

Index



Absenteeism, 200-201

Accidents/Injuries, Workplace —
 investigation of, 154
 reporting of, 153

Accommodation, 135-136

Adoption Leave, 123-124

Advertisements, 8-10, 132

Affirmative Action, 133, 144-145

After-Acquired Cause, 218

Agents, 42-43

Aggravated Damages, 253-254, 319

Alcohol and Drug Use, 13-14, 25-27, 205-206

Alcohol Liability, 103-105

Allurement/Enticement. *See* Inducement

Alternate Dispute Resolution, 307-308

Alternate Work Arrangements, 90-91

Anticipatory Breach of Contract, 36-38

Anton Piller Orders, 282

Applications. *See* Job, applications

Attendance, 91-92

Automobiles, 247-248

Bad Faith Discharge, 227, 253, 323

Ballpark Damages, 256-257

Bankruptcy and Receivership, 187-188

effect on employment relationship, 116, 187-188
employment standards implications, 188

Bargaining Power —

inequality of, 263, 286

Benefits —

damages, as a type of, 234, 242-244
discrimination, with respect to, 133
employment contracts, reference to, 66, 73-78

Bereavement Leave, 124-125

Bridging Formulas, 237

Bullying. *See* Personal/Psychological Harassment

Call-in Pay, 110

Career Limiting Moves. *See* Just Cause for Dismissal

Cause. *See* Just Cause for Dismissal

Condonation, 170, 221

Confidentiality/Non-Disclosure —

agreements, 274-275
contractual provisions, 68
duty of, 277

Conflict of Interest, 206-207

Consideration, 53, 61, 235-236, 264-265

Conspiracy, 316-317

Constructive Dismissal, 165

changes historically considered to be, 174
change in job responsibilities, 90, 176-177
change in remuneration, 86-87, 174-176
change in working conditions, 91, 179-181
geographical relocation, 178-179
condonation, 169-170
definition of, 168
economic justification of, 172-173
general, 165
harassment as, 95
job description, 6, 62

INDEX

Constructive Dismissal — *Continued*

- just cause, justification for, 169
- layoffs as, 190-19
- mitigation, 181-185
- notice of, 173-174
- promotion as, 90
- resignation, 171-172

Contra Proferentem, 54

Contract. *See* Employment Contract

Criminal Record/Offences, 14, 19-20

Crown Employees, 45-46

Damages, 234

- ballpark damages, 256-257
- contractual provisions, 275-276
- definite term employment contracts, 238-239
- general, 234
- indefinite term employment contracts, 235-238
- reinstatement, 256
- special types —
 - moral/aggravated/mental distress, 253-254, 319
 - loss of reputation or opportunity, 255-256
 - punitive, 254-255
- types, 239
 - automobile benefits, 247-248
 - compensation, 239-240
 - bonuses, 240-242
 - commission, 240
 - salary, 239
 - disability insurance, 243-245
 - insurance, 242-243
 - interest, 251-252
 - pensions —
 - Canada Pension Plan, 246
 - private pension plans, 246-247
 - registered retirement savings plans, 246
 - staff loans and employee discounts, 251
 - stock option plans, 249-251
 - vacation pay and sick leave, 248-249
 - Wallace, 219, 227, 253, 256

Defamation, 256, 318-321

Dependent Contractors, 41-42

Directors, 43

Disability, 13, 19, 203-204

arising out of workplace accident, 160-161

drug or alcohol dependency as, 205

insurance, 243-245

Discipline. *See* Progressive Discipline

Discrimination. *See* Human Rights; Tort Claims

Dishonesty, 196-197

Dismissal —

bankruptcy and receivership, 187-188

employment standards legislation, 59, 115-119

constructive, 165

downsizing, 228-230

employment standards requirements, 115-118, 265-266

frustration of contract, 231-234

general, 211

condonation, 221

resignation, 212-215

harassment or humiliation of employee, 95-100

human rights legislation, 95, 97, 129-130

just cause. *See* Just Cause for Dismissal

layoffs, 189-191

mass terminations, 118-119, 228-230

mitigation, 181-185, 257-262

near cause, 222

practical advice regarding, 323-328

exit interviews, 327

relocation counselling, 230, 326-327

reasonable notice, 222-228. *See also* Reasonable Notice

sale of business, 185-187

employment standards legislation, 59, 115-119

without cause, 222

working notice, 222-224

wrongful, 218-221, 224

INDEX

Disruption of Corporate Culture, 204-205

Downsizing, 228-230

Drug or Alcohol Addiction —

disability, as, 205

job application inquiry into, 13-14

Drug Testing, 26-27

Duty to Accommodate, 135-136

Early Retirement, 217

Employee —

attendance, 91-92

duties, 149, 268-270, 276-280

confidentiality, 277

fidelity, 276-277

fiduciary, 278-280

remedies for breach of, 280-283

Anton Piller orders, 282

injunctions, 281-282

Mareva injunctions, 282

full-time versus part-time, 7-8

types, 39

agents, 42-43

Crown employees, 45-46

dependent contractors, 41-42

directors, 43

independent contractors, 40-41

joint venturers, 44

ministers, 44

not-for-profit corporation employees, 45

partners, 43

shareholders, 43

Employee Records, 92-94

Employment —

agencies —

application of human rights legislation, 29, 130

when hiring, use of, 28-29

when seeking employees, use of, 28-29

alternate work arrangements, 90-91

contract. *See* Employment Contract

Employment — *Continued*

- headhunters, 28-29
- manuals. *See* Employment Manuals
- policy manuals, 87-89
- probation, 89-90
- promotions, 89-90
- special, 132-133
- terms, 6
 - remuneration, 6-7, 56
 - type of engagement, 7-8

Employment Contract, 50

- contractual terms, 56
 - benefits, 66
 - choice of law, 69-70
 - “entire agreement” clause, 66-67
 - independent legal advice, 68
 - inducement, 67
 - intellectual property ownership, 69
 - job description, 62
 - liquidated damages, 70-71, 275-276
 - management rights, 65
 - mandatory retirement, 215-217
 - non-competition/non-solicitation/non-disclosure, 68-69
 - probationary period, 63-64
 - relocation, 65-66
 - remuneration, 56
 - service to the best of one’s abilities, 65
 - severability clause, 70
 - term, 57-59
 - fixed, 57-59, 88, 238-239, 258-259
 - indefinite, 55, 57-59, 235-238
 - termination, 59-62
 - wage deductions, 71
 - waiver clause, 71
- drafting, 52-56
- enforceability of —
 - ambiguity and contra proferentem, 54
 - consideration, lack of, 53, 61, 235-236, 264-265
 - employment standards legislation, 56, 87, 105-106
 - general, 50
 - mistake and non est factum, 264
 - outdated contracts, 266-267

INDEX

Employment Contract — *Continued*

enforceability of — *Continued*

statute of frauds, 55

unconscionability, 262

undue influence/unequal bargaining power, 263-264, 286

executives. *See* Executive Employment Contracts

frustration of —

test for, 231

implied terms, 50

independent legal advice regarding, 68

requirements for, 203-204, 231-234

restrictive covenants, 33-35, 68-69, 268-275

updating, 87-89

written versus unwritten, 50-52

Employment Equity, 139-147

legislation, 139-140

Employment Insurance, 287-291

deduction from settlement or wrongful dismissal awards, 289

disqualification from, 289

entitlement to benefits, 287-288

record of employment, 288

Employment Manuals, 61-62, 71-72

termination provisions in, 61

updating, 87-89

Employment Relationship —

alternate work arrangements, 90-91

bringing to an end, 211

dismissal for just cause, 195-210, 217-221

dismissal without cause, 222

resignation, 212-215

considerations during, 83-84

defining, 39

employee attendance, 91-92

employment manuals. *See* Employment Manuals

performance evaluations and reviews, 84-85

probationary periods, 63-64, 89-90

promotions, 89-90

salary reviews, 86-87

tests for, 46-47

combining factors approach, 49-50

Employment Relationship — *Continued*

tests for — *Continued*

- control test, 47
- fourfold test, 48
- organization test, 48-49
- permanency test, 49

Employment Standards, 105

- application, 106
- bankruptcy and receivership, 116, 188
- contracts, minimum provision for, 56
- general, 105-107
- homeworkers, 129
- hours of work, 110-113
 - averaging of hours, 115
 - compressed work week, 111
 - exemptions from maximums, 111
 - maximums, 110-112
- leaves of absence, 123-125
 - bereavement leave, 124
 - emergency leave, 124
 - family care leave, 124-125
 - illness or injury leave, 124-125
 - jury duty, 125
 - paternity leave, 124
 - special occasion leave, 124-125
 - time off to vote, 125
- legislation, 105, 265
- minimum wage, 109-110
 - application, 106
 - call-in pay, 110
 - exemptions, 108-110
- overtime pay, 110-113
 - exemptions, 112-114
 - hours before required, 111
 - statutory minimums, 106
 - time off in lieu, 112
- parental/adoption leave, 123-124
 - length of leave, 121-122
 - minimum service requirement, 107
- pregnancy leave, 121-123
 - exemptions, 122
 - extension or reduction of, 122

INDEX

Employment Standards — Continued

pregnancy leave — *Continued*

length of, 121

minimum service requirement, 121

reinstatement, 122

seniority/benefits, 123

public holidays, 107-108

entitlement to, 107-108

exemptions, 108

minimum service requirement, 107

payment for, 107-108

required rest days, 113-114

exemptions, 113-114

minimum requirements, 113

Sunday observance legislation, 114

sale of business, 186

termination of employment, 115-118. *See also* Dismissal

individual, 115-118

bankruptcy, 116

exemptions, 117

interruption in service, 116

sale of a business, 116

statutory notice of, 115

temporary layoff, 117-118

mass, 118-119

statutory notice of, 118

payment of wages, 119

severance pay, 119-120

“stacking”, 120-121

vacations, 126-129

exemptions, 128-129

minimum length, 126

minimum service requirement, 126

timing of, 128

waiver of, 127-128

with pay, 126

wages —

payment of, upon termination, 115, 119

Enforceability of Contracts, 33-35, 262-267

Enticement. *See* Inducement

Equal Pay for Similar or Substantially Similar Work, 139-140
terms of employment, 7

Equal Pay for Work of Equal Value, 139-140
terms of employment, 7

Equity Legislation, 139
affirmative action, 144-145
employment equity, 145-147
equal pay for equal or similar work, 139-140
equal pay for work of equal value, 139-140
pay equity, 141-144

Executive Employment Contracts, 72
general, 72
immigration issues, 79-82
terms, 73-79
 arbitration clause, 79
 benefits, 73-74
 duties and performance, 73
 golden handcuffs, 78-79
 golden parachutes, 75-78
 perks, 74
 stock options, 75

Exit Interview, 327-328

Failure of Consideration —
reader potentially subjected to, *passim*

Fiduciary Duties, 278-280

Frustration of Contract, 231-234

Golden Parachutes/Handcuffs, 75-79

Harassment, 95-100, 134-135, 156, 207-209. *See also* Personal/Psychological Harassment
constructive dismissal as, 95
investigations, 99-100
occupational health and safety implications, 151
policies, 98-99
sexual, definition of, 97-98, 134-135
sexual relations between employees, restriction of, 97-98, 134-135, 207-209
tort claim as, 97

INDEX

Headhunters —

- when hiring, use of, 39
- when seeking employees, use of, 28-29

Hiring —

- anticipatory breach at time of, 36-38
- enforceability of restrictive covenants and employment contracts at time of, 33-35
- headhunters, use of, 39
- inducement at time of, 38
- inducing breach of contract at time of, 31-33
- negligent misrepresentation at time of, 35-36
- potential minefields in the process, 31

Holidays. *See* Public Holidays

Homeworkers, 129

Hours of Work. *See* Employment Standards, hours of work

Human Rights, 129

- administration, 137-138
 - investigations, 137-138
 - limitation periods, 137
 - settlement, 138
- discrimination, 130-132
 - advertisements, in, 8-10, 132
 - benefits, with respect to, 133
 - bona fide occupational requirement, 10, 132
 - direct, 130-131
 - exemptions, 134
 - indirect, 130-131
 - interviews, in, 18, 132
 - job applications, in, 132
 - justification, test for, 131-132
 - prohibited grounds, 342-343
 - special employment, 132-133
 - special programs, 133
 - systemic, 144
- duty to accommodate, 135-136
 - employee's role in, 136
 - undue hardship, 135-136
- general, 129-130
- government contacts for inquiries, 357-360
- harassment, 95, 97, 134-135

Human Rights — *Continued*

- job advertisements, requirements for, 8-10, 132
- job applications, designing, 10-16, 132
- legislation, 129-132
- remedies, 95, 138

Illness, 90, 91-92, 203-204

Immigration Issues, 79-82

Incompetence, 201-202

Independent Contractors, 7, 39-41

Independent Legal Advice, 68

Inducement —

- employment contract, provision for, 67
- hiring, at time of, 23-25, 38
- interviews, during, 23-25
- reasonable notice, impact on, 225

Inducing Breach of Contract —

- hiring process, in, 31-33
- test for, 32
- tort claim, 321-323

Injunctions, 281-282

Insurance, 242-245

Intentional Infliction of Nervous Shock, 313-315

Interviews. *See* Job, interviews

Intimidation, 315-316

Job —

- advertisements, 8, 132
 - human rights requirements and guidelines, 8-10, 18, 132
- applications, 8-17
 - considerations when designing, 10-15
 - age, 12
 - criminal record or convictions, 14
 - disability, 13
 - driver's licence, 14-15
 - drug or alcohol addiction, 13-14
 - family status, 13
 - gender, 11

INDEX

Job — *Continued*

applications — *Continued*

considerations when designing — *Continued*

- height and weight requirements, 14
- marital status, 12
- national or ethnic origin/ancestry or place of origin, 12
- nepotism or anti-nepotism, 15
- other, 15
- race, 11
- religion or creed, 11
- sexual orientation, 13

employee misrepresentation on, 16-17

human rights requirements, 18, 132

sample, 15-16

descriptions, 6, 62

interviews, 17-21, 132

inducement during, 23-25, 38

human rights requirements and guidelines, 18, 132

medical testing/drug and alcohol testing, as a requirement, 25-27, 206

negligent misrepresentation during, 21-23

references, checking, 27-28

sample questions, 20-21

subject-matter of questions, 18-20

age, 20

citizenship, 19

criminal record or convictions, 19-20

disability, 19

driver's licence, 20

marital/family status, 20

race/ancestry/ethnic origin/place of birth/sex, 19

religion or creed, 19

opening, 5

Joint Venturers, 44

Jury Duty, 125

Just Cause for Dismissal, 195-210, 217-221

after-acquired cause, 218

behaviour which may constitute, 195-210

alcohol and drug use, 205-206

conduct outside of normal working hours, 202-203

conflict of interest, 206-207

dishonesty, 196-197

Just Cause for Dismissal — *Continued*

behaviour which may constitute — *Continued*
disobedience, 200
disruption of corporate culture, 204-205
illness and disability, 203-204
incompetence, 201-202
insolence and insubordination, 198-199
lateness and absenteeism, 200-201
revelation of character, 197-198
sexual harassment, 207-209
condonation, 221
constructive dismissal, as result of, 169
definition of, 217-218
documentation in support of, 85-86
employment contract, definition in, 59
general, 217-221
near cause, 222
onus of proof, 218
requirement to provide employee with reason, 219

Layoff, 189-191

constructive dismissal, as, 190
employment standards implications, 117-118
unjust dismissal complaint, 191

Legal —

advice, 68
fees, 294-295

Litigation, 299-307

case management, 304
class proceedings, 305-306
contingency fees, 303-304
costs, 302-303
demand letters, 299-300
discovery, 301
offers to settle, 302
pleadings, 301
pretrial, 301
settlement, 285-287, 308-309
simplified procedure, 304-305
summary procedures, 303-304
timing, 301-302
trial, 301

INDEX

- Mandatory Retirement**, 215-217
 - human rights implications, 215-216
 - bona fide occupational requirement, 215-217
 - policies, 216-217
- Manuals.** *See* Employment Manuals
- Mareva Injunctions**, 282
- Mass Terminations**, 118-119, 228-230, 306
- Maternity Leave**, 121-123
- Medical Records**, 93
 - access to, 93-94
- Medical Testing/Drug and Alcohol Testing** —
 - interviews, during, 25-27
- Mental Distress Damages**, 227, 253-254
- Minimum Wage**, 109-110
- Ministers**, 44
- Misrepresentation.** *See* Negligent Misrepresentation
- Mitigation**, 181-185, 257-262
 - comparable employment, 258
 - constructive dismissal, 181-185
 - duty, 257-258
 - employment contract, consideration in, 236
 - expenses incurred during, 261-262
 - fixed term contracts, duty in case of, 258-259
 - reasonable steps to, 257
 - retraining in fulfilment of duty, 261
 - starting a business in fulfilment of duty, 260-261
- Moral Damages**, 253-254, 319
- Near Cause**, 222
- Negligent Misrepresentation** —
 - hiring, at time of, 21-23, 35-36
 - interviews, during, 21-23
 - test for, 22, 35
 - tort claim, 310-313

Nervous Shock, 313-315

Non-Competition Contractual Provisions/Agreements, 68-69, 268-275

Non-Solicitation Contractual Provisions/Agreements, 68-69, 268-275

Notice, Reasonable, 222-228. *See also* Reasonable Notice

Occupational Health and Safety, 147

due diligence, 155

duties, 148-149

of employees, 149

of employers, 144-145

of others, 145

employee rights, 149

enforcement of, 152

right to know, 150

right to participate, 151-152

right to refuse work, 150-151

general, 147-148

government contacts for inquiries, 361-365

harassment, 156

industrial diseases, 159

legislation, 147-148

offences, 154-155

regulations, 155-156

toxic substances, 153

workplace accidents or injuries —

investigations of, 154

reporting of, 153-154

Outplacement Counselling, 294-295

Overtime, 110-113

Parental Leave, 121-124

Partners, 43

Pay Equity, 141-144

job classes, 141-143

job value, comparisons, 142-143

job value, measurement of, 142

legislation, 139-140, 347-349

terms of employment, 7

wage adjustments, 143

INDEX

Pensions, 246-247, 284-285

Performance Problems —

- documentation, use of, 85-86
- performance reviews and evaluations, 84-85

Personal/Psychological Harassment, 95-103, 207-210

Pregnancy Leave, 121-123

Privacy, 93, 163-164

Probationary Periods —

- employment contract, provision for, 63-64
- progressive discipline, as, 90, 193

Progressive Discipline, 191-195

- policies, 191-192
- probationary periods, 90, 193
- suspensions, 193-195
- warnings, 192-193

Prohibited Grounds of Discrimination, 8-9, 95, 130, 133-134

Promotions, 89-90

Public Holidays, 107-108

Punitive Damages, 254-255, 318-321

Reasonable Notice, 222-228

- amount of, 223-225
- economic climate, impact of, 226
- factors impacting, 224
- inducement, impact of, 224-225
- interruption in service, impact of, 226
- upper limit, 227-228
- Wallace effect, 227-228
- wording of, 223
- working notice, 223-224

Records. *See* Employee Records

References —

- interviews, checking, 27-28
- letters —
 - contents, 297-299
 - obligation to provide, 295-297
 - qualified privilege, 297-299

Refuse to Work —
right to, 150-151

Registered Retirement Savings Plans, 246

Reinstatement, 162, 256
pregnancy/parental leave, following, 122-123
workplace accident/injury, following, 162

Releases, 285-287
employment contract, reference to, 61
soft releases, 287

Relocation Counselling, 230, 294-295

Remedies —
breach of employee duties, 280-283
human rights, 138

Resignation, 212-215
constructive dismissal, in response to, 171-172
reasonable notice of, 213
wrongful resignation, 213-214

Rest Days, 113-114

Restrictive Covenants, 268-276
contracting reasonableness, 271-272
contractual damages provisions, 275-276
determining reasonableness, 268-270
tests for —
duration of restriction, 270
geographic restriction, 270
protecting employer's legitimate proprietary interest, 269
public interest, 270
scope of restriction, 269-270
employment contract, provision for, 33-35, 68-69
enforceability of —
hiring, at time of, 34-35
general, 33-35, 280
remedies, 280-283
Anton Piller orders, 282
damages, 280-281
injunctions, 281-282
Mareva injunctions, 282

INDEX

Restrictive Covenants — *Continued*

types —

- confidentiality/non-disclosure agreements, 274-275
- non-competition agreements, 272-273
- non-solicitation agreements, 273-274

Retaliatory Discharge, 323

Retirement. *See* Early Retirement; Mandatory Retirement

Retiring Allowances, 291-293

Revelation of Character, 197-198

Right to Refuse Work, 150-151

Salary Review, 86-87

Sale of a Business, 185-187

- employment relationship, effect on, 185-187
- employment standards implications, 116

Settlement Negotiations, 280-81

Severance. *See also* Employment Standards, termination of employment

- package, preparation of, 283
 - amount, 283-284
 - lump sum, 284
 - salary continuance, 284, 295
 - employment insurance, 287-291
 - legal fees, 293-294
 - outplacement services, 294-295
 - pension and other benefits, 284-285
 - reference letters, 295-299
 - releases, 285-287
 - taxes, 291-294
- pay, 119-120

Sexual Harassment, 97-98, 134-135, 207-209

Shareholders, 43

Stacking, 120-121

Statute of Frauds, 55

Stock Options —

- damages, as, 249-251
- executive employment contracts, provision for, 75

Suspension —

progressive discipline, as, 193-195

Taxes, 291-294

retiring allowance —

definition of, 291

rollover, 292-293

withholdings, 292-294

Termination. *See* Dismissal; Employment Standards

Tort Claims, 309

conspiracy, 316-317

defamation, 318-321

discrimination, 317-318

general, 309-310

inducing breach of contract, 321-323

intentional infliction of nervous shock, 313-315

intimidation, 315-316

negligent misrepresentation, 310-313

retaliatory and bad faith discharge, 323

Toxic Substances, 153

Undue Hardship, 135-136

Undue Influence, 135

Vacations, 126-129, 248-249

Violence, 100-103, 156

Wage Earner Protection Program, 188

Wallace Damages, 219, 227, 253, 256

Warnings, 192-193

Workers' Compensation, 157

accident fund, 158-159

merit ratings, 158-159

accidents or injuries, compensable, 159

collective liability, 158

compensation —

additional, 161

for dependants, 161

medical expenses, 161

for accidents or injuries, 159

INDEX

Workers' Compensation — *Continued*

compensation — *Continued*

for accidents or injuries — *Continued*

arising outside of jurisdiction, 159

for disability, 160-161

permanent, 160

temporary partial, 160

temporary total, 160

general, 157-158

government contacts for inquiries, 361-365

legislation, 350-351

medical examinations, 162

notice of accident or injury, 163

rehabilitation, 162

reinstatement, 162

right to sue, 157

Working Notice, 222-224

Workplace Violence. *See* Violence

Wrongful Dismissal, 218-221, 224

Wrongful Hiring, 21-22

Wrongful Referencing, 27-28

Wrongful Resignation, 213-214

|

|

—

—

—

—

|

|