International Comparative Legal Guides

Employment & Labour Law 2021

A practical cross-border insight into employment and labour law

11th Edition

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Employment law in Canada is governed by employment contracts, statutes, and in nine of the 10 provinces, by common law. In Québec, the *Civil Code of Québec* governs instead of the common law. Under Canada's *Constitution Act*, labour and employment law is mostly subject to provincial jurisdiction, with some select industries under federal jurisdiction, including but not limited to, banking, air transportation, railway, port services, and telecommunications.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Workers in Canada can be categorised into three types: employees; dependent contractors; and independent contractors. These types are distinguished based on the nature of their relationship to the party for whom they perform work. Generally, employees are entitled to statutory and common law rights and entitlements, including overtime pay, vacation entitlements, and leave of absences. Dependent contractors also have certain common law rights, including reasonable notice upon termination. Independent contractors do not have these same rights and entitlements.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Employment contracts can take various forms to be considered valid such as an offer letter, a written agreement, or a verbal agreement. For unionised employees whose employment is governed by labour legislation, collective agreements containing terms and conditions of employment must be in writing to be valid.

Employees generally do not have to be provided with any information in writing aside from tax and deduction forms.

1.4 Are any terms implied into contracts of employment?

Employers have various implied duties, most notably to comply with statutory obligations, including to provide a safe and secure work environment, to not discriminate on protected grounds and to provide reasonable notice of dismissal to an employee dismissed without cause. Employees have an implied and legal duty of good faith and loyalty to their employer, the duty to perform work diligently and competently, and the duty to keep trade secrets and sensitive information confidential both during and after their employment comes to an end.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

All Canadian jurisdictions have employment standards legislation which establish the minimum standards for employees. These include minimum wages, hours of work, overtime pay eligibility, public holiday pay, vacation, and various types of leaves of absences, some of which may be paid but the majority of which are unpaid. Employers cannot contract out of these obligations, except when an employer provides a greater right or benefit.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

All terms and conditions of employment are negotiated through collective bargaining when a workforce becomes represented by a union. Collective bargaining mostly takes place at the company level, but can also occur at the industry level in some sectors and jurisdictions. Unionisation rates in Canada vary by province with Québec having the highest rate of unionisation at almost 40% and Alberta the lowest at nearly 26%. Public sector unionisation is significantly higher than private sector unionisation.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Under labour legislation, there are procedures pursuant to which a trade union can take steps to become recognised or certified as a bargaining unit on behalf of a group of employees. In Ontario, the trade union must have the support of 40% of the employees in the proposed bargaining unit to trigger a secret ballot representation vote. The union is certified if the majority employees who vote do so in favour of the union. In some

jurisdictions, employers can voluntarily recognise a trade union as the bargaining unit.

2.2 What rights do trade unions have?

Once a trade union is certified or recognised, the union acquires bargaining rights and is the sole representative for all of the employees in the bargaining unit. The union has the right to bargain terms and conditions of employment with the employer. Further, bargaining unit employees are typically required to pay the union dues whether or not the individual employee supports the trade union.

2.3 Are there any rules governing a trade union's right to take industrial action?

Each jurisdiction sets out the trade union's right to take industrial action. In most cases, unions are prohibited from engaging in strikes or picketing during the term of a collective agreement. Once a collective agreement has expired, striking or picketing can occur if certain criteria are met, including a meaningful attempt by the parties to bargain a collective agreement and a strike vote at which the majority of the bargaining unit votes in favour of strike action. Some jurisdictions require advance notice of a strike to be provided to the employer before industrial action can commence.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

There is no requirement for Canadian employers to create or implement work councils. Collective agreements may include rights to a consultation process in some areas.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Please see question 2.4.

2.6 How do the rights of trade unions and works councils interact?

Please see question 2.4.

2.7 Are employees entitled to representation at board level?

Canadian employees are not entitled to representation at the board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Employees are protected against discrimination under human rights legislation, which varies by jurisdiction. Prohibited grounds of discrimination can include, without limitation, race, creed, sex, age, sexual orientation, gender identity, disability, criminal convictions, and marital or family status. These grounds vary between jurisdictions. Employees who believe they have been discriminated against in violation of human rights legislation may file a complaint with the applicable human rights commission or tribunal which then adjudicates such complaints.

3.2 What types of discrimination are unlawful and in what circumstances?

Human rights legislation prohibits direct and indirect forms of discrimination. Employers must be aware of this when developing or applying policies, rules, or practices, so as to not infringe any employee rights or protected grounds. These issues can arise in hiring, promotions, conditions of employment, and terminations. Discrimination based on certain protected grounds such as pregnancy or disability may be protected under employment standards and human rights legislation. Harassment based on a protected ground, including sexual harassment, is prohibited under both human rights legislation and occupational health and safety legislation.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Typically, employers have standard policies and requirements relating to the prevention of sexual harassment. These policies vary from jurisdiction to jurisdiction. In some instances, employers are required to have formal written policies in place and to provide mandatory training to their employees. This training often includes anti-workplace violence, bullying and harassment training. Policies may need to include the process and steps for filing a formal workplace sexual harassment or violence complaint.

3.4 Are there any defences to a discrimination claim?

An employer can rely on a *bona fide* occupational requirement (BFOR) as a defence to a claim of discrimination by demonstrating undue hardship or a statutory exemption. To rely on a BFOR defence, the employer must: 1) establish the policy or standard was created and implemented with a rationally connected purpose to the performance of the work; 2) prove the policy or standard was adopted in good faith to fulfil a legitimate purpose; and 3) show the policy or standard was necessary, within reason, to achieve the intended purpose.

However, employers must attempt to accommodate employees. If an employer cannot reasonably accommodate based on undue hardship, the discrimination claim will not succeed. The threshold to establish undue hardship is very high. Tribunals typically consider factors such as costs and health and safety.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees can file a human rights complaint with human rights tribunals or commissions in their jurisdiction. Human rights claims can generally be settled at any time before an adjudicator renders a decision including by way of tribunal or commission sponsored mediation.

3.6 What remedies are available to employees in successful discrimination claims?

If employees are successful in their claim, they may be compensated in lost wages as a result of the discriminatory behaviour or failure to accommodate the employee. Aggravated and punitive damages may also be awarded if the employee can establish that the employer, through their actions, injured the employee's dignity, feelings, and self respect. Tribunals and commissions may also award non-monetary relief, including reinstatement of the employee and/or anti-discrimination training for the employer's workplace.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Contractual terms do not impact the broad protections of Canadian human rights legislation.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

Employers cannot retaliate against their employees for "whistle-blowing". Employment standards legislation does not address this. The Criminal Code of Canada states that employers may not take any disciplinary action, demote or terminate an employee in order to deter them from reporting information related to corporate malpractice or offences committed by an employer. Some employers must have a policy in place to protect whistle-blowers.

The Ontario Securities Commission's Office of the Whistleblower and Whistleblower Program is the first and only programme in Canada that provides a financial incentive to any person who reports corporate misconduct to the OSC.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Pregnant employees are generally entitled to 16 to 18 weeks of unpaid leave.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Maternity leave is considered an unpaid entitlement. Both the federal government and Québec have an insurance scheme for parents to receive a percentage of their earnings. In most jurisdictions, benefit coverage of the employee is maintained during the duration of the maternity leave.

In Ontario, an employer cannot take reprisal action against an employee who qualifies for this leave. Additionally, some jurisdictions also permit employees to preserve their seniority while on leave.

4.3 What rights does a woman have upon her return to work from maternity leave?

When returning to work, employees are entitled to return to their position or a position that is comparable if their pre-leave position is no longer available.

4.4 Do fathers have the right to take paternity leave?

In all jurisdictions, fathers are entitled to take parental leave. In Ontario, parental leave is an unpaid leave that ranges from 61 to 63 weeks. In contrast, Québec is the only jurisdiction that allows for a paternity leave for up to five weeks.

Additionally, adoptive parents or same-sex couples can also qualify for unpaid parental leave that ranges from 34 to 63 weeks.

4.5 Are there any other parental leave rights that employers have to observe?

There are no other parental leave rights, except in Québec. Employees have access to another unique leave for birth or adoption and pregnancy termination, which includes up to five days of partially paid leave.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Under human rights legislation, family status is a protected ground from discrimination. Employers have a duty to accommodate their employees who have family obligations such as caring for dependents which require them to work flexibly, up until the point of undue hardship. There are various types of leave available for family obligations under employment standards legislation.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

An asset purchase or other transaction which results in the change of legal identity of the employer will result in a certain number of considerations. Although an asset purchaser will generally enjoy greater latitude in the selection of non-unionised employees, contracts of employment with non-unionised employees cannot be automatically assigned and will generally be deemed to be terminated, at least for common law purposes, upon the sale of the business. In the case of unionised employees, applicable labour relations legislation raises additional complications, including the continued binding nature of the collective agreement on the purchaser and the seniority rights of unionised employees. In a share sale, all employment relationships will transfer to the purchaser.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In general, subject to the purchase agreement, an asset purchaser is not obligated to replicate the terms and conditions of employment that were provided by the seller to non-unionised employees. As such, an asset purchaser may offer employment to prospective non-unionised employees on terms satisfactory to the purchaser. If the employees accept those terms, then that forms the new contract of employment, provided that the purchaser is not entitled to ignore the existing length of service of the employees, for purposes of employment standards legislation. Where the employee is offered employment with a purchaser on less favourable terms, the employee may be entitled to refuse the offer and not be found to have failed to mitigate damages.

In the case of unionised employees, a purchaser cannot unilaterally amend the terms of employment and will generally be bound by the existing collective agreement.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Except for provisions in a collective agreement to inform a trade union and the general duty of employers to disclose significant information in the course of collective bargaining, non-unionised employees are not entitled to information or consultation rights on a sale of a business.

5.4 Can employees be dismissed in connection with a business sale?

Non-unionised employees are not specifically protected from dismissal either before or after a business transfer. However, non-unionised employees who are terminated without cause will have termination entitlements under Canadian law, including all statutory and common law rights upon termination, subject to whether or not they accept an offer of employment with the purchaser.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

There are key differences between an asset transfer and a share purchase. Following an asset transfer, employers may choose to retain employees or not, and are free to establish their own terms and conditions of employment. In a share purchase, there is no change in employment status for unionised and non-unionised employees relating to the terms and conditions of employment.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employment standards legislation provide minimum notice periods for the termination of an employee. Such notice periods typically vary between one to eight weeks of working notice of termination or pay *in lieu* of working notice. Minimum standards of notice do not apply in limited circumstances, such as where an employee has not completed a minimum period of continuous service, has been terminated for cause or was hired pursuant to a fixed term contract.

Employees are also entitled to reasonable notice of termination at common law and under the Québec *Civil Code*. This entitlement must be decided with reference to each particular case, having regard to factors such as an employee's age, position, experience and length of employment. Notice of up to 24 months may be awarded on the higher end subject to mitigation efforts. Parties to an employment agreement are entitled to contract out of common law or civil law notice periods so long as the contract provides for at least the statutory minimum entitlements.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Garden leave is rare in Canada, but not prohibited. A clearly drafted, reasonable garden leave clause may be enforceable where it is set out in writing between the parties. In the absence of express agreement to that effect, there is a risk that requiring an employee to stay at home and not participate in work may constitute a substantial change to a fundamental term of the employee's contract of employment, resulting in constructive dismissal at common law.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Unionised employees subject to collective agreements are generally protected from dismissal without just cause. Similarly, in the federal sector, and in Québec and Nova Scotia, employees cannot be dismissed without just cause where they have completed a number of years of service with the same employer.

Employers generally do not require the consent of third parties before dismissing an employee, unless otherwise provided for. Subject to the restrictions outlined, an employee can be dismissed without cause for any *bona fide* reason. Employees may also treat their employment as terminated by any act, on the part of an employer, which repudiates the essential obligations imposed by the contract of employment.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Employees cannot be terminated for reasons directly or indirectly based on a prohibited ground of discrimination, as defined in Canadian human rights legislation. Employers are also prohibited from using termination to take reprisal action against employees for exercising a legal right under employment standards legislation or any other employment-related legislation, such as labour or occupational health and safety legislation.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

An employer is entitled to dismiss an employee for any lawful reason, except in circumstances where the employer must prove just cause for dismissal. Lawful reasons for dismissal can be related to the individual employee, or may be for legitimate business reasons, such as downsizing as a result of the COVID-19 pandemic.

Employees who are dismissed on a without cause basis are entitled to reasonable notice or pay *in lieu* of notice if the employer provides the employee with working notice of termination. Furthermore, in some jurisdictions such as Ontario and the federal sector, some employees may be entitled to severance pay, depending on an employee's length of service.

Employees who are dismissed "with cause" are generally not entitled to notice or severance pay.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The procedures that an employer must follow in relation to individual terminations depends on the language of the contract of employment, employer policies and statutory framework that govern the employment relationship.

In sectors where an employer has the burden to establish just cause for dismissal, such as in unionised workplaces or in the federal sector, Québec or Nova Scotia, employers are expected to apply progressive discipline prior to dismissal. This provides employees with a reasonable opportunity to correct their performance. However, where there is gross misconduct (i.e. fraud, theft or repeated sexual harassment), employers may have immediate cause for dismissal.

Finally, when an employer wishes to terminate an employee's employment for cause, the employee must generally be given an opportunity to be advised and respond to the allegations against them prior to termination and be informed of the reasons for their dismissal upon termination.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Upon dismissal, non-unionised employees may bring a complaint if they believe that their rights and entitlements have been violated. If successful, employees may be entitled to damages for the compensation they would have earned over the applicable notice period, subject to the employee's duty to mitigate. Employees also may claim other types of damages, such as moral or punitive damages, where an employer has acted in bad faith.

Unionised employees and employees employed in the federal sector, Québec and Nova Scotia who have been dismissed may file a grievance or a complaint seeking reinstatement and lost wages, where dismissal was not for "just cause".

6.8 Can employers settle claims before or after they are initiated?

Employers may settle claims throughout the complaint process, both before and after a formal claim is filed or initiated. In some Canadian jurisdictions, such as Ontario, mediation is a mandatory dispute resolution process designed to help parties to avoid trial. Any settlement reached must comply with employment standards legislation.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

In cases of a group or mass termination, where an employer dismisses a number of employees at the same time, employers have obligations in addition to individual termination obligations. In most Canadian jurisdictions, a mass termination is triggered where 50 or more employees are terminated within a four-week period. However, there are exceptions to this rule.

Where a mass termination occurs, the amount of notice to which employees are entitled is based on the number of employees who have been terminated and not their length of employment.

Employers have an obligation to notify the appropriate government office of a mass termination, and must indicate the number of employees being terminated, the date of their termination, and confirm that all statutory requirements have been complied with.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees may file a complaint with the relevant Ministry of Labour or employment standards office if they believe that their employer did not comply with mass termination requirements. An order of compliance may be made against an employer where it is found to have been non-compliant with its statutory obligations in relation to mass terminations. Non-compliance may also result in fines or civil action by the dismissed employees.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Non-competition and non-solicitation clauses are the main types of restrictive covenants recognised in Canada.

7.2 When are restrictive covenants enforceable and for what period?

Non-competition clauses are deemed to be *prima facie* unenforceable in most jurisdictions in Canada given that they are generally viewed by courts as unduly interfering with an employee's right and ability to earn a living. Additionally, non-competition clauses will generally not be enforced where an employer's interests could be adequately protected by a non-solicitation clause.

Courts may enforce a non-competition clause where an employer demonstrates that such a clause is both reasonable and necessary to protect its business, taking into account factors such as the duration, geographic scope and the activities prohibited by the covenant, is expressed in clear and certain terms, and is reasonable in terms of the public interest. Non-competition clauses of a shorter duration under a year are more likely to be enforced.

Non-solicitation clauses are generally easier to enforce. However, non-solicitation clauses must be still clearly worded, narrowly drafted and reasonable to be enforceable for a period that should generally not exceed two years.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Where a restrictive covenant, in particular a non-solicitation clause, forms part of an offer of employment, the offer itself will generally constitute sufficient consideration. However, additional consideration must be given to an employee approached with a restrictive covenant during the term of employment. Such consideration may be monetary or non-monetary.

7.4 How are restrictive covenants enforced?

Employers generally enforce restrictive covenants by way of a lawsuit, either to restrain a former employee from breaching the restrictive covenant or for damages in the form of financial compensation, related to such a breach.

Employers may also seek an injunction from a court if the breach of the covenant causes the employer to suffer irreparable harm that may not be adequately addressed by way of an award of monetary damages. However, courts will generally not grant injunctive relief unless the employer can demonstrate that the restrictive covenant is reasonable, that the employee is violating the restrictive covenant, and injunctive relief must be granted to prevent further irreparable harm to the employer.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Certain provinces and territories are covered by legislation protecting privacy of personal information which is applicable to employment relationships. Private sector organisations that collect, use or disclose personal information solely within the provinces of Alberta, British Columbia and Québec are regulated by provincial privacy law, unless the information at issue crosses provincial boundaries. All other provinces and the three territories, and all federally regulated businesses, are governed by the *Personal Information Protection and Electronic Documents Act*.

Under privacy law generally, employers may only collect, use or disclose employee personal information for a purpose that a reasonable person would consider appropriate in the circumstances.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Employees have the right to access their personal information under Canadian privacy legislation in certain circumstances. A right to access may also exist pursuant to a collective agreement.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers are entitled to carry out pre-employment checks on prospective employees with consent, unless such checks violate Canadian privacy and/or human rights legislation. Generally, personal information about an employment candidate should relate to the purpose or nature of the job to be lawfully obtained and considered in the hiring process.

Most Canadian employers will limit their pre-employment checks to basic reference checks, until a conditional offer of employment has been made.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employers must use care in engaging in any monitoring of employee use of employee e-mail accounts, telephone calls and/or use of an employer's computer system as employees have a reasonable expectation of privacy, unless the employer takes clear steps to alert employees to the potential for monitoring. Monitoring is not typically permitted in unionised workplaces and/or where the employment relationship is subject to privacy legislation. Monitoring must be conducted through the least intrusive means possible and only for legitimate business purposes when no less intrusive means are available.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

Employers can control an employee's use of social media in the workplace through the establishment of workplace policies. Workplace policies on social media should also include restrictions on employees' use of social media outside of work, namely where such use may occur through employer-provided equipment or where this use may have a direct impact on the employer's business interests.

Employers are generally entitled to discipline an employee, including up to dismissal, for unlawful use of social media, if such use negatively impacts the employer.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

In most Canadian jurisdictions, employment-related complaints of various natures can be heard by civil courts. Administrative tribunals, such as labour relations boards, human rights tribunals and employment standards offices and boards, may also receive and adjudicate employment-related complaints.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Employment-related claims are typically commenced by the filing of a claim or complaint by the employee with the courts or an administrative board, tribunal, or commission. Once a claim is filed, the procedure that follows depends upon the forum and jurisdiction chosen by the employee. Generally, the parties will engage in some form of alternate dispute resolution, such as voluntary mediation, with the assistance of a commission appointed mediator or private mediator chosen by the parties. If unsuccessful, parties will then exchange pleadings and documentary productions. The final step is the hearing of the claim or complaint in front of the court, board or tribunal.

Employees must pay a court filing fee when initiating an employment-related complaint in the civil courts. However, employment-related complaints filed with a tribunal, commission or board are typically free of charge.

9.3 How long do employment-related complaints typically take to be decided?

Generally, complaints heard by an administrative board or tribunal may be adjudicated within 18 to 24 months, while court proceedings that result in a trial of an employment-related claim can take several years.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Most employment-related first instance decisions rendered by a board or tribunal may be appealed and/or challenged by way of judicial review or reconsideration. While reconsideration or internal appeals of administrative decisions typically occur

quickly, appeals and judicial review processes take significantly longer, even years in some cases. Employment-related claims decided by a court may generally be appealed to a higher level court, with or without leave of the court.

10 Response to COVID-19

10.1 Are there any temporary special measures in place to support employees and businesses during the COVID-19 emergency?

In response to the economic impacts of the COVID-19 pandemic, most jurisdictions in Canada have amended employment standards legislation and regulations to support both employers and non-unionised employees, such as extending the time periods for temporary layoffs and with respect to leaves of absence.

Additionally, the Government of Canada has also implemented a variety of relief programmes to provide relief to businesses, individuals and families impacted by the COVID-19 pandemic. For example, the Canada Emergency Wage Subsidy offers temporary wage subsidies of up to 75% to employers that have experienced a decline in revenue as a result of the pandemic.

10.2 What steps can employers take in response to reduced demand for services/ reduced workload as a result of the pandemic?

Most jurisdictions in Canada have temporarily amended temporary layoff rules for non-unionised employees. Generally, the time periods for temporary layoffs have been extended to enable employers more time to recall laid-off employees. Employers may also choose to terminate non-unionised employees to respond to a reduced demand for services, so long as employees have been terminated in compliance with applicable employment standards legislation. For unionised employees, employers considering layoffs or termination must consult applicable labour legislation and collective agreements.

10.3 What are employees' rights to sick pay?

In most jurisdictions, non-unionised employees do not have a right to paid sick days. However, unionised employees may have a right to paid sick days pursuant to a collective agreement.

The Government of Canada has implemented the Canada Recovery Sickness Benefit, which provides $500 per week, for up to a maximum of two weeks, for workers who are unable to work for at least 50% of the week because of personal health reasons related to COVID-19.

10.4 Do employees have a right to work from home if this is possible or can they be required to return physically to the workplace?

While Canadian employees do not have a right to work from home, employers have the duty to keep workers safe. Based on COVID-19 safety guidelines, this can impact an employer's ability to require an employee to physically return to the workplace.

Whether the employer should require their employees to work from home depends on: current government orders and health and safety legislation; employees' ability to work from home; and the employer's ability to provide the proper equipment. Employers need to continue to be flexible and reasonable in managing employees.

10.5 How has employment-related litigation been affected by the pandemic?

COVID-19 has created a myriad of employment-related disputes involving issues such as constructive dismissals, work from home arrangements, and occupational and public health and safety concerns. The duty to accommodate for employers has never loomed larger as a workforce challenge, as COVID-19 forces employers to be exceptionally flexible in finding solutions in these unique scenarios.

Mathias Link has advised and represented employers with respect to labour, employment and human rights law matters for more than 15 years. His practice includes defending employers in wrongful dismissal actions, human rights complaints, grievance arbitrations, certification applications, unfair labour practice complaints, claims under the federal and provincial employment standards legislation.
Mathias acts as lead spokesperson in collective bargaining on behalf of employers and assists employers with negotiation strategy and providing ongoing advice regarding collective agreement administration.
Mathias also provides clients with strategic advice with respect to the employee related aspects of corporate restructurings, drafts employee and independent contractor agreements and reviews and provides advice concerning workplace policies in areas such as the duty to accommodate, harassment and discrimination.
Mathias is a frequent speaker at Ontario Bar Association and Lancaster House seminars and contributes to publications such as *Lexpert*, *Canadian Corporate Counsel* magazine and *Canadian Labour and Employment Law for the U.S. Practitioner*.

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