

Top 10 Employment Law Basics

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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, both full-time and part-time. It governs issues such as: minimum wage, hours of work, breaks, overtime, leaves of absence, vacation time-off and pay, general holidays (commonly referred to as “stat” holidays), termination of employment, and more!

Parties that fall under the ESC cannot contract out of it. This means that an employer and employee cannot agree that the employee will work for less than their entitlements under the ESC. However, an employer may decide to provide greater benefits than those provided for in the ESC.

2. The Workplace Safety and Health Act & Regulations (WSHA) - The WSHA requires every employer to maintain a safe and healthy workplace. This includes, among other things, a duty to ensure workers are a) protected from unsafe and/or hazardous conditions and equipment in the workplace; b) properly trained to ensure the health and safety of themselves and others; and c) able to work in a workplace free from harassment, violence, and discrimination.

The WSHA sets out the minimum safety and health standards required for all types of work environments. In order to meet these standards, it requires that most employers develop various written policies, which may include but not be limited to a general safety and health program, harassment and violence prevention policies, and proper training information with instructional procedures. It further lays out employer obligations to provide, where applicable, workers with personal protective equipment, uniforms, and much more. The WSHA additionally emphasizes the employer’s duty to investigate and its 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.

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

These protected grounds must not play any role at all in the employer's hiring, performance management or firing decisions. Employers are obligated to accommodate workers 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.

Many people confuse the provincial Employment Standards Branch and the Manitoba Labour Board. The Employment Standards Branch duties are to enforce the minimum standards under the ESC legislation. The Manitoba Labour Board is a separate tribunal from the Employment Standards Branch.

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. However, many employers choose to do so.

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 their employment, the employer must have them fill out TD1 (federal) and TD1MB tax forms. These forms are used to determine the amount of federal and provincial tax to deduct from the income an employee receives in a year.

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. This document is important as Service Canada will require it to determine if an employee is entitled to Employment Insurance benefits.

8. 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 high threshold to meet.

(3) “Without cause”, at any time, if the employer gives advance notice or pay in lieu of notice. The most common 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 (i.e. what a judge would consider to be reasonable in the circumstances). Each case is highly dependent on the specific circumstances of each employer and employee.

Accordingly, employers can benefit from legal advice at the start of an employment

relationship and prior to and following a termination.

9. The Importance of a Written Employment Contract - All employers should enter into a written employment contract with every new employee. A written employment contract sets out each parties' obligations, both during the term of the contract (employment), and in some instances, after the employment relationship ends (for example, confidentiality, non-competition, etc.). Having clear and concise terms may help to avoid or resolve disputes down the road. Employment contracts are most effective when they are signed before the employee begins their first day of work.

10. The Accessibility for Manitobans Act - This legislation came into effect as part of the Manitoba government's objective to develop mandatory accessibility standards. The plan includes five accessibility standards that address barriers for Manitobans and commit to make Manitoba more inclusive for everyone by 2023. These barriers include physical, architectural, information/communicational, technological, and attitudinal barriers.

The Employment Accessibility Standard addresses employer practices to ensure that the hiring and recruitment process and ultimately the employment relationship is accessible to people who may be disabled by a barrier. The private sector must comply with the accessibility standards by May 1, 2022.

* Please note that this checklist applies to provincially regulated employers. It does not address the requirements for federally regulated employers. If you are not sure if you are a federally regulated employer, 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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