

Summary of Ontario Employment Law

Foreign employers planning to hire employees in Canada must be aware of the specific laws and rules governing the employment relationship in each province. Each Canadian province has its own employment-related statutes. All provinces except Quebec are otherwise subject to the “*Common Law*” system of judge-made, precedent-based legal principles and doctrines. Quebec is governed by its “*Civil Code*” and, importantly, by the *Quebec Charter of the French Language* (commonly known as *Bill 101*).

The following is a summary of Ontario Employment Law.

Table of Contents

<i>The Human Rights Code</i>	1
Discrimination in employment advertising, applications and interviews	1
<i>The Employment Standards Act</i>	1
Payment of Wages	2
Records	2
Hours of Work	2
Overtime Pay	2
Minimum Wages	2
Public Holidays	3
Paid Vacation	3
Pregnancy and Parental Leave	4
Other Authorized Leaves of Absence	4
New Leaves Effective October 29, 2014	5
Termination of employment under the <i>Employment Standards Act</i>	5
Exceptions to providing notice of termination or termination pay under the <i>Employment Standards Act</i>	6
Severance pay under the <i>Employment Standards Act</i>	7
Quantum of severance pay under the <i>Employment Standards Act</i>	7
No contracting out of <i>Employment Standards Act</i> requirements	7
<i>The Common Law and Wrongful Dismissal</i>	8
<i>Employment Insurance Act</i>	9
<i>Occupational Health and Safety Act</i>	9
<i>Workplace Safety & Insurance Act</i>	10
<i>Pay Equity Act</i>	10
<i>Ontario Labour Relations Act</i>	11
<i>Privacy Legislation</i>	12

The Human Rights Code

Human Rights legislation is recognized by our Courts as having a preferred status in comparison to other types of legislation. The legislation is remedial and is therefore intended to be given the most liberal interpretation which will best ensure that its objectives are achieved. Ontario employers are governed by the Ontario *Human Rights Code* (the “Code”). Employers and employees are not permitted to “contract out” of the provisions of the Code.

The Code enumerates certain basic freedoms in relation to services, goods, facilities, accommodation, and employment. With respect to employment, the Code provides as follows:

“Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer, or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.”

Discrimination in employment advertising, applications and interviews

The Code provides that the right to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Further, the right to equal treatment with respect to employment is infringed where a form of application for employment is used, or a written or oral inquiry is made, of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

The Code does not preclude the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such a ground is permitted under the Code.

The Ontario Human Rights Commission publishes a sample “*Application for Employment*” form and also provides guidelines as to what questions it feels are appropriate and inappropriate in relation to the prohibited grounds of discrimination (both are accessible by visiting the Commission’s website).

The Employment Standards Act

The *Employment Standards Act*, 2000 (the “Act”) provides for certain minimum terms and conditions of employment for most employees in Ontario. The legislation provides minimum standards of employment only. Where an employer has agreed to provide some greater benefit than that set out in the legislation, the employer will be bound by this promise and will not be entitled to fall back upon the prescribed minimum standards that are set out in the Act.

Employers have significant obligations under the legislation to keep accurate records of wages paid, hours worked and holidays accrued. Failure to keep such records can expose employers to substantial liability, as Employment Standards Officers will often defer to the word of the employee in the event that an employer has not kept accurate records to support its position.

Payment of Wages

“An employer shall establish a recurring pay period and a recurring pay day and shall pay all wages earned during each pay period, other than accruing vacation pay, no later than the pay day for that period.”

Records

Among other mandatory information, an employer must (except for salaried employees and employees exempt from “overtime” requirements) keep a record of the number of hours worked in each week. For salaried employees, an employer must nonetheless keep a record of hours worked in excess of eight (8) in a day.

Hours of Work

The *Act* generally provides that the regular hours of work of an employee must not exceed eight (8) hours per day or forty-eight (44) hours per week. There are exceptions that are set out in the legislation, such as the exemption of managerial and supervisory personnel.

Under the hours of work provisions, employers are also required to allow an unpaid eating period of at least one half-hour, often enough so that no employee will have to go for over five (5) hours without having a meal break.

Employers are required by law to provide their employees with a minimum of one full day or twenty-four (24) consecutive hours of rest per week. Once again there are exemptions which can be reviewed in detail by visiting the Ministry’s website.

Overtime Pay

Employees working more than forty-four (44) hours in a week are entitled to time and one-half (1.5X) of their regular base rate of pay for all hours worked over that threshold. The overtime provisions similarly do not apply to managerial and supervisory personnel.

Employers must also ensure that when paying employees for overtime hours, there is some clear record made of the portion of the payment which is designated as pay for overtime. This will be important evidence in the event that there is a formal dispute or litigation over alleged unpaid overtime pay.

The *Act* currently permits employer to “average” hours over a period of up to four (4) weeks in duration in calculating overtime entitlement, but averaging in this manner requires the written agreement of the employee and the approval of the Director of Employment Standards.

Minimum Wages

The *Act* requires that employers pay at least the minimum wage to all employees. The actual minimum wages are increased from time to time by the provincial government. Currently, the general minimum wage for an employee who is not a student is \$11.00/hour.

Minimum wage legislation is intended to apply to all employees in a jurisdiction including employees who are not paid on an hourly basis. It is the employer's responsibility to ensure that minimum wage compliance is achieved and this may require some calculation for those employees who are not paid on an hourly basis.

The legislation also makes provision for employees to receive remuneration if they are called in to work, even if they are working or only work for a short period of time. This is referred to as "*call-in pay*" and is meant to protect employees from being called in at an employer's discretion only to discover that no work exists. The minimum amount of "*call-in pay*" in Ontario is three hours' pay regardless of whether or not the employee worked the hours.

Public Holidays

The *Act* requires that employees be given public holidays with pay each year. An employee who does not work on a public holiday is still entitled to his or her wages for that day. The nine (9) currently designated holidays in Ontario are:

1. New Years Day
2. Good Friday
3. Family Day (the third Monday in February)
4. Victoria Day
5. Dominion Day
6. Labour Day
7. Thanksgiving Day
8. Christmas Day
9. Boxing Day (day after Christmas Day)

Employees who are required to work on the holiday must be paid for the day together with holiday pay of 1.5 times their regular daily rate. There are provisions which permit the substitution of other days off in lieu of the holiday in certain circumstances.

Paid Vacation

Under the *Act*, employers are required to give employees at least two (2) weeks vacation with pay every year. The vacation must be taken within ten (10) months of the end of the year in respect of which it is given. The pay that is required must be at least 4% of the previous year's wages. Wages include all monetary payments but do not include discretionary gifts or bonuses, benefit fund or plan contributions, or the previous year's vacation pay.

Many employers give as vacation pay the regular salary the employee would have earned during his vacation (ie. two weeks pay). Although this is a common practice, it may fall short of the payment that the *Act* requires, especially where employees work a great deal of overtime. Occasionally, such a method of payment will result in a payment that is more than what is required as happens when an employee receives a pay raise just before the vacation period, or where the employee was absent without pay for part of the year for some reason.

Although an employee may not be entitled to take a paid vacation until after twelve (12) months' completed

employment under the Act, employees' vacation entitlement begins to accrue as soon as they commence employment. Although many employers will allow employees to take vacations before they have actually been earned, employers should be cautious of such a practice. In Ontario, if an employee ceases employment before having earned all of the vacation already taken, the employer is not allowed to set off the employee's wages to account for such vacation.

Pregnancy and Parental Leave

A pregnant employee who started employment with her employer at least thirteen (13) weeks before the expected date of birth of a child is entitled to a leave of absence without pay. An employee may begin pregnancy leave no earlier than seventeen (17) weeks before the expected date of birth. The pregnancy leave of an employee ends seventeen (17) weeks after the pregnancy leave began.

In addition, an employee who has been employed by an employer for thirteen (13) weeks and who is the parent of a child is entitled to a leave of absence without pay following the birth of the child, or the date of an adoption, as the case may be. Parental leave may be up to thirty-five (35) weeks in duration. The parental leave of an employee who also takes a pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of a parent for the first time.

During a pregnancy leave or parental leave under the Act, an employee continues to participate in each type of benefit plan (ie. pension plans, life insurance plans, accidental, death and dismemberment plans, extended health care plans, dental plans, and any other types of benefit plans that are in effect in the workplace) that is related to his or her employment, unless the employee elects in writing not to do so.

During an employee's pregnancy leave or parental leave, the employer must continue to make the employer's contributions for any of the benefit plans referred to above, unless an employee gives the employer written notice that the employee does not intend to pay the employee's contributions, if any.

The period of an employee's pregnancy leave or parental leave is included in any calculation of the employee's length of employment (whether or not it is active employment), length of service (whether or not it is active service) or seniority, for the purposes of determining whether the employee has a right under a contract of employment.

Under the Act, an employer of an employee who has taken pregnancy leave or parental leave must reinstate the employee when the leave ends, either to the exact position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not. In addition, an employer must pay a reinstated employee wages that are at least equal to the greater of the wages that the employee was most recently paid by the employer, or the wages that the employee would be earning had the employee worked throughout the leave.

An employer cannot intimidate, discipline, suspend, lay-off, dismiss, or impose a penalty on an employee because the employee is or will become eligible to take, intends to take, or takes pregnancy leave or parental leave.

Other Authorized Leaves of Absence

The Act also provides for the following authorized leaves of absence:

Family Medical leave: Employees with family members with a significant risk of death occurring within twenty-six (26) weeks are entitled to leave without pay of up to eight (8) weeks in duration.

Organ Donor Leave: Employees with thirteen (13) or more weeks service who donate an organ are entitled to a leave of absence without pay of up to thirteen (13) weeks or for a “prescribed period”.

Emergency leave: Employees in workplaces with fifty (50) or more employees are entitled to up to ten (10) days of unpaid leave relating to personal illness, injury or medical emergency affecting either the employee them self or designated family members.

Reservist Leave: Employees who are Reserves with that Canadian Armed Forces are entitled to leave without pay in respect of identified deployments that prevent them from working.

New Leaves Effective October 29, 2014

Effective October 29, 2014, The Act will provide for the following leaves of absence, which were introduced by the *Employment Standards Act Amendment Act (Leaves to Help Families), 2013*:

Family Caregiver Leave: Employees that need to provide care to listed family members with a serious medical condition (without proof of risk of death within 26 weeks) are entitled to up to eight (8) weeks of leave without pay.

Critically Ill Child care Leave: Employees with at least six (6) months service are entitled to up to thirty-seven (37) weeks unpaid leave to provide care to a critically ill child.

Crime-Related Child Death and Disappearance Leave: Employees with at least six (6) months service are entitled to unpaid leave of up to fifty-two (52) weeks where their child has disappeared due to crime, and up to one hundred and four (104) weeks in the event of death resulting from crime.

With respect to most authorized leaves under the *Act*, employers are obligated to continue benefits coverage unless the employee elects in writing not to have coverage maintained.

Employees are also entitled, at the end of their leave, to reinstatement to the position they most recently held, or to a comparable position if their position no longer exists. This reinstatement obligation is not breached where the employment is “ended solely for reasons unrelated to the leave”.

Termination of employment under the *Employment Standards Act*

The *Act* requires that employees be given advance notice of termination (or payment instead). The minimum length of notice required for individual terminations is determined by an employee’s length of service as follows:

<u>Length of Service</u>	<u>Notice Requirement</u>
3 months but less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks

7 years but less than 8 years	7 weeks
8 years or more	8 weeks

Under the legislation, an employer can discharge its obligations in one of two ways:

- give the employee the requisite advance notice of termination in writing; or
- pay wages instead of notice and continue benefits for the required statutory notice period.

The *Act* also contains provisions which freeze the terms of employment during a period of working notice. The legislation prohibits an employer from altering the rates of wages or any other terms and conditions of employment of an employee to whom working notice has been given. Further, the legislation provides that during the period of notice, an employee is deemed to be actively employed on the same terms and conditions in existence during the employment for the purposes of entitlement to benefits.

Under the *Act*, there is a special definition of the words “*temporary lay-off*”. A temporary lay-off is defined as a lay-off of not more than thirteen (13) weeks in any period of twenty (20) consecutive weeks, or a lay-off of more than thirteen (13) weeks when certain conditions are satisfied. The legislation contains a complementary definition of “*termination of employment*” which includes a lay-off of a person for a period longer than a “*temporary lay-off*”.

A “*week of lay-off*” means a week in which an employee receives less than one-half of the amount the person would ordinarily earn at their regular rate in a normal non-overtime work week. Under the *Act*, if an employee is temporarily laid-off, as defined in the legislation, and the lay-off equals or exceeds thirty-five (35) weeks in any period of fifty-two (52) consecutive weeks, the employee is deemed no longer to be temporarily laid-off, and if the employee has not been given notice of termination in accordance with the minimum notices referred to above, the employee is entitled to termination pay.

There are situations where an employer is not able to, or may choose not to, provide the required advance written notice of termination to employees. In default of giving notice, the employer must make a payment in lieu of the prescribed notice of termination.

Exceptions to providing notice of termination or termination pay under the *Employment Standards Act*

The *Act* provides for a limited number of exceptions to the requirement to give notice of termination or to make a payment in lieu of such notice. Exceptions include:

- an employee who is employed for a definite term or task;
- an employee who is temporarily laid-off, as defined in the *Act*;
- an employee who has been guilty of wilful misconduct or disobedience or wilful neglect of duty that has not been condoned by the employer; or
- A contract of employment that is or has become impossible of performance or is frustrated by a fortuitous or unforeseeable event or circumstance.

In addition to the exceptions referred to above, the statutory minimum amount of notice or payment in lieu of such notice need not be given to an employee who is laid off after refusing an offer by the employer of reasonable alternative work, or is laid-off after refusing alternate work made available through a seniority system, or is on lay-off and does not return to work within a reasonable time after being requested to do so by the employer.

Severance pay under the *Employment Standards Act*

Aside from the notice of termination requirements, the *Act* also entitles certain employees to “severance pay”. The principal differences between “termination pay” and “severance pay” are:

Severance pay is in the form of a lump sum entitlement and the employer cannot avoid the obligation to pay severance pay by giving an equivalent period of advance notice of termination; and

Severance pay is, with the exceptions as noted, payable in addition to any other statutory or contractual entitlement. Therefore, severance pay can result in double compensation in the case of an employee who receives severance pay and finds new employment before the expiry of the period for which the employee has been compensated through termination or severance pay.

Severance pay is payable under the following conditions:

“Where fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment, or, where one or more employees have their employment terminated by an employer with a payroll of 2.5 million dollars per year or more, the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years”. (emphasis added)

Quantum of severance pay under the *Employment Standards Act*

The *Act* provides that severance pay is to be calculated in an amount that is equal to the employee’s regular wages for a regular non-overtime work week multiplied by the number of the employee’s completed years of employment, up to a maximum of twenty-six (26) weeks regular wages for a regular non-overtime work week.

Once again, there are exceptions to having to pay severance pay and for the most part, they are the same exceptions that exist in relation to the notice of termination provisions that are referred to above.

For a more comprehensive discussion of termination pay and severance pay under the *Employment Standards Act*, reference can be made to the Ontario Ministry of Labour’s website.

No contracting out of *Employment Standards Act* requirements

A term of employment that falls below a legislated employment standard will not be enforceable. A written contract containing terms which fall below employment standards will be of no force or effect, despite the fact that the employee may have agreed to the terms voluntarily at the time of hire.

The Common Law and Wrongful Dismissal

Under the common law (Judge-made, precedent-based law), employment can be terminated at any time, without just cause, upon “reasonable” prior notice of termination or payment instead. In determining what is “reasonable” notice in the circumstances, a Judge would consider:

The terms of any written contract of employment. Employment contracts may contain binding terms governing termination entitlements, so long as they do not fall below the Employment Standards Act minimum requirements; and

In the absence of a written agreement, A judge would determine the appropriate notice period by reviewing relevant factors, including an employee’s age, length of service, position, the availability of similar employment having regard to employee’s experience, training, and qualifications; and whether the employee was induced to leave secure employment in order to accept employment with the terminating employer.

At common law, it is not at all unusual for Judges to routinely award notice periods in the range of one (1) month’s notice for every year of employment, and possibly more.

In providing notice of termination, an employer has two options. The Employer can provide prior “working” notice or can make a payment in lieu of (instead of) notice. The decision is generally based on whether or not the employer wishes to keep the employee in the workplace for any period of time.

We urge our clients to make effective use of employment contracts which specify notice of termination and thereby provide both the employee and the employer with more certainty. Where an employee enters into a written agreement prior to commencing employment, the contract can properly contain a term which specifies the amount of notice to which the employee will be entitled upon dismissal. If the agreement is enforceable, the employee will be restricted to the notice period set out in the agreement. If the termination clause in an agreement is not enforceable for any reason, the common law will apply.

At common law, there also exists a doctrine of “*constructive dismissal*”. It is an implied term of any employment contract that an employer cannot make unilateral changes to the duties, status or remuneration of an employee that are so substantial that they amount to a repudiation of the employment contract. Where an employer imposes fundamental changes, the employee may treat the contract as having been ended and then sue for damages for wrongful dismissal. The onus is then on the employee to prove constructive dismissal. The employee must establish that the changes were of a fundamental nature and that they constituted a significant alteration of the employment contract. The following types of changes have been found to constitute a constructive dismissal:

1. a significant change in remuneration and/or benefits;
2. a significant change in job duties (such as a demotion);
3. a significant geographic re-location;
4. a forced resignation, retirement, or layoff;
5. a significant change in working conditions;

6. any other employer conduct that is incompatible with continued employment (ie. harassment on the job, unsafe working conditions which employer refuses to correct or address etc.);
7. sudden imposition of a probationary period without good reason.

Employment Insurance Act

When an employment relationship ends, the employee may be entitled to *Employment Insurance Act* ("EI") benefits. An employee will be entitled to EI benefits, if during the "qualifying period", which is generally the fifty-two (52) weeks prior to the application for benefits, the employee had the requisite number of weeks of "insurable employment". Employees are disqualified from receiving benefits if they lose their employment because of their own misconduct or if they voluntarily leave employment ("quit") without "just cause" (discrimination, harassment, etc...).

The legislation is designed to provide income protection for employees who are unemployed for various reasons. Aside from benefits that may be available after termination of employment, this statute also provides for benefits that may be payable during periods of illness or, for example, a pregnancy or parental leave of absence.

Wages earned by employees, unless they are exempt under the legislation, are insured to a maximum amount.

Both the employer and the employee contribute to the Employment Insurance Plan. The employer is required to deduct and remit employee premiums.

Occupational Health and Safety Act

This legislation is intended to improve and maintain safety in the workplace. It requires the establishment of a Health and Safety Committee with employee representatives selected by the employees equal in number to management representatives for all workplaces with either twenty (20) or more employees, or where a regulation relating to a designated substance is in effect. This legislation differs from Workers Compensation legislation which is designed to deal with issues arising after the occurrence of workplace accidents and injuries, in that occupational health and safety legislation is aimed at the prevention of such accidents and injuries. The legislation is designed to establish deterrence and penalization of those in violation.

A violation of occupational health and safety legislation can generally be prosecuted as a summary conviction offence. Individuals and corporations may be subject to fines if found guilty, while individuals may face the additional risk of incarceration. A defence of due diligence is available to a party that is charged with this type of offence. If an accused can prove that every reasonable precaution was taken in the circumstances, the accused may be acquitted.

Workplace Safety & Insurance Act

The *Workplace Safety & Insurance Act* (formerly known as *Workers' Compensation*) creates a system of compensation for workplace accidents or injuries which occur while workers are in the course of their employment. The legislation operates on the premise that it would be unjust to require workers to commence lengthy and expensive litigation before they can obtain compensation for their injuries. Instead, the scheme of the legislation has little or no regard for blame, fault, or negligence and provides injured employees with access to compensation from an accident fund. Under this system of compensation, there exists no right of court action for compensation resulting from a workplace accident or injury. Therefore, employees cannot sue their employers for damages resulting from injuries sustained in the course of employment (if the employers are covered under the legislation).

Employer contributions are the exclusive source of funding for *Workplace Safety & Insurance* scheme. Employers governed by the legislation are required to contribute. An employer who is not mandated by the legislation to participate can voluntarily apply for coverage.

Employer premiums are based on regular assessments which take into account such factors as the nature of the work being performed, accident cost experience, hazards, and the general financial status of the industry in which an employer operates.

The assessment setting process classifies employers into industry groups, as well as into groups according to accident history or hazard risk. Each class or sub-class has a separate assessment rate, which is calculated by the Board to cover all anticipated benefit claims within the group.

It is also important to note that this statute imposes an obligation on employers to reinstate injured workers after they have recovered from work related injuries. This provision does not apply to employers who regularly employ fewer than twenty (20) employees.

In order for an employee to be able to take advantage of the reinstatement provision, he or she must have been continuously employed with the employer for at least one (1) year on the date of the injury. If the worker qualifies, the employer must reinstate the worker in the position held on the date of injury, or provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on that date or, where the worker is unable to perform the essential duties of a position, offer the worker the first opportunity to accept suitable employment that may become available with the employer.

Pay Equity Act

The Ontario *Pay Equity Act* is legislation aimed to redress systemic gender discrimination in compensation for work performed by employees in female job classes. The fundamental rationale for pay equity stems from the premise that in general, women have been segregated into a narrow range of occupations, and as a result of gender discrimination, their work in these occupations has traditionally been undervalued. Pay equity is further based on the notion that occupational groupings or "job classes" in organizations tend to be either male dominated or female dominated, and compensation for the female dominated job classes is artificially depressed on the basis of the

unwarranted systemic sex discrimination. The pay equity model is based on the concept that employees should be paid equally for work which is of “equal value” to the employer, not just for work which is substantially similar.

Systemic gender discrimination and compensation is identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed.

For the purposes of the *Pay Equity Act*, the criterion to be applied in determining value of work is a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed. Every private employer with ten (10) or more employees must establish and maintain compensation practices that provide for pay equity in an owner’s “establishment”, which is defined as all the employees employed within a geographic division.

For the purposes of the legislation, pay equity is achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under a job to job method of comparison or through what is referred to as a proportional value method of comparison and any adjustment to the job rate of each female job class that is indicated by the comparison has been made.

Pay equity is achieved under the job to job method of comparison when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value.

Every employer must establish and maintain compensation practices that provide for Pay Equity in every establishment of the employer.

An employer is not permitted to reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve Pay Equity.

Any business which commenced its operation after January 1, 1988 and has ten (10) or more employees, is required to implement compensation practices which immediately achieve pay equity.

Disputes relating to the achievement of pay equity are typically referred to the Pay Equity Commission.

Ontario Labour Relations Act

When the term “*labour relations*” is used, it typically refers to the body of law that governs unionized workplaces. This area of the law is quite different from employment law (master and servant/common law) and is also different from ordinary commercial contract law.

The distinction between unionized employee rights and non-unionized employee rights is far reaching. For example, if a matter is in relation to a dismissal from employment, a unionized employee does not have a right to commence a common law wrongful dismissal action. The employee may have a right to lodge a discharge grievance pursuant to the collective agreement between the union and the employer. Such grievances must generally be processed through the employee’s union.

In Ontario, the principal piece of labour legislation is the *Labour Relations Act*. The *Labour Relations Act* deals with organization and certification of Unions as bargaining agent for groups of employees, collective bargaining, unfair labour practices and termination of bargaining rights, and has specific provisions dealing with:

1. Who can belong to a union;
2. How and when a union can obtain bargaining rights and who it can appropriately represent in a group;
3. How, when and at whose initiative, bargaining rights can be terminated;
4. The duty to bargain in good faith by both a union and an employer;
5. A statutory “freeze” on terms and conditions of employment during the period that a union that has obtained bargaining rights, or is attempting to negotiate a collective agreement;
6. The content and operation of collective agreements and the arbitration process through which such agreements are enforced;
7. The right to strike and lock out;
8. Successor rights in cases in which a unionized employer transfers a unionized business or undertaking;
9. Provisions governing unfair labour practices by employers and unions; and
10. Procedure for applications or complaints before the Ontario Labour Relations Board in respect of any of the aforementioned matters.

Non-unionized employees involved in a union organizing campaign are afforded significant protections and remedies under this regime.

Where a Union can demonstrate 40% support of the employees in a proposed bargaining unit, the Union can file an application for certification and the Labour Relations Board will conduct a secret ballot vote. If the majority of those employees who vote cast a ballot in favour of the Union, the Union will be certified as bargaining agent for that group of employees.

The Labour Relations Board has broad powers to remedy employer breaches of the *Act*, including orders (both interim and final) of re-instatement, together with compensation.

This is only a glimpse at the nature and scope of the *Labour Relations Act*. Should you wish to learn more about this Act and its operation, please let us know.

Privacy Legislation

At present, the Federal *Personal Information Protection and Electronic Documents Act* (“*PIPEDA*”) governs the collection, use, and disclosure in the private sector of personal information. While this legislation applies to Ontario employers, it does not govern the collection and use of information about employees. Ontario is in the process of introducing legislation designed to govern the collection and use of employees’ personal information, likely in the near future.

I trust that this overview is of assistance to you as you familiarize yourself with doing business in Canada and Ontario in particular. If there is further information that you require at this point, please do not hesitate to contact me at any time.

In the meantime, I will leave you with the following links in the event that you wish to explore any of these issues on your own.

Ontario Ministry of Labour (*Employment Standards Act* and *Labour Relations Act*), visit www.labour.gov.on.ca

Ontario Human Rights Commission (*Human Rights Code*), visit www.ohrc.on.ca



Peter C. Straszynski
Partner, Employment & Labour

PHONE
416 775 5447

EMAIL
pstraszynski@torkinmanes.com

Peter Straszynski is a partner in our Employment & Labour Group. He assists employers with all of their labour and employment issues, from the hiring to the post-termination stages of employment, in both the union and non-union settings.