

Top 10 Employment Law Basics for First-Time Employers in Manitoba

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Your business has grown and you are now thinking of taking on your first employees - congratulations! But where to start?

Employment law in Manitoba is regulated by a combination of contractual, statutory and common law rules. The following is a short checklist of 10 basic employment law areas that most first time Manitoba employers need to consider.*



1. The Employment Standards Code (ESC) - The ESC sets out the minimum working entitlements for the vast majority of employees in Manitoba. It governs things such as: minimum wage, hours of work, breaks, overtime, unpaid leaves of absence (including maternity and parental leaves), vacation time-off and pay, general holidays (commonly referred to as “stat” holidays), termination of employment, and more!

Parties cannot contract out of the ESC. This means that an employer and employee cannot agree that the employee will work for less than his or her entitlements under the ESC. However, an employer may provide greater benefits than those provided for in the ESC if it chooses.

2. The Workplace Safety and Health Act & Regulations (WSHA) - The WSHA requires every employer to maintain a safe and healthy workplace. It sets out the minimum safety and health standards required for all types of working environments. It also requires that most employers develop various written policies, such as: a general safety & health program, harassment and violence prevention policies, and much more. It also establishes the employer’s investigation and reporting obligations when a workplace incident or accident occurs.

All employers should review the WSHA in detail to know the specific requirements that apply to its workplace. Violations may result in an employer being charged with an offence under the WSHA and subject to improvement orders, stop work orders, and hefty fines.

3. Workers Compensation - Workers compensation insurance is a no-fault insurance system. Employers enroll with the Workers Compensation Board (WCB) and pay a premium to cover their employees, and in return they are not able to be sued for workplace injuries. Most employers who employ workers in Manitoba are required to open and maintain an account with the WCB. You should contact the WCB to inquire whether your business requires

mandatory enrollment.

4. The Human Rights Code - *The Human Rights Code of Manitoba* prohibits any employer from discriminating against any employee on the basis of one or more of the following grounds:

- ancestry, including colour and perceived race
- nationality or national origin
- ethnic background or origin
- religion or creed, or religious belief, religious association or religious activity
- age
- sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy
- gender identity
- sexual orientation
- marital or family status
- source of income
- political belief, political association or political activity
- physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device
- social disadvantage

According to the law, these protected grounds must not play any role at all in the employer's hiring or firing decisions, unless an employer has accommodated an employee to the point of "undue hardship". This can be a complicated legal principle and employers are encouraged to seek advice when a question of discrimination or potential discrimination arises.

5. The Manitoba Labour Board - The Manitoba Labour Board deals primarily with matters involving employers, unions and unionized employees; for example, applications for union certification, collective agreements, and grievance arbitrations.

The Board may also become involved in adjudicating complaints related to employment standards or workplace safety & health, but only if those complaints cannot first be resolved through other governmental departments (e.g. Employment Standards Branch or Workplace Safety and Health Division).

6. Benefits - Employers in Manitoba do not have an obligation to provide benefits or other "perks" to employees such as a medical/dental plan, life insurance, disability insurance or a pension plan. Many employers choose to do so, however, it is not legally required.

7. Canada Revenue Agency & Service Canada Requirements - All employers have the following reporting and remittance requirements to Canada Revenue Agency (CRA):

TD1 Forms: When an employee begins his or her employment, the employer must have him or her fill out TD1 (federal) and TD1MB tax forms.

Statutory Remittances: Employers must deduct certain amounts from employee pay for income tax, employment insurance (EI) and Canada Pension Plan (CPP) and remit them to CRA on a regular basis. Deductions/remittances are tracked by Business Number. If you are using a payroll company, they can likely assist you with this.

T4: Employers must complete end of year tax reporting by issuing a T4 form to each employee and a T4 summary for CRA.

Employers must also issue a Record of Employment (ROE) form when an employee is terminated, quits, or has an interruption of earnings. An ROE must be issued within five (5) calendar days and a copy must be provided to Service Canada.

8. Non-Competition and Non-Solicitation Agreements - Employers sometimes seek to limit an employee's ability to take customers and/or work for a competitor by having employees sign non-compete or non-solicit agreements. Such restrictions are commonly used, but are difficult to enforce. They must be carefully drafted and limited in terms of the restricted activity, how long the restriction applies, and the geographical scope of the restriction. Legal advice is recommended if these types of restrictions are desired.

9. Termination of Employment - While most new employers are optimistic and not thinking of termination at the beginning of an employment relationship, it is important to do so since it is often the most contentious part of the employment relationship. There are three main ways that an employment contract can be terminated:

- (1) At the expiry of a fixed term (i.e. where a contract is only for a set period of time).
- (2) For "just cause", immediately and without notice. However, the burden of proving "just cause" is on the employer and is a very high threshold to meet.
- (3) "Without cause", at any time, if the employer gives advance notice or pay in lieu of notice. This is a very common way of terminating employees. However, the big question in these types of terminations is how much notice or pay in lieu of notice the employer is required to give. This can be a complicated question and can depend on a number of factors including *The Employment Standards Code*, whether a written contract of employment exists, and the "common law". Each case is highly dependent on the specific circumstances of each employee.

As termination is an area that has a significant ability to result in liability for the employer, employers can often benefit from legal advice at the start of an employment relationship and both prior to and following a termination.

10. The Importance of a Written Employment Contract - It is a good idea for all employers to enter into a written employment contract with every new employee. The benefits of a written contract are to serve as a clear guide and reminder to both the employer

and employee as to what each parties' obligations are. It can also be used to avoid disputes which may arise later on, for example, by clearly setting out what the employer's obligations are upon termination of employment. Employment contracts should be signed *before* the employee begins his or her first day of work.

* Please note that this checklist applies to provincially-regulated employers. It does not address the requirements for federally-regulated businesses. If you are not sure if you are a federally-regulated business, a lawyer will be able to help you determine this.

Please contact **businessdevdept@tdslaw.com** to connect with a lawyer on this topic.

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