

BLIZZARD WARNING: a Primer on the Basics of Employment and Immigration Laws in Canada

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CLARK WILSON

Andrea Raso, Partner and Moderator

Anne Amos-Stewart, Associate

Catherine Repel, Associate

Debbie Preston, Associate

John Soden, Immigration Consultant

Pu Zhang, Immigration Consultant

Canadian Employment Legislation and Jurisdiction

- Most workplaces are provincially governed
- Some are federally governed, including:
 - Banks
 - Transport companies
 - Aviation

Employment Standards Legislation

- ❖ *Employment Standards Act*, R.S.B.C. 1996, c. 113 (BC)
- ❖ *Canada Labour Code*, R.S.C. 1985, c. L-2 (federal)
- ❖ Labour relations (unionized workplaces) are governed by separate legislation

Minimum Standards from Legislation

- ❖ The applicable jurisdiction has legislation setting out minimum employment standards, including:
 - Notice and other entitlements on termination
 - Minimum wage
 - Overtime and hours of work
 - Vacation time and pay
 - Leaves
 - Continued employment provisions
 - Exemptions and/or special provisions (full or partial) for certain jobs

Group Terminations

- Layoffs of 50 or more employees
- Higher notice period under ESA, must provide extended notice
- Notify the government Director responsible for Employment Standards

Leaves of Absence

Different job-protected leaves available to employees in Canada

- Numerous leaves available to employees, most are unpaid
- See applicable provincial legislation for job-protected leaves
- Employees inform employers of when and why they need to take leave

Complaints Process

Each jurisdiction has a complaints process and administrative body to administer the process

- Some exclusive jurisdiction for administrative bodies
- Different time limits for complaints
- Easier process designed for employees to access without a lawyer

Terminations

No “at-will” employment

- Minimum notice pursuant to employment standards legislation applies to everyone
 - Approximately 1 week of notice per year of service to a max of 8 weeks
- But common law provides more notice
 - There is no formula for CL notice
 - Based on Age; length of service; character of employment; availability of alternative employment; any other factor court considers relevant

Limit Liability of CL Notice

*Employment Contract

- **Do** – Carefully state the amount of notice to be provided on terminations, which must be at least minimum ESA
- **Do** – State that no further amounts owing pursuant to common law
- **Do** – Address benefits
- **Do** – Address bonus and equity compensation

“Just Cause” for Termination

Very high threshold

- In the event of “serious employee misconduct during the employment relationship that strikes at the very root of the employment contract such that it can be said that the employment contract cannot continue or be repaired”

No “near cause”

Constructive Dismissal

- Change to a fundamental term or condition of employment can result in constructive dismissal
- “Poisoned work” environment can also lead to a constructive dismissal
- If occurs, CL notice is owed

To avoid:

- ✓ Provide as much notice as possible if changing a fundamental term or condition of employment
- ✓ Provide for flexibility in job duties where possible

Human Rights



Introduction

- Provincial and federal human rights law
 - *Human Rights Code* (BC)
 - *Canadian Human Rights Act* (Canada)
- Apply to employment
- Human rights commissions and tribunals
- Higher accessibility for employee, including minimal costs consequences

Discrimination

- Prohibited in employment
- Protected grounds:
 - Race
 - Colour
 - Ancestry
 - Place of origin
 - Political belief
 - Religion
 - Marital status
 - Family status
 - Physical or mental disability
 - Sex
 - Sexual orientation
 - Gender identity or expression
 - Age
 - Criminal or summary conviction

Discrimination

- 3 areas: employment advertisements, wages and employment = hiring process, course of employment and termination
- Direct, indirect or systemic
- Intentional or unintentional

Discrimination - Inability to Perform Job

- Inability to perform essential job duties
- Reasons related to a prohibited ground of discrimination
- *Bona fide* occupational requirement (BFOR)
- Duty to accommodate

Duty to Accommodate

- Employee's needs related to prohibited ground
- Undue hardship
- Individual adjustments examples:
 - Physical assistance
 - Technical aids
 - Leave
 - Flexible work schedules

Harassment

- Harassment = form of discrimination
- No complete list
 - ✓ Any unwelcome physical, verbal or other conduct that offends or humiliates on the basis of any of the prohibited grounds
- Prevent and address:
 - policies and investigation

Note: Non-discriminatory bullying and harassment under workers' compensation legislation

Human Rights - Enforcement

- Available remedies:
 - Monetary damages
 - Reinstatement
 - Anti-discrimination policies or education
 - Posting human rights laws
 - Report to the human rights body

Workers Compensation

Mandatory insurance for employers to cover workplace injuries



Administration and Registration

- ❖ Administered by provincial governments
- ❖ Registration must be done in each province of operation
- ❖ Premiums are typically based on a formula that takes into account payroll and the type of industry
- ❖ Any entity with one or more employees in Canada must register with the applicable workers compensation body
- ❖ If you have contractors, ensure they have their own insurance or coverage

Workplace safety legislation

- ❖ Each province has workplace safety legislation that sets out obligations for employers regarding occupational health and safety
- ❖ Obligations can include:
 - Safety committees
 - Policies
 - Protective equipment
 - Environmental standards
 - COVID guidelines
 - Reporting requirements
 - Investigation requirements
- ❖ Be familiar with the applicable legislation and requirements for your workplace

Claims and complaints

- ❖ Workers may make complaints to the applicable workers compensation board about an unsafe workplace
- ❖ Workers may refuse unsafe work
- ❖ Workers must make a claim for a workplace injury to the applicable workers compensation board
- ❖ Claims are handled solely by the board
- ❖ The employer may be required to provide information as part of the claim process and will often be copied on correspondence, but generally does not play any role in determining whether a claim is accepted or what benefits may be appropriate

Risks of not registering

- ❖ Lack of insurance for workplace illness or injury
- ❖ Liability for claim costs and unpaid premiums in the event of a claim
- ❖ Financial penalties and retroactive premiums for delays in registration
- ❖ Potential personal liability on corporate directors for unpaid premiums and claim payouts

Summary of Canadian Immigration Recruitment and Retention Programs

John Soden	RCIC	JSoden@cwilson.com	604.643.3148
Pu Zhang	RCIC	PZhang@cwilson.com	604.891.7783

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Summary of Canadian Immigration Recruitment and Retention Programs

Immigration Programs to Support Recruitment & Retention of International Employees

Summary of Canadian Immigration Recruitment and Retention Programs

Work Permits

Work Permits

**Labour Market Impact Assessment (LMIA) Exempt Programs
– the preferred option**

Labour Market Impact Assessment (LMIA) Required Program



LMIA Exempt Programs

- Intra-company Transferees
 - Executive, Managerial, and Specialized Knowledge
- Francophone Mobility
- International Experience Canada
- International Free Trade Agreements
 - CUSMA, CETA, CPTPP, and more
- Significant Benefits

LMIA Required Program

Health Warning – Immigration, Refugees & Citizenship Canada (IRCC) describes the LMIA as a PROGRAM OF LAST RESORT

- complex, time consuming and expensive
- a 50/50 success rate

Wherever possible we prefer to help employers avoid using the LMIA required program

If you are or will be considering using the LMIA program, please contact us to see if there are any better alternatives.

Work Permit Durations & Family Members

Work Permit Durations

- Up to 3 years
- Extending/Renewal

Family Members of International Employees

- Eligible for Open Work Permit/Study Permit

Summary of Canadian Immigration Recruitment and Retention Programs

Business Visitors

Summary of Canadian Immigration Recruitment and Retention Programs

Travel Restrictions Exemptions

Travel Restriction Exemptions

Exemptions used most for international employees:

- Valid Work Permit holders
- Work Permit Letter of Introduction holders
- Immediate family members/Extended family members

* Travel restrictions change frequently.

Questions?



Andrea Raso

Partner

604 891 7761
araso@cwilson.com



Anne Amos-Stewart

Associate

604 891 7756
aamos-stewart@cwilson.com



Catherine Repel

Associate

604 643 3175
crepel@cwilson.com



Debbie Preston

Associate

604 891 7779
dpreston@cwilson.com



John Soden

Immigration Consultant

604 643 3148
jsoden@cwilson.com



Pu Zhang

Immigration Consultant

604 891 7783
pzhang@cwilson.com

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