



ROBINSON
HEENEY LLP

A Complete Guide to Employment Law

James Heeney
Partner
Robinson Heeney LLP



Agenda

- Pre-employment Considerations
- Employment Contracts
- Human Rights Issues
- Workplace Investigations
- Bringing the Employment Relationship to an End
- Damages / Severance Packages / Dismissal Meetings
- *Fair Workplaces, Better Jobs Act, 2017*



Pre-Employment Considerations

- Employment applications and interviews (human rights issues)
- Inducement (allurement/enticement)
- Restrictive covenants
- Reference checks



Ontario Human Rights Code: Prohibited Grounds

- Race
- Colour
- Ethnic Origin/Ancestry
- Citizenship
- Religion or Creed
- Disability
- Age
- Sex
- Sexual Orientation
- Record of Offences
- Marital/Family Status



Restrictive Covenants

- Can include:
 - Non-competition agreements
 - Non-solicitation agreements
 - Non-disclosure of confidential information
- Enforceability:
 - Are they reasonable?



Employment Contracts

- Written vs. Unwritten
- Inducement
- Requirements of enforceability (offer, acceptance & consideration)
- Express & implied terms



Employment Contracts: Standard Terms

- Remuneration (salary, bonus, commission)
- Term / Probationary period
- Status (position, reporting structure)
- Duties
- Benefits
- Inducement
- Termination
- Restrictive covenants, if any
- Intellectual property rights
- I.L.A.



Independent Contractors

- Issues to Consider:
 - Employment standards
 - Reasonable notice at common law
 - WSIA/OH&SA
 - Income taxes/EIC/ CPP
- Issues to Consider:
 - Employment standards
 - Reasonable notice at common law
 - WSIA/OH&SA
 - Income taxes/EIC/ CPP



Employer's Responsibilities

- Human Rights Policy
- Respect in the Workplace Policy
- Workplace Violence/Harassment – Bill 168



Duty to Accommodate

- “Every person has a right to equal treatment with respect to employment without discrimination...”
- Requirement to accommodate to the point of undue hardship
- Very onerous responsibility



Bringing the Employment Relationship to an End

- Resignation
- Dismissal for just cause
- Dismissal without cause



Termination Payments

- Employment Standards notice
- Employment Standards severance pay
- Reasonable notice at common law



Termination Payments

- Employment Standards Notice
 - Individual Termination:

Length of Employment

Less than 3 months
3 months, less than 1 year
1 year, less than 3 years
3 years, less than 4 years
4 years, less than 5 years
5 years, less than 6 years
6 years, less than 7 years
7 years, less than 8 years
8 years or more

Notice Required

none
1 week
2 weeks
3 weeks
4 weeks
5 weeks
6 weeks
7 weeks
8 weeks



Termination Payments

- Employment Standards Severance Pay

Entitlement:

Employee has worked for employer for 5 years or more;

AND

was employed by employer who:

a) has payroll in Ontario of at least \$2.5 million;

OR

b) severed the employment of 50 or more employees in a 6 month period because all or part of the business was permanently discontinued.



Termination Payments

- Reasonable Notice at Common Law:
 - Age
 - Length of Service
 - Salary level
 - Position
 - Inducement
 - Wallace Factor/Bad Faith



Types of Constructive Dismissal

- Change in remuneration
- Change in job responsibilities
- Change in geographical location
- Change in working conditions



Just Cause

- “Serious misconduct on the part of the employee which is inconsistent with the fulfillment of the express or implied conditions of service.”
- Behaviour which may constitute just cause:
 - Theft / fraud / dishonesty
 - Incompetence
 - Off-Duty Conduct
 - Sexual harassment
 - (Disruption of corporate culture)



Other Considerations

- Burden of proof
- Near cause
- After-acquired cause
- Condonation
- Investigations



Workplace Investigations

- Interview
- Maintain confidentiality
- No reprisal
- Report
- Internal vs. External



Damages

- Compensation
- Benefits
- Insurance
- Pension
- Other Damages:
 - Mental distress
 - Aggravated
 - Punitive
 - Stock Options
 - Company Car
 - Vacation
 - Mitigation Expenses
 - Other
 - Loss of reputation
 - Wallace/Bad Faith



Severance Package Considerations

- Lump sum or salary continuance
- Possibility of re-employment
- Benefits
- Outplacement counselling
- Legal allowances
- References
- Announcements
- Release



Dismissal Meeting

- When?
- Where?
- Who?
- How long?
- Other?



ROBINSON
HEENEY LLP

*Recent Changes (and Undoing of
Changes) to the
Employment Standards Act*



ROBINSON
HEENEY LLP

Questions?