personal benefit v. used solely for business, entitlement proportionate to personal benefit derived (*Fewer v. Toromont Industries Ltd.*, 2009 CarswellOnt 4779)
 - The value of shares an employee would have become entitled to over the reasonable notice period (*Strangis v. Hub International Ltd.*, 2005 CarswellOnt 903)
 - The value of lost stock options (*Lowthers v. MacIntyre* (1986) 76 N.S.R. (2d) 332)



Bonuses

- If these form a significant part of the employee's compensation and have been paid over several years, these will be included in an employee's entitlements over the notice period
 - Compensation for the lost opportunity to earn a bonus during the notice period
(*Paquette v TeraGo Networks Inc*, 2016 ONCA 618)
- Includes “discretionary” bonuses
- Also includes bonuses requiring “active employment” – clauses to this effect found to be unenforceable (*Schumacher v. Toronto Dominion Bank*, 1997 CanLII 12329; *Paquette v TeraGo Networks Inc*, 2016 ONCA 618)
- Incentive compensation will be treated like any other remuneration for determining notice entitlement



A Common Pitfall: Unenforceable Termination Clauses

- Including termination provisions in employment contracts can limit an employee's entitlement upon termination without cause to the ESA minimums
- Termination clauses must provide for equal right or benefit to an employee's ESA entitlements; otherwise, the clause will be unenforceable
- Clauses referring only to statutory notice/termination pay, without reference to the continuation of benefits will be unenforceable as the contractual right is less than the *ESA* minimums (*Stevens v. Sifton Properties Ltd.*, 2012 CarswellOnt 16792)
- Even actual continuation of benefits throughout notice period will not save a termination provision which excludes them (*Wright v. Young Rubicam Group of Cos.*, 2011 CarswellOnt 10754)



Termination Clauses

- Recommended Clause:

“We may terminate your employment in our sole discretion without cause, at any time during the term of your employment by providing you with all payments and entitlements (including benefits, if any) in accordance with the standards set out in the *Employment Standards Act, 2000*, as may be amended from time to time.

You understand and agree that provision of the notice, or pay in lieu of notice, benefit continuance and/or severance pay and any other payments required under the *Employment Standards Act, 2000*, shall constitute full and final satisfaction of any claim, right and/or demand that you might have arising from or related to the termination of your employment under statute or common law.

In no circumstance will you receive less than your entitlements pursuant to the *Employment Standards Act, 2000*.”

- The consequence of unenforceable termination clauses: potential entitlement to (much greater) common law reasonable notice
 - ESA entitlement: approximately 1 week for every year worked; maximum of 8 weeks
 - Common law entitlement: approximately 1 month for every year worked; no official cap



Common Law Reasonable Notice

- Where there is no enforceable contractual provision limiting entitlement to that under the *ESA*, the common law applies
- Relevant Factors:
 - Character of employment (more skilled/management positions = more notice)
 - Length of service (the longer the service, the more notice required)
 - Age of the employee (the older the employee, the more notice required)
 - Availability of similar employment (hard to find = more notice)
 - “Having regard to the experience, training and qualifications” of the employee

(Bardal v. Globe & Mail Ltd., 1960 CarswellOnt 144)



Common Law Reasonable Notice

- Typically results in significantly longer notice period than *ESA* minimums
- Over the years, an unofficial “cap” of 24 months was developed by the courts
- But longer notice periods awarded in some recent cases:
 - *Dawe v. Equitable Life Insurance Company*, 2018 CarswellOnt 8419 – court awarded a **30 month notice period** but stated that he **would have awarded up to 36 months** if the employee requested it
 - *Markoulakis v SNC-Lavalin*, 2015 ONSC 1081 – awarded **27 months** of reasonable notice to a 65 year old senior civil engineer given the employee’s age and length of service (40 years)
 - *Keenan v Canac Kitchen Ltd.*, 2016 ONCA 79 – the Ontario Court of Appeal expressly found that there was no cap in common law notice period and upheld the award of **26 months to two dependent contractors**; based on age, length of service and supervisory position
 - *Hussain v. Suzuki Canada Ltd.*, 2011 CarswellOnt 12251 – 65 year old employee, 36 years of service, given high level of importance and extraordinary length of service: **26 months’ notice awarded**
 - *Abraham v. Sliwin*, 2012 ONSC 6295 – employees 63 years old or more, minimum of 35 years service, counsel agreed to 24 month cap: it was stated that more may have been awarded if it had been asked for as the **Court failed to see “how a cap of 24 months, or indeed any maximum, is appropriate”**



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Summary

- There are many legal considerations in determining the appropriate severance package for an employee
- Employers should consult with an employment lawyer to assist with the drafting of the employment contract and prior to terminating an employee to ensure cost-effective settlement and avoid litigation



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Questions?

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