

Employment Law Update

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Legislative Changes

Human Rights

- new Ontario human rights system will be launched on June 30, 2008
- six month transition period following launch date to deal with cases already in the system
- three central changes:
 1. Direct Access
 2. More Money
 3. More Time

Legislative Changes (cont.)

Impact on Wrongful Dismissal Claims

- awards in wrongful dismissal cases will no longer be limited to “pay in lieu of notice” as damages for human rights violations are available to a plaintiff in a court action
- court now has the power to make an order for restitution which may mean that courts may order reinstatement, and force employers to provide letters of reference and even make them post letters of apology in the workplace or in the media

Legislative Changes (cont.)

Mandatory Retirement

- just under one year has passed since mandatory retirement was abolished in Ontario
- in general, this has had limited impact on employee terminations
- impact on benefit costs may be more pronounced

Case Law Update

Overtime Pay

- employers may face significant liability if they do not comply with employment standards legislation regarding overtime pay
- recent trend has emerged where employees are commencing class actions to force employers to pay retroactive overtime costs to employees

Common Mistakes About Overtime

- misapplication of supervisory or managerial exemption
- incorrect assumption that salaried employees exempt from overtime

How To Avoid Liability For Unpaid Overtime

- properly monitor and keep accurate records of hours worked (regular and overtime) and wages paid to employees
- create a defined pre-approval process for overtime
- suggest overtime averaging agreements where employees agree to average weekly hours of work over several weeks

Wrongful Dismissal Update

- generally speaking, the trend to more generous wrongful dismissal awards is continuing
- this relates both to pay in lieu of notice as well as other heads of damages
- bad faith/Wallace damages
- punitive damages
- aggravated damages

Wrongful Dismissal Update (cont.)

- the appropriate time to limit termination costs is prior to the beginning of the employment relationship
- this is done through the use of employment agreements

Emerging Trends

- flexible work arrangements
- duty to accommodate

Emerging Trends (cont.)

Flexible Work Arrangements

- given the aging of society and the reality of single parent families and two parent working families, these requests are becoming more common
- there are generally 3 kinds of flexible work arrangements:
 - flex time
 - telecommuting
 - reduced work hours

Emerging Trends (cont.)

- advantages/disadvantages
- written flexible work policies should be implemented
- these policies should address:
 - process by which requests will be considered
 - time limits
 - process under which any flexible work arrangement should be altered or terminated
 - should clearly outline impact on employee salary or benefits
 - accessibility issues

Duty To Accommodate

- as human rights obligations and matters such as flexible work arrangements become more common, so too may an employer's duty to accommodate
- this involves more than the “disabled” employee
- be proactive
- document in writing

QUESTIONS?

If you have any questions or require additional information feel free to contact:

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