



Employment Update

Labour and Employment Group

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“...now is a good time to look at your employment agreements to make sure that their terms and conditions adequately address the needs of the company”

TAKE TIME TO REFLECT ON YOUR WORKPLACE POLICIES

David E. Greenwood

The new year is fast approaching which makes it the perfect time of year to both reflect and look forward. With that in mind, we encourage everyone to take some time and look at your employment policies and employment agreements to make sure they still suit your needs and remain in compliance with the law.

There have been several events this year which have provided reason for reflection on workplace policies. Most notably, there were amendments to the *Occupational Health and Safety Act* which require employers to prepare a workplace violence and harassment policy. This is a mandatory requirement for almost every employer. The failure to prepare a violence and harassment policy can have significant consequences which are easily avoided. While many companies are late in preparing this policy, it is not too late.

With respect to employment agreements, now is a good time to look at your employment agreements to make sure that their terms and conditions adequately address the needs of the company and its employees. For example:

- (a) You may want to add “termination clauses” to your employment agreements. If you already use termination clauses, you should make sure that they still comply with the terms of the *Employment Standards Act 2000* or such similar legislation in the jurisdiction which governs your employment relations. If termination clauses do not comply with the applicable employment legislation in your jurisdiction(s), they may not be enforceable. If the clauses are unenforceable, early recognition will allow you take appropriate measures to bring them into compliance with the law. This is not a costly or time consuming procedure, and it certainly makes sense given the potential risks of not having enforceable termination clauses.
- (b) This may be an appropriate time to introduce restrictive covenants, such as non-competition or non-solicitation clauses or Intellectual Property and/or Confidentiality clauses or agreements. If you already use some or all of these types of agreements or clauses, you should take time to determine if those agreements or clauses are enforceable. There have been a number of cases over the last couple of

EMPLOYMENT UPDATE



David Greenwood has represented clients in files involving wrongful dismissals, constructive dismissals, human rights complaints, pension issues, disability claims, allegations of employee fraud, theft of confidential and proprietary information, breach of fiduciary duties and misappropriation of corporate opportunities. Additionally, David is frequently consulted in respect of reorganizations and mass terminations and is routinely retained to draft or to negotiate employment agreements, employee policy manuals and other employment related contracts.

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years that have impacted on the enforceability of these types of clauses, specifically non-competition and non-solicitation restrictions, and you want to be sure that clauses or agreements drafted some time ago comply with the current state of the law.

It is important to remember that if an employer is changing the terms of an existing employment agreement, it must provide fresh consideration for those changes. In many instances, the consideration can be reflected in the annual wage increase and thereby limit the cost to employers. This is why it makes sense to assess changes to the terms of employment before the coming year.

Have a safe and happy holiday season and best wishes in 2011. ■

EXPECT THE BEST

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We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Chris Jones at 416 593.7221 ext. 3030 or by email to cjones@blaney.com. Legal questions should be addressed to the specified author.