

Index

ABSENTEEISM

Generally, **4:23 to 4:25**
Termination, discipline or disadvantage based on, **13:50.50**

ACCOMMODATING PERSONS WITH DISABILITIES

Ontario Human Rights Commission policy, **13A:5, 13A:7, 13:57**
Procedural duties, **13:50.10**

ADDICTION

See DISMISSAL

ADMINISTRATION AND ENFORCEMENT

Generally, **26:1 to 26:19**
Collection, **26:17**
Employment standards claims, **26:2**
cases where complaint cannot be filed, **26:2**
complaint mechanism, **26:2**
sample form, **26:2**
General principles applicable to investigation and adjudication, **26:19**
principles of natural justice and, **26:19**
Introduction, **26:1**
investigation of complaints, **26:1**
targeted investigations, **26:1**
Investigation by an employment standards officer
generally, **26:5**
compensate, **26:7**
compliance order, **26:8**
general, **26:5**
information sheet, **26:4**
limitation period for issuing orders and notices, **26:10**
notice of contravention, **26:9**
order to pay wages, **26:6**
administrative fee and, **26:6**
powers of investigation, **26:5**
Judicial review, **26:16**
Limitation periods, **26:3**
ESA, **26:3**
recovery of wages and, **26:3**

ADMINISTRATION AND

ENFORCEMENT—Cont'd

Offences and prosecutions, **26:18**
Practice and procedure
generally, **26:14**
adjournments and, **26:14**
information bulletin no. 24, **26:14**
hearing, **26:14**
making an application, **26:14**
mediation, **26:14**
reference chart, **26:14**
referral by the Director, **26:15**
review of an Employment Standard Officer's Decision, **26:11**
practice and procedure, **26:11**
review of notice of contravention, **26:12**
practice and procedure, **26:12**
Reviews by the Ontario Labour Relations Board, **26:11**
application to void settlement, **26:13**
Settlements
generally, **26:4**
administrative costs, **26:4**
application to void settlement, **26:4**
compliance orders, **26:4**
notice of contravention, **26:4**
payment by officer, **26:4**
restrictions on settlements, **26:4**

AFFIRMATIVE ACTION PROGRAMS

General, **14:1 to 14:14**
Special programs, **14:15, 14:16**
Statutory provisions, **14:1 to 14:11**

AGE

See DISCRIMINATION

ALCOHOLISM

See DISMISSAL

APPEALS

Employment litigation, **33:7**

ASSAULT

See TORT LIABILITY

ASSOCIATION

Generally, **13:63.50**

BATTERY

See TORT LIABILITY

BENEFIT PLANS

Differential treatment under, **13:50.60**

BENEFITS

See DAMAGES

BONA FIDE OCCUPATIONAL REQUIREMENTS

See EXCEPTIONS ALLOWING DISCRIMINATION

CLASS PROCEEDINGS

Certification of class action, **1:20**
Resolution of common issues, **1:20**

COLLECTIVE AGREEMENTS

See also CONTRACTS OF EMPLOYMENT
Significance of, **3:16**

CONDONATION

See DISMISSAL
Generally, **4:2**

CONFLICT OF INTEREST

Generally, **4:46**

CONSPIRACY

See TORT LIABILITY

CONSTRUCTIVE DISCRIMINATION

General, **14:2**

CONSTRUCTIVE DISMISSAL

Change in geographic location, **5:4**
Change in job description, **5:2**
 administrative suspension, **5:2**
 required to work on Sunday, **5:2**
 shift change, **5:2**
Change in remuneration, **5:3**
Deemed leave, **5:5.50**
Employer conduct incompatible with continued employment, **5:5 to 5:12**
Forced leave, **5:12**
General principles, **5:1**
Indefinite layoff, **5:11**
Racial harassment, **1:4**
Suspend employee for misconduct falling short of just cause, right to, **5:1**
Temporary layoff, **5:5.50**

CONSTRUCTIVE DISMISSAL—Cont'd

Unilateral alteration of employment terms, **5:1**

CONTRACTS OF EMPLOYMENT

See also DAMAGES

Ambiguities resolved in favour of employee, **3:1**

Breach of, no right to reinstatement, **3:29**

Circumstances rendering contract unenforceable, **3:3**

 unilaterally imposed provision, **3:3**

 variation of agreement, **3:3**

Collective agreements, significance of, **3:16**

Consideration, valid

 generally, **3:1**

 continued employment, **3:1**

 early retirement agreement, **3:1**

 forbearance, **3:1**

 unilaterally imposed provision, **3:3**

 variation of agreement, **3:3**

Corporate changes, termination and

 generally, **3:21 to 3:23**

 amalgamation, **3:22**

 sale of business, **3:21**

 transfer within corporate group, **3:23**

Employees and independent contractor

 chance of profit and risk of loss

 generally, **3:12**

 control, **3:12**

 dependent contractors, **3:12 to 3:14**

 mitigation of damages, **6:75:50**

 ownership of tools, **3:12**

 relevance of the intention of the parties, **3:12**

 whose business is it?, **3:12**

Fixed or indefinite term, **3:11**

Frustration of, **4:47**

General principles, **3:1**

 fundamental adverse changes, **3:1**

 valid consideration, **3:1**

Wronko, **3:1**

 damages, **3:1**

 termination, **3:1**

Government employees defined by statute

 generally, **3:18**

 denial of hearing prior to termination, **6:163**

 employment at pleasure, **3:17**

 entitlement to reasonable notice, **3:17**

INDEX

CONTRACTS OF EMPLOYMENT

—Cont'd

Government employees defined by statute

—Cont'd

procedural fairness in relation to discharge, right to, **3:18**

refusal to engage in contractual dispute resolution process, **6:163.50**

Independent contractor status

notice of termination, **3:13**

reasonable notice, **3:13**

significance of, **3:13**

Inducing breach, **7:13 to 7:15**

Layoff, temporary, **3:19, 5:5.50**

Liability of related or common employers, **3:24**

Loss of retirement benefits to retirees, **6:72 to 6:95**

No right to re-instatement after breach of employment contract, **3:29**

Obligation to act in good faith, **3:1.10**

Ownership of inventions by employees, **3:20**

Practical advice, **29:1**

Privacy issues, **27:22 to 27:33**

Reasonable notice of termination or adverse changes to contract, **3:1**

Repudiation, **4:53.50**

Temporary layoffs, **3:19**

Termination, **3:28**

Unwritten, **3:10**

Written

conclusions, **3:10**

contractual rights exercised in good faith, **3:2**

period of notice, **3:2**

defences, **3:3**

documents outside contract

policy statements, **3:8**

significance of, **3:8**

enforceability, **3:2**

statutory invalidation, **3:4**

unenforceability, **3:3**

void for unconscionability, **3:9**

COST

Discrimination proceedings, **20:12**

Employment litigation, **33:8**

COVID-19

Infectious Disease Emergency Leave, **5:5.50**

CRIMINAL ACT

See also DISMISSAL

Generally, **4:44**

DAMAGES

Benefits, **6:165**

specific performance, **6:165**

Breach of confidence and trust, **6:156**

Breach of employer obligation to advise/assist employee in securing benefit entitlement, **6:157**

Human Rights Code, infringement of, **6:158**

Liability for, of contracting parties, **6:159**

Liability for, of executives, managers and directing minds, **6:159**

Loss of reputation, **6:160**

Mental distress—aggravated damages

generally, **6:96 to 6:123**

factors that may give rise to—unfair or bad faith conduct in manner of dismissal, **6:97 to 6:99**

introduction, **6:97**

post Keays cases awarding, **6:98**

post Keays cases declining to award, **6:99**

general principles, **6:96**

obtaining medical or professional assistance — is medical or other expert evidence required, **6:123**

quantum of damages table, **6:100 to 6:122**

Mitigation of damages

generally, **6:72 to 6:95**

application to different types of contracts, **6:73 to 6:75**

contracts containing provision for fixed period of notice or pay in lieu, **6:75**

fixed term contracts, **6:74**

indefinite term contracts, **6:73**

by accepting position with same employer, **6:76 to 6:78**

cases finding obligation to accept new position, **6:77**

cases not finding obligation to accept new position, **6:78**

by finding new employment, **6:79 to 6:82**

conclusion, **6:82**

general principles, **6:79**

DAMAGES—Cont'd

Mitigation of damages—Cont'd

by finding new employment, **6:79 to 6:82—Cont'd**

reasonable search for employment, what constitutes, **6:80**

relocation to obtain new employment, **6:81**

discount/deduction where judgment rendered during period of reasonable notice, **6:92**

due to receipt of collateral benefits generally, **6:87 to 6:92**

COVID-19-related benefits, **6:91.50**

deductibility of LTD payments, **6:90**

disability benefits, **6:90**

employment insurance benefits, **6:89**

general principles, **6:76, 6:87**

pension benefits, **6:88**

workers' compensation benefits, **6:91**

general principles, **6:72**

by accepting employment with same employer, **6:76**

no obligation to continue with employer, **6:78**

independent contractors, **6:75:50**

statutory termination and severance payments, **6:93 to 6:95**

deduction of statutory payments and mitigation earnings from damages calculation, **6:94**

statutory payments

not reduced by mitigation earnings, **6:93**

not reduced by workers' compensation benefits, **6:95**

through self-employment

generally, **6:83 to 6:86**

calculation of earnings in mitigation of damage or loss from attempting mitigation, **6:86**

cases finding self-employment a reasonable attempt to mitigate, **6:84**

cases finding self-employment not a reasonable attempt to mitigate, **6:85**

introduction, **6:83**

Punitive

generally, **6:124 to 6:154**

cases awarding, **6:125**

DAMAGES—Cont'd

Punitive—Cont'd

cases declining to award, **6:126**

general principles, **6:124**

quantum table, **6:127 to 6:154**

Quantifying damages

generally, **6:36 to 6:44**

general principles, **6:36**

determination of reasonable notice period and, **6:36**

Reasonable notice of termination, what constitutes, **6:1**

general principles, **6:1**

advancing years, **6:1**

Bardal principles, **6:1**

character of the employment, **6:1**

rule of thumb, **6:1**

length of service, **6:1**

reasonable advance notice, **6:1**

Retirement and other vested benefits, loss of, **6:155, 6:165**

Specific performance, **6:165**

Sample notice periods, **6:2 to 6:10**

employer bad faith, **6:7**

inducement, **6:2, 6:3**

Specific performance, **6:165**

Statutory termination and severance payments, **6:18**

Unfairness, **6:71.50**

Unjust enrichment, **6:71.50**

DEFAMATION

See TORT LIABILITY

DISABILITY

See also DISCRIMINATION

Absenteeism, **13A:8, 13:50.50, 13:58**

termination based on, **13:50.50**

Addiction, **13A:3, 13:54, 13:56**

Benefits plans, **13:50.60**

differential treatment under, **13:50.60**

Bona fide occupational qualification requirement exception, **14:4**

Breach of employer obligation to advise and assist employee in securing benefit entitlement, **6:124 to 6:154**

Definition, **13A:5, 13:55**

Developmental disability, **13:50.30**

Difficulties in dealing with disabled employee, **31:9**

Drug and alcohol testing, **13A:10, 13:60**

INDEX

DISABILITY—Cont'd

- Duty to accommodate, **13A:5, 13A:7, 13:49 to 13:63**
 - procedural duties, **13:50.10**
- Employer considerations, **31:9**
- General principles, **13:50**
- Height and weight, **13:50, 13:62**
- HIV/AIDS, **13.10(k), 13:61**
- Language processing dysfunction, **13:50.40**
- Learning disability, **13:50.40**
- Medical information, **13A:5, 13A:7, 13A:9, 13:59**
- Mental disorder, **13:50.30**
- Mental health, **13A:3, 13:56**
- Mental impairment, **13:50.30**
- Physical disabilities, **13:50.20**

DISCOVERY

- See LITIGATION

DISCRIMINATION

- See also EXCEPTIONS ALLOWING DISCRIMINATION;
DISCRIMINATION
- Advertising, **18:2**
- Age, **13:34 to 13:40**
- Association, **13:63.50**
- Definition, **12:1**
 - direct and constructive
 - historical perspective, **12:2**
 - unified approach to rights and remedies: 1999 B.C. Firefighter case, **12:5**
- Employment advertising, applications, and interviews
 - advertising, **18:2**
 - applications for employment, **18:3**
 - general principles, **18:3**
 - employment interview
 - generally, **18:1, 18:4**
 - general principles, **18:4**
 - medicals, **18:5**
 - post-hiring inquiries, **18:3**
- Intentional, **12:2**
- Prohibited grounds, **13:1 to 13:63.50**
- Remedies
 - cancellation of government contract, **20:13**
 - costs of proceedings, **20:12**
 - general, **20:1**

DISCRIMINATION—Cont'd

- Remedies—Cont'd
 - monetary, **20:2**
 - damages, **20:2**
 - reinstatement, **20:3**
 - non-monetary, **20:10**
 - orders to stop or prevent harassment, **20:11**
- Test for discrimination
 - historical perspective, **12:2**
 - prima facie case, **19:3**
 - unified approach to rights and remedies: 1999 B.C. Firefighters case, **12:5**
 - artificiality of distinction between direct and adverse effect discrimination, **12:5**
 - legitimising systemic discrimination, **12:5**
 - unified approach, elements of, **12:5**
- Vocational associations
 - general principles, **17:2**
 - statutory provisions, **17:1**

DISHONESTY

- See also DISMISSAL
- Generally, **4:34 to 4:40**

DISMISSAL

- See also CONSTRUCTIVE DISMISSAL;
DAMAGES
- Absenteeism, **13:50.50**
- Dismissal of probationary employees, **4:54 to 4:57**
 - cause for dismissal of probationary employees, **4:55**
 - extending the probationary period, **4:57**
 - meaning of probationary employee and probation period, **4:54**
 - placing regular employees on probation, **4:56**
- Just cause for dismissal
 - generally, **4:1 to 4:57**
 - absenteeism, **13:50.50**
 - failure to conduct a proper investigation or afford a fair hearing, **4:6**
 - natural justice and, **4:6**
 - failure to warn, **4:5**
 - general principle, **4:1**
 - just cause, **4:1**

DISMISSAL—Cont'd

Just cause for dismissal—Cont'd
 preliminary considerations, **4:2 to 4:8**
 condonation, **4:2**
 condonation at time of termination, **4:4**
 condonation during the course of employment, **4:3**
 general principle, **4:2**
 Obligation of the Employer to Disclose Relevant Documents Which May Include Whistleblower Complaints, **4:8.50**
 Other conduct incompatible with continued employment, **4:46**
 Seeking new employment not itself just cause, **4:53**
 Sexual harassment, **4:41 to 4:43**
 see also SEXUAL HARRASSMENT AND SOLICITATION
 pornography at work, **4:41 to 4:43**
 What constitutes just cause for dismissal
 generally, **4:9 to 4:53**
 absenteeism and lateness, **4:23 to 4:25, 13:50.50**
 breach of employer policies or rules related to Health and Safety, **4:51**
 breach of fiduciary duty, **4:50**
 commencement of action against employer, **4:49**
 conflict of interest, **4:48**
 discriminatory conduct, **4:45**
 dishonesty
 generally, **4:34 to 4:40**
 dishonesty during the period of employment but other than in the course of employment, **4:36**
 fiduciary duty, **4:36**
 dishonesty in the course of employment, **4:37, 4:38**
 dishonesty prior to employment, **4:35**
 general principle, **4:34**
 fact of criminal or regulatory charges not itself just cause, **4:52**
 frustration of the employment contract, **4:47**
 illness—long and shot term disability, **4:26 to 4:28**
 Marshall test, **4:28**

DISMISSAL—Cont'd

What constitutes just cause for dismissal—Cont'd
 incompetence
 generally, **4:9 to 4:13**
 difficulty defining competence, **4:10**
 incompetence constituting just cause for dismissal, **4:11**
 incompetence not constituting just cause for dismissal, **4:12**
 insolence
 generally, **4:20 to 4:22**
 definition, **4:20 to 4:22**
 distinguished from
 insubordination, **4:20 to 4:22**
 seriousness—the stand-alone test, **4:20 to 4:22**
 Supreme Court jurisprudence, **4:20 to 4:22**
 insubordination
 generally, **4:14 to 4:19**
 disregard of proper procedures, **4:17, 4:18**
 willful disobedience, **4:15, 4:16**
 intoxication and addiction
 generally, **4:29 to 4:33**
 addiction, **4:31**
 alcoholism, **4:29**
 intoxication, **4:30**
 The Prevention and Treatment of Substance Abuse: A Contemporary Perspective, **4:32**

DRIVER'S LICENCE AS CONDITION OF EMPLOYMENT

See DISCRIMINATION

DRUGS AND ALCOHOL

See DISMISSAL; ONTARIO HUMAN RIGHTS COMMISSION

DUTY TO ACCOMMODATE

See DISABILITY

EMPLOYEE OBLIGATIONS

Clean hands doctrine, **9:13**
 Resignation notice, **9:1**
 effectiveness of, **3:26**
 Rights and obligations
 liability for negligence, **9:10**
 liability for stock option repayment, **9:11**

EMPLOYEE OBLIGATIONS—Cont'd

- Rights and obligations—Cont'd
 - non-competition
 - confidentiality agreement, **9:4**
 - damages, **9:7**
 - fiduciary employees, **9:2, 9:4**
 - measure of damages, **9:4, 9:5**
 - non-fiduciary employees, **9:2, 9:3**
 - restrictive covenant, **9:5**
 - Stock options, **9:11**
 - reasonable notice, **9:1**

EMPLOYEE OBLIGATIONS AND LIABILITY TO EMPLOYER

- Clean hands doctrine as bar to equitable relief, **9:13**
- Damages for loss of opportunity, **9:16**
- Duty of Fidelity and Loyalty, **3:1**
- Employee liability to employer for damages caused by negligence or breach of contract, **9:10**
- Employer action against former employees for breaching obligation to keep data confidential, **9:19**
- Equitable accounting for profit, **9:15**
- Independent forensic inspector, **9:14**
- Liability of departing and competing employee to repay employer pursuant to stock option plan, **9:11**
- Non-competition
 - generally, **9:2 to 9:9**
 - distinguishing fiduciary employees from non-fiduciary employees, **9:2**
 - employees subject to restrictive covenant, **9:5**
 - fiduciary employees, **9:4**
 - interim injunction for breach of fiduciary duty, **9:4**
 - liability of new employer for breach of fiduciary duties, **9:8**
 - non-fiduciary employees, **9:3**
 - quantification of damages for breach of fiduciary duty and non-competition covenant, **9:7**
- Notice of resignation, **9:1**
 - reasonable advance notice, **9:1**
 - waiver by employer, **9:1**
- Obligation of fiduciary to disclose own fraudulent activity, **9:18**
- Other examples, **9:12**
- Whether contractual provisions for forfeiture of employee post-termination

EMPLOYEE OBLIGATIONS AND LIABILITY TO EMPLOYER—Cont'd

- entitlements are enforceable, **9:17**

EMPLOYER LIABILITY

- Corporate officers, directors and agents, **22:19**
- Deemed liability, **11:3**
- Employee torts, **7:21**
- Evidence, preservation of, **9:13**
- Harassment, **15:3**
- Related employers, **3:21 to 3:23**
- Sexual harassment, **16:10**
- Tax, failure to withhold, **8:12**

EMPLOYMENT CONTRACTS

- See **CONTRACTS OF EMPLOYMENT**

EMPLOYMENT INSURANCE

- See **TERMINATION PAY**

EMPLOYMENT STANDARDS ACT

- Generally, **1:8**
- Amount in excess of order, **1:8**
- Common law and, **1:9**
- Nature of motion, **1:8**
 - facts, **1:8**
- Same, wrongful dismissal, **1:8**
- Scheme of Employment Standards Act, 2000, **1:8**
- Where civil proceeding not permitted, **1:8**
- Withdrawal of complaint, **1:8**

EMPLOYMENT STANDARDS ACT, 2000

- Administration and enforcement
 - claim, **26:2**
 - collection, **26:17**
 - investigation and adjudication, **26:1, 26:19**
 - investigation by employment standards officer, **26:5**
 - limitation periods, **26:3, 26:10**
 - offences, **26:18**
- Ontario Labour Relations Board
 - review, **26:11**
 - settlement, **26:4**
- Application of the Act, **22:1**
 - exemptions, **22:1**
 - policy objectives, **22:1**
- Continuity of employment on the sale of a business, **22:17**

**EMPLOYMENT STANDARDS ACT,
2000—Cont'd**

Definitions

generally, **22:2**
 employee, **22:3**
 employer, **22:4**
 employment contract, **22:5**
 employment standard, **22:6**
 establishment, **22:7**
 payroll, **22:8**
 severance pay, **22:9**
 statutory notice period, **22:10**
 termination pay, **22:11**
 wages, **22:12**

Greater contractual benefit prevails, **22:14**

Liability of corporate officers, directors,
and agents, **22:19**

No contracting out, **22:13**

Related businesses may be treated as on
employer, **22:18**

Remedies, 22:15

civil remedies preserved, **5:5.50, 22:15**
 unionized employees, **22:16**

Wages, vacation pay and,
no deduction from, **22:20**

**EMPLOYMENT STANDARDS
OFFICER**

Investigation, **26:1**

Jurisdiction, **23:25, 23:26**

**EXCEPTIONS AGAINST THE
PROHIBITION AGAINST
DISCRIMINATION**

Affirmative action programs

generally, **14:12 to 14:14**
 general principles, **14:13**
 guidelines on special programs, **14:14**
 statutory provisions, **14:12**

Employment attending to medical or
personal needs of employer or rela-
tives, **14:15, 14:16**

general principles, **14:16**
 statutory provisions, **14:15**

Nepotism and anti-nepotism practices,
14:17, 14:18

general principles, **14:18**
 statutory provisions, **14:17**

Reasonable and bona fide occupational
qualifications, requirements or fac-
tors, **14:1 to 14:11**

duty of accommodation short of undue
hardship, **14:7**
 economic considerations and the

**EXCEPTIONS AGAINST THE
PROHIBITION AGAINST
DISCRIMINATION—Cont'd**

Reasonable and bona fide occupational
qualifications, requirements or fac-
tors, **14:1 to 14:11—Cont'd**

duty of accommodation short of undue
hardship, **14:7—Cont'd**

undue hardship standard, **14:8**

general principles, **14:7**

standard for proof of undue hard-
ship, **14:7**

time of accommodation, **14:7**

other considerations and the undue
hardship standard, **14:10**

safety considerations and the undue
hardship standard, **14:9**

general principles, **14:5**

bona fide occupational requirements,
14:6

introduction and statutory provisions,
14:1

exception in the case of constructive
discrimination, **14:2**

exception in the case of disability,
14:4

exception in the case of special
employment, **14:3**

onus and burden of proof, **14:11**

procedural duties, **13:50.10**

type of evidence required to substanti-
ate bona fide occupational
qualifications, requirements, or
factors, **14:6**

Religious, philanthropic, educational,
fraternal, and social institutions or
organizations, **14:19, 14:20**

general principles, **14:20**

special employment exception, **14:3**

statutory provisions, **14:1, 14:19**

substandard performance, **14:8**

**EXCEPTIONS ALLOWING
DISCRIMINATION**

Age

exceptions, **13:36**

general, **13:35**

mandatory maximum hiring age, **13:38**

mandatory retirement, **13:37**

bona fide occupational requirement
exception, **13:37**

whether violation of Charter, **13:37**

EXCEPTIONS ALLOWING

DISCRIMINATION—Cont'd

- Age—Cont'd
 - other types, **13:39**
 - statutory definition, **13:35**
- Citizenship
 - exceptions, **13:8**
 - general principles, **13:9**
- Creed
 - accommodation, **13:12**
 - exceptions, **13:11**
 - general principles, **13:12**
 - work scheduling, **13:12**
- Disability
 - absenteeism, **13:50.50**
 - differential treatment based on, **13:51**
 - examples, **13:63**
 - general principles, **13:50**
 - alcoholism and drug addiction, **13:50, 13:54**
 - allergies and asthma, **13:50**
 - mental or physical disability, **13:50**
 - precluding performance of essential duties, **13:50**
 - procedural duties, **13:50.10**
 - temporary disability, **13:50**
- Ontario Human Rights Commission
 - policies
 - ableism and discrimination based on disability, **13A:5, 13:55, 13:57, 13:59**
 - absenteeism and illness, **13A:8, 13:50.50, 13:58**
 - drug and alcohol testing, **13A:10, 13:60**
 - employment-related medical information, **13A:9, 13:59**
 - height and weight requirements, **13:50, 13:62**
 - HIV/AIDS-related discrimination, **13A:11, 13:61**
 - medical documentation for accommodation, **13A:7, 13:57, 13:59**
 - statutory definition, **13:49**
- Marital and family status
 - exceptions, **13:45**
 - family status, **13:48**
 - bereavement leave, **13:48**
 - meaning of “family status,” **13:48**
 - membership of group, **13:48**
 - serving interests of children, **13:48**

EXCEPTIONS ALLOWING

DISCRIMINATION—Cont'd

- Marital and family status—Cont'd
 - marital status
 - conjugal relationships, **13:47**
 - general principles, **13:46**
 - potential conflict of interest, **13:46**
 - spousal identity, **13:46**
 - statutory definitions, **13:44**
- Race, ancestry, place of origin, colour,
 - ethnic origin exceptions, **13:2**
 - general principles, **13:3**
 - corrective measures, **13:3**
 - expert evidence, **13:3**
 - systemic barriers, **13:3**
 - types of evidence heard, **13:3**
 - under-representation of visible minorities, **13:3**
- introduction, **13:1**
- Ontario Human Rights Commission
 - policy on discrimination and language, **13:6**
 - policy on racial slurs and harassment, and racial jokes, **13:4, 13:5**
- Record of offences
 - exceptions, **13:42**
 - general principles, **13:43**
 - statutory definition, **13:41**
- Sex
 - classification of “male” and “female”
 - employment-related
 - characteristics, **13:18**
 - positions, **13:16**
 - work environments, **13:17**
 - differentiation of dress and grooming rules, **13:20**
 - exceptions, **13:15**
 - miscellaneous/other issues, **13:19**
 - pregnancy or potential pregnancy,
 - related to, **13:21**
 - health-related absence, **13:21**
 - interaction of sick leave benefits and maternity leave, **13:21**
 - inter-relationship of sick leave and pregnancy leave, **13:21**
 - maternity leave: mandatory or optional, **13:21**
 - privacy and personal care considerations, **13:25**

**EXCEPTIONS ALLOWING
DISCRIMINATION—Cont'd**

Sex—Cont'd
 pregnancy or potential pregnancy,
 related to, **13:21**—Cont'd
 sex-related physical characteristics,
 13:23
 statutory definition, **13:14**
 Sexual orientation
 exceptions, **13:27**
 general principles, **13:28**

FRINGE BENEFITS

See TERMINATION PAY; DAMAGES

GOVERNMENT EMPLOYEES

See CONTRACTS OF EMPLOYMENT
 Generally, **3:17, 3:18**

HANDICAPS

See also DISABILITY

HARASSMENT

See also SEXUAL HARASSMENT AND
 SOLICITATION
 Employer liability, **15:3**
 Prohibitions in workplace
 general principles, **15:2**
 statutory definition, **15:1**

HIRING

See PRE-HIRING

HIV/AIDS

See ONTARIO HUMAN RIGHTS COM-
 MISSION
 Generally, **13A:11, 13:61**

HUMAN RIGHTS

See also HUMAN RIGHTS TRIBUNAL
 OF ONTARIO; ONTARIO HUMAN
 RIGHTS CODE; ONTARIO
 HUMAN RIGHTS COMMISSION
 Legislation
 interpretation, **11:1**
 Quasi-constitutional status of human
 rights legislation, **1:3, 1:6**
 Release may not bar human rights com-
 plaint, **1:5**

**HUMAN RIGHTS LEGISLATION,
 NATURE AND SIGNIFICANCE OF**

Generally, **11:1 to 11:9**
 Employee, extended definition of, **3:15**

**HUMAN RIGHTS LEGISLATION,
 NATURE AND SIGNIFICANCE OF
 —Cont'd**

Human Rights Code, introduction to, **11:2**
 special status of, **11:2**
 Interpretation, **11:1**
 application of law under the Human
 Rights Code, **11:1**
 liberal interpretation, **11:1**
 preferred status, **11:1**
 Responsibility for violations of the Code,
 11:3
 death of complainant does not bar com-
 plaint, **11:9**
 employer deemed liability, **11:3**
 no reprisals for exercising rights under
 the Code, **11:8**
 right of complainant to proceed upon
 appointment of Tribunal an in
 absence of Commission, **11:7**
 significance of Human Rights Commis-
 sion Policies and Guidelines, **11:6**
 Griggs test, application of, **11:6**
 law on guidelines, **11:6**
 vicarious liability for harassment or
 offences, **11:4**

**HUMAN RIGHTS TRIBUNAL OF
 ONTARIO**

Adjournments, **19:10**
 Applicant's guide, **34:1 to 34:58**
 Application by Commission, **34:1 to
 34:58**
 Applications, not dealt with, **19:12**
 Constitutional jurisdiction, **19:6**
 Costs, **19:21**
 Delay in proceedings, **19:20**
 Documents, production of, **19:4**
 Former system, **19:22**
 Hearing, mode of, **34:1 to 34:58**
 Judicial review, **19:23**
 Limitation period, discretion to extend,
 19:22
 Motions, non-suit, **19:11**
 Parties, **19:8**
 Pleadings, amendments, **19:7**
 Policies, **34:1 to 34:58**
 Practice directions, **34:1 to 34:58**
 Preliminary motions, **19:5**
 Publication bans, **19:9**
 Reconsideration, **19:23**

INDEX

HUMAN RIGHTS TRIBUNAL OF ONTARIO—Cont'd

- Respondent's guide, **34:1 to 34:58**
- Rules of Procedure, **34:1 to 34:58**
- Transitional provisions, **34:1 to 34:58**
 - complaints, Commission-referred, **34:1 to 34:58**
 - complaints under ss. 53(3) and 53(5), **34:1 to 34:58**
- Tribunal forms, **34:1 to 34:58**
- Withdrawal of application, **19:18**

ILLNESS

- See also DISMISSAL
- Generally, **4:26 to 4:28**

INCOME TAX

- Termination payments and, **8:1 to 8:15**

INCOMPETENCE

- See DISMISSAL
- Generally, **4:9 to 4:13**

INDEPENDENT CONTRACTOR

- Dependent contractor, distinguished from, **3:14**
- Exclusive distribution agreement, **13:27**
- Mitigation of damages, **6:75:50**
- Notice of termination, entitlement to, **13:27**
- Reasonable notice, **13:27**
- Sales agency agreement, **13:27**

INSUBORDINATION

- See DISMISSAL

INTERVIEWS

- See PRE-HIRING

INTIMIDATION

- See TORT LIABILITY

INTOXICATION AND ADDICTION

- See DISMISSAL

INVENTIONS

- Ownership of inventions by employees and independent contractors, **3:20**

ISSUE ESTOPPEL

- Collective agreement and mandatory arbitration, **1:15**
- Concurrent jurisdiction, **1:15**
- Discretion to decline to apply issue estoppel, **1:11**
- Employment insurance decisions, **1:14**

ISSUE ESTOPPEL—Cont'd

- Employment standards decisions, **1:9**
- General principles, **1:10**
- Human rights decisions, **1:12, 1:15**
- Labour board decisions, **1:18**
- Requirements for, **1:10**
- Workplace safety decisions, **1:19**

JURISDICTION

- Collective Agreement and Mandatory Arbitration Ousts Court Jurisdiction
 - Generally, **1:15**
 - Weber analysis and, **1:16**
 - Whether Decisions Result in Issue Estoppel, **1:10 to 1:19**
- Concurrent jurisdiction, **1:15**

JUST CAUSE FOR DISMISSAL

- See DISMISSAL

LATENESS

- See also DISMISSAL
- Generally, **4:23 to 4:25**

LEAVES OF ABSENCE

- Child Death Leave, **23:11**
- Complaints enforcement, **23:25, 23:26**
- Crime-Related Child Disappearance Leave, **23:12**
- Critical Illness Leave, **23:10**
- Domestic or Sexual Violence Leave, **23:13**
- Emergency Leave for Declared Emergencies, **23:15**
- Employment standards officer's jurisdiction to enforce compliance, **23:25, 23:26**
- Family Caregiver Leave, **23:9**
- Family Medical Leave, **23:7**
- Infectious Disease Emergency Leave, **5:5.50**
- Jurisdiction of employment standards officer to enforce compliance, **23:25**
- Organ Donor Leave, **23:8**
- Parental leave
 - applying for, **23:5**
 - generally, **23:4**
 - qualifying for, **23:5**
 - termination, **23:6**
- Personal Emergency Leave, **23:14**
- Pregnancy leave
 - applying for, **23:2**
 - generally, **23:1**

LEAVES OF ABSENCE—Cont'd

- Pregnancy leave—Cont'd
 - qualifying for, **23:2**
 - termination, **23:3**
- Reservist Leave, **23:16**
- Rights during leaves of absence, **23:18**
 - continued participation in benefit plans, **23:19**
 - deferred vacation or vacation pay, **23:20**
 - introduction, **23:18**
 - length of employment, **23:22**
 - reinstatement after leave of absence, **23:23**
 - reprisal, **23:24**
 - rights and enforcement Pre-Employment Standards Act, 2000, **23:26**
 - taking leave in weeks, **23:21**
- SARS-Related Leave, **23:17**

LIMITATION ACT

- Generally, **1:21**

LITIGATION

- Appeals, **33:7**
- Costs, **33:8**
- Examinations for discovery, **33:4**
- General, **33:1**
- Pleadings, **33:2**
- Pre-trial conferences, **33:5**
- Production of documents, **33:3**
- Trial, **33:6**

MANDATORY RETIREMENT

- See also DISCRIMINATION
- Termination and, **32:19**

MEDICAL INFORMATION

- Generally, **13A:5, 13A:7, 13A:9, 13:59**

MENTAL DISTRESS—AGGRAVATED DAMAGES

- Factors that may give rise to—unfair or bad faith conduct in manner of dismissal, **6:97 to 6:99**
 - introduction, **6:97**
 - post Keays cases awarding, **6:98**
 - post Keays cases declining to award, **6:99**
- General principles, **6:96**
- Quantum of damages table, **6:100 to 6:123**

MITIGATION

- Generally, **6:72 to 6:95**
- Application to different types of contracts, **6:73 to 6:75**
 - contracts containing provision for fixed period of notice or pay in lieu, **6:75**
 - fixed term contracts, **6:74**
 - indefinite term contracts, **6:73**
 - independent contractors, **6:75:50**
- By accepting position with same employer, **6:76 to 6:78**
 - cases finding obligation to accept new position, **6:77**
 - cases not finding obligation to accept new position, **6:78**
- By finding new employment, **6:79 to 6:82**
 - generally, **6:79**
 - conclusion, **6:82**
 - reasonable search for employment, what constitutes, **6:80**
 - relocation to obtain new employment, **6:81**
- Discount/deduction where judgment rendered during period of reasonable notice, **6:92**
- Due to receipt of collateral benefits
 - generally, **6:87 to 6:92**
 - pension benefits, **6:88**
 - workers' compensation benefits, **6:91**
- COVID-19-related benefits, **6:91.50**
- disability benefits, **6:90**
- employment insurance benefits, **6:89**
- Failure to conduct reasonable job search, **6:80**
 - generally by accepting employment with same employer, **6:76**
- Statutory termination and severance payments
 - generally, **6:93 to 6:95**
 - deduction of statutory payments and mitigation earnings from damages calculation, **6:94**
 - statutory payments
 - not reduced by mitigation earnings, **6:93**
 - not reduced by workers' compensation benefits, **6:95**
- Through self-employment, **6:83 to 6:86**
 - calculation of earnings in mitigation of damage or loss from attempting mitigation, **6:86**

INDEX

MITIGATION—Cont'd

- Through self-employment, **6:83 to 6:86**
 - Cont'd
 - cases finding self-employment a reasonable attempt to mitigate, **6:84**
 - cases finding self-employment not a reasonable attempt to mitigate, **6:85**
 - introduction, **6:83**

NEGLIGENT MISREPRESENTATION

- See TORT LIABILITY

NEPOTISM

- Nepotism and anti-nepotism practices, **14:17, 14:18**

NON-COMPETITION

- Generally, **9:2 to 9:9**

NOTICE

- See DAMAGES; TERMINATION OF EMPLOYMENT

NOTICE PERIODS

- Employee required to work out notice period, **9:1**
- Table of sample notice periods, **6:2 to 6:10**
 - employer bad faith a factor, **6:7**
 - inducement a factor, **6:3**
 - inducement not a factor, **6:2**

OCCUPATIONAL QUALIFICATIONS

- See EXCEPTIONS ALLOWING DISCRIMINATION

ONTARIO HUMAN RIGHTS CODE

- Civil cause of action, not creating, **1:4**
- Complaint, **11:9**
- Complaint resolution procedures, **31A**
- Dealing with alleged infringement of, **31:10**
- General, **10:1, 11:2**
- Interpretation of legislation, **11:1**
- Release may not bar complaint, **1:5**
- Remedies, **20:1 to 20:15**
- Reprisals for exercising rights prohibited, **11:8**
- Responsibility for violations
 - employer deemed liability, **11:3**
 - vicarious liability for harassment offences, **11:4**

ONTARIO HUMAN RIGHTS CODE

—Cont'd

- Right of complainant to proceed upon appointment of board and in absence of commission, **11:7**
- Sexual harassment, **4:41 to 4:43**

ONTARIO HUMAN RIGHTS COMMISSION

- Complaints, see HUMAN RIGHTS TRIBUNAL OF ONTARIO
- General, **10:1**
- Guidance for affirmative action special programs, **14:14**
- Guidelines for internal human rights complaint resolution procedures, **31A**
- Policy on Ableism and Discrimination Based on Disability, **13A:5, 13:55, 13:57, 13:59**
- Policy on absenteeism and illness, **13A:8, 13:50.50, 13:58**
- Policy on drug and alcohol testing, **13A:10, 13:60**
- Policy on employment-related medical information, **13A:9, 13:59**
- Policy on height and weight requirements, **13:50, 13:62**
- Policy on HIV/AIDS-related discrimination, **13A:11, 13:61**
- Policy on medical documentation for accommodation, **13A:7, 13:57, 13:59**
- Policy on racial slurs and harassment, and racial jokes, **13:4**
- Significance of policy and guidelines, **11:6**

PARENTAL LEAVE

- See LEAVES OF ABSENCE

PENALTIES

- See EMPLOYMENT STANDARDS ACT

PENSION BENEFITS

- See also DAMAGES

PERFORMANCE APPRAISALS

- General, **31:2**

PERMANENT DISABILITY

- See DISMISSAL

PERSONAL INFORMATION

PROTECTION AND

ELECTRONICS DOCUMENT ACT

- Commercial activity, definition, **27:7**

**PERSONAL INFORMATION
PROTECTION AND
ELECTRONICS DOCUMENT ACT
—Cont'd**

Organization, definition, **27:6**
 Personal information, definition, **27:4**
 Principles of protection of personal information
 CSA Code, **27:8**
 overview, **27:2**
 Privacy generally, **27:1**
 Record, definition, **27:5**

PERSONNEL RECORDS

General, **31:1**

PLEADINGS

See LITIGATION

PREGANCY

See DISCRIMINATION; LEAVES OF ABSENCE
 Prohibited grounds of discrimination, **13:21**

PREGNANCY LEAVE

See LEAVES OF ABSENCE

PRE-HIRING

Application for employment, **30:1**
 Employment interviews, **30:2**
 Hiring decisions, **30:3**

**PRIVACY AND PROTECTION OF
PERSONAL INFORMATION**

Generally, **27:1 to 27:35**
 Contract principles, liability, **27:22 to 27:33**
 collection, use and release of employee information, **27:23**
 employee monitoring and surveillance, **27:33**
 introduction, **27:22**
 Fiduciary duties, **27:34, 27:35**
 general principles, **27:35**
 introduction, **27:34**
 Introduction, **27:1**
 CSA Code, **27:1, 27:8**
 Personal Health Information Protection Act, 2004, **27:9 to 27:17**
 application of PHIPA, **27:10**
 application to employers and employees, **27:17**

**PRIVACY AND PROTECTION OF
PERSONAL INFORMATION
—Cont'd**

Personal Health Information Protection Act, 2004, **27:9 to 27:17**—Cont'd
 definitions/key concepts, **27:11**
 agents, **27:12**
 health information custodians, **27:11**
 personal health information, **27:13**
 recipients of health care information, **27:14**
 enforcement, **27:16**
 introduction, **27:9**
 rights and responsibilities
 generally, **27:15**
 PIPEDA and the ten principles of protection of personal information
 generally, **27:2 to 27:8**
 introduction, **27:2**
 overview of PIPEDA—definitions
 generally, **27:2 to 27:8**
 commercial activity, **27:7**
 CSA and, **27:2 to 27:8**
 organization, **27:6**
 personal information, **27:4**
 records, **27:5**
 principles—The CSA Code
 generally, **27:8**
 accountability, **27:8**
 accuracy, **27:8**
 challenging compliance, **27:8**
 consent, **27:8**
 identifying purposes, **27:8**
 individual access, **27:8**
 limiting collection, **27:8**
 openness, **27:8**
 safeguards, **27:8**
 Tort principles—liability
 generally, **27:18 to 27:21**
 elements, **27:20**
 intentional torts—invasion of privacy, **27:19**
 introduction, **27:18**
 negligence, **27:20**
 vicarious liability of employer, **27:21**

PROBATIONARY EMPLOYEES

See DISMISSAL

PROBATIONARY PERIOD GENERAL

Generally, **4:54 to 4:57**

INDEX

PRODUCTION OF DOCUMENTS

See LITIGATION

PROHIBITED GROUNDS OF DISCRIMINATION

See DISCRIMINATION

PUNITIVE DAMAGES

Cases awarding, **6:125**
Cases declining to award, **6:126**
General principles, **6:124**
Quantum table, **6:127 to 6:154**

RELATED EMPLOYERS

Liability, contractual, **3:24**

RELEASES

see also TERMINATION OR
TERMINATION PAY
as part of settlement, **32:12**

RELIGIOUS ORGANIZATIONS

See EXCEPTIONS ALLOWING
DISCRIMINATION
Generally, **14:19, 14:20**

RELOCATION COUNSELLING

General, **32:11**

REMEDIES

See also DISCRIMINATION

Remedies

generally, **20:1**
cancellation of government contracts,
20:13
civil remedy, **20:14**
costs of the proceeding, **20:12**
 against the Commission, **20:12**
introduction, **20:1**
monetary remedies
 generally, **20:2**
 breach of settlement, **20:9**
 foreseeability, **20:5**
 general damages, **20:3**
 interest, **20:8**
 introduction, **20:2**
 loss of income, **20:4**
 loss of opportunity for employment
 or promotion, **20:5**
 obligation to mitigate damages, **20:6**
 reasonable mitigation to avoid loss,
 20:6
 reinstatement, **20:7**

REMEDIES—Cont'd

Remedies—Cont'd

monetary remedies—Cont'd
 remedial authority of Board of
 Inquiry, **20:2**
 size of awards, **20:3**
non-monetary remedies, **20:10**
orders to stop or prevent harassment,
20:11

REPRISALS

Generally, **25:2**
Anti-reprisal provisions, **25:2 to 25:8**
By Recruiter, **25:3**
Court ordered payments, **25:5**
Leaves of absence, **25:6**
Lie detector tests, **25:7**
Remedies, **25:4**
Retail business establishments, **25:8**

RESIGNATION

Resignation, **3:26**
 what constitutes effective, **3:26,**
 4:53.50
 case law, **3:26**

RETIREMENT

See MANDATORY RETIREMENT

RETIREMENT ALLOWANCE

See TERMINATION PAY

RETIREMENT BENEFITS, LOSS OF

Generally, **6:72 to 6:95**
Specific performance, **6:165**

SEVERANCE PAY

See TERMINATION OF EMPLOY-
MENT; TERMINATION PAY;
EMPLOYMENT STANDARDS
ACT

SEXUAL HARASSMENT AND SOLICITATION

See also DISMISSAL

Employer liability, **7:22, 16:10**

Harassment

definition, **16:1**
general principles, **16:2**

Identity of harasser

employer's agent, **16:8**
fellow employee, **16:9**

SEXUAL HARASSMENT AND SOLICITATION—Cont'd

Ontario Human Rights Commission
Policy on Sexual and Gender-Based Harassment, **16:3**

Prevention orders, **16:13**

Proof

onus and burden of proof, **16:11**

weighing evidence, **16:12**

Types

coerced consent, **16:6**

poisoned work environment, **16:7**

without consent, **16:5**

SOLICITATION

See SEXUAL HARASSMENT AND SOLICITATION

SOURCES OF APPLICABLE LAW

Common law, **1:9**

Employment Standards Act, **1:7, 1:8**

Generally, **1:2**

Human Rights Code, **1:3 to 1:6**

Code taking priority, **1:3**

STATEMENTS OF POLICY AND PROCEDURE

General, **31:3, 31:4**

SUBSTANCE ABUSE

See DISMISSAL; DISABILITY

TEMPORARY LAYOFF

Generally, **3:19**

COVID-19, **5:5.50**

TERMINATION OF EMPLOYMENT

Amalgamation, and, **3:22**

Employer's payment obligations, **24:5 to 24:6, 24:32**

Meetings, **32:16, 32:17**

Notice

generally, **24:1**

contract limiting period of notice, enforceability of, **3:2**

determining period of

generally, **6:2 to 6:10**

factors not relevant in

generally, **6:36 to 6:44**

age 65, attainment of, **6:41**

eligibility date for early retirement, **6:37**

eligibility date for unreduced pension not a factor, **6:37**

TERMINATION OF EMPLOYMENT—Cont'd

Notice—Cont'd

determining period of—Cont'd

factors not relevant in—Cont'd

failure to warn of perceived failings, **6:42**

job performance, **6:36**

prior service in same type of business, **6:38**

reasonableness of employer offer, **6:43**

status of employer as not for profit, **6:39**

termination provision in earlier contract, **6:40**

other relevant factors in

generally, **6:11 to 6:35**

breach of agreement to return employee to bargaining unit, **6:29**

commencing employment at or after age 60, **6:19**

common employee liability for common employment only, **6:32**

contract providing for tenure, **6:24**

creating expectations of continued employment, **6:28**

disability of employee, **6:16**

employee pregnancy, **6:31**

employment in remote community, **6:11**

excessive level of compensation, **6:18**

failure to provide appropriate letter of reference, **6:21**

lifetime commitment from employees, **6:33**

narrow field of specialization, **6:22**

notice entitlement with previous employer, **6:17**

notice of likelihood of termination, **6:12**

persuasion of employee by employer not to accept alternate employment before termination, **6:15**

prior severance offer, **6:25**

restrictive covenant, existence of, **6:23**

TERMINATION OF EMPLOYMENT

—Cont'd

Notice—Cont'd

- determining period of—Cont'd
 - other relevant factors in—Cont'd
 - seasonal employment, **6:30**
 - statutory minimums reasonable for certain junior employees, **6:20**
 - temporary employees, **6:26**
 - terms of contract rendered unenforceable by Statute of Frauds, **6:27**
 - wrongful accusation of misconduct, **6:13**
 - years of part-time service, **6:14**
 - effectiveness of, **3:27**
 - election re recall rights, **24:7**
 - exemptions, **24:6, 24:17**
 - fewer than fifty employees, **24:3, 24:13**
 - fifty or more employees, **24:4, 24:14**
 - fixed or indefinite term contracts, **3:11**
 - pre-Employment Standards Act, 2000
 - generally, **24:12**
 - calculation of average weekly salary, **24:16**
 - employee obligation upon receipt, **24:18**
 - employer obligations upon default, **24:15**
 - exceptions, **24:17**
 - fewer than fifty employees, **24:13**
 - fifty or more employees, **24:14**
 - reasonable advance notice, **3:28, 32:9**
 - termination, **24:2 to 24:4**
 - termination pay, **24:5 to 24:6**
- principle factors in
 - age, **6:2**
 - availability of similar employment, **6:8**
 - character of employment, **6:7**
 - continuity and length of service, **6:3**
 - interruption in service: bankruptcy of corporate employer, **6:6**
 - interruption in service: change in corporate employer, **6:5**
 - interruption in service with same employer, **6:4**
 - economic circumstances, **6:9**
 - inducement, **6:10**

TERMINATION OF EMPLOYMENT

—Cont'd

Notice—Cont'd

- principle factors in—Cont'd
 - what constitutes, **6:1**
- reasonable—calculation of damages
 - related to
 - generally, **6:48 to 6:71**
 - elements of
 - generally, **6:49 to 6:71**
 - benefits, **6:165**
 - specific performance, **6:165**
 - bonuses, **6:51**
 - commissions, **6:50**
 - consequential damages—loss of training and status, **6:66**
 - disability arising during period of reasonable notice, impact of, **6:69**
 - disability benefits, loss of, **6:63**
 - expenses incurred in mitigating damages, **6:62**
 - fringe benefits, **6:54**
 - gratuities, **6:65**
 - increased tax burden, **6:71**
 - life insurance benefits, loss of, **6:63**
 - maternity leave arising during period of reasonable notice, impact of, **6:69**
 - mitigating damages, expenses incurred in, **6:62**
 - nominal damages, **6:67**
 - other losses consequent on termination, **6:61**
 - pension benefits, loss of, **6:59**
 - prejudgment interest, **6:70**
 - promised ownership interest, damages on account of, **6:68**
 - salary, overtime and salary increments, **6:49**
 - statutory entitlements, **6:64**
 - stock options, loss of, **6:60**
- References for terminated employees, **32:18**
- Release may not bar human rights complaint, **32:15**
- Retirement, by reason of, **32:19**
- Sale of business, **3:21**
- Severance, **24:20**

TERMINATION OF EMPLOYMENT

—Cont'd

- Severance pay
 - calculation of, **24:21**
 - election re recall rights, **24:23**
 - entitlement to, **24:21**
 - generally, **24:19**
 - pre-Employment Standards Act, 2000
 - entitlement to, **24:30**
 - generally, **24:28**
- Table of sample notice periods, **6:45 to 6:47**
- Termination pay, **24:5 to 24:6, 24:32**
- Termination types, **32:2 to 32:5**
- Transfer within corporate group, **3:23**

TERMINATION OR TERMINATION PAY

See also TERMINATION OF EMPLOYMENT

- Employee obligation to make payment upon termination pre-Employment Standards Act, 2000, **24:5, 24:21, 24:32**
 - ESA and, **24:32**
- Notice of termination or termination pay, **24:1 to 24:11**
 - construction employees, **24:10**
 - definite term or specific task, **24:7**
 - common law principles and, **24:7**
 - election re: recall rights, **24:11**
 - ESA and, **24:11**
 - legislative scheme, **24:11**
 - exemptions from entitlement to notice of termination or termination pay, **24:6**
 - employees not entitled to notice, **24:6**
 - introduction, **24:1**
 - employer obligations, **24:1**
 - termination vs. severance, **24:1**
 - reasonable alternative employment, **24:8**
 - examples, **24:8**
 - requirements for termination of 50 employees or more, **24:4**
 - ESA and, **24:4**
 - requirements for termination of fewer than 50 employees, **24:3**
 - employer notice period, **24:3**
 - employer obligation, **24:3**

TERMINATION OR TERMINATION

PAY—Cont'd

- Notice of termination or termination pay, **24:1 to 24:11**—Cont'd
 - requirements for termination of fewer than 50 employees, **24:3**—Cont'd
 - manner of giving notice, **24:3**
 - termination
 - generally, **24:2**
 - constructive dismissal and, **24:2**
 - ESA Section 56(1) and, **24:2**
 - lay-off and, **24:2**
 - quitting and, **24:2**
 - temporary lay-off and, **24:2**
 - termination pay, **24:5**
 - employer obligation, **24:5**
 - ESA and, **24:5**
 - willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the employer, **24:9**
 - employer onus, **24:5**
 - examples, **24:5**
 - warning, **24:9**
- Notice of termination or termination pay pre-Employment Standards Act, 2000, **24:12 to 24:18**
 - advance notice required for termination of 50 employees or more within four weeks or less, **24:14**
 - ESA and, **24:14**
 - advance notice required for termination of fewer than 50 employees, **24:13**
 - ESA and, **24:13**
 - temporary lay-off and, **24:13**
 - calculation of wages for employees paid on a basis other than time or where work hours are variable, **24:16**
 - ESA and, **24:16**
 - employee obligation to continue employment upon receipt of notice of termination, **24:18**
 - ESA and, **24:18**
 - employer obligation in default of providing advance notice, **24:15**
 - exemptions from entitlement to notice of termination or termination pay, **24:17**
 - conflict of interest, **24:17**
 - ESA and, **24:17**

**TERMINATION OR TERMINATION
PAY—Cont'd**

- Notice of termination or termination pay
 - pre-Employment Standards Act, 2000, **24:12 to 24:18**—Cont'd
 - exemptions from entitlement to notice of termination or termination pay, **24:17**—Cont'd
 - willful misconduct and, **24:17**
 - introduction, **24:12**
 - ESA and, **24:12**
- Severance pay
 - generally, **24:19 to 24:27**
 - calculation of, **24:26**
 - ESA and, **24:26**
 - formula for calculation, **24:26**
 - construction employees, **24:25**
 - definite term or specific task, **24:22**
 - election re recall rights, **24:27**
 - defined, **24:27**
 - entitlement to severance pay, **24:21**
 - defined, **24:21**
 - ESA and, **24:21**
 - Human Rights Code and, **24:21**
 - non-entitlement, **24:21**
 - introduction, **24:19**
 - termination v. severance, **24:19**
 - reasonable alternative employment, **24:23**
 - severance, **24:20**
 - defined, **24:20**
 - willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the employer, **24:24**
 - examples, **24:24**
- Severance pay pre-Employment Standards Act, 2000
 - generally, **24:28 to 24:31**
 - criteria governing entitlement to severance pay, **24:29**
 - ESA and, **24:29**
 - examples, **24:29**
 - severe illness and, **24:29**
 - introduction, **24:28**
 - as distinct from termination pay, **24:28**
 - defined, **24:28**
 - ESA and, **24:28**

**TERMINATION OR TERMINATION
PAY—Cont'd**

- Severance pay pre-Employment Standards Act, 2000—Cont'd
 - quantum of severance pay, **24:30**
 - calculating the amount of severance pay, **24:30**
 - ESA and, **24:30**
 - severance pay payable without set-off or deduction, **24:31**
 - ESA and, **24:31**
 - notice and, **24:31**

TERMINATION PAY

- See also TERMINATION OF EMPLOYMENT
- Statutory obligations
 - Employment Insurance Act
 - employer liability for repayment of benefits, **8:16**
 - issue estoppel, **1:11, 1:14**
 - Income Tax Act
 - retiring allowance, **8:1 to 8:15**
- Termination packages
 - generally, **32:6 to 32:15**
 - fringe benefits, **32:10**
 - lump sum, **32:6**
 - proposing, **32:17**
 - reasonable advance notice of termination, **32:9**
 - releases, **32:12**
 - relocation counselling, **32:11**
 - salary continuation, **32:7**
 - salary continuation with incentive, **32:8**

TORT LIABILITY

- Assault and battery, **7:30**
- Bad faith, discharge, **7:26**
- Breach of confidence, **7:22**
- Conspiracy, **7:17**
 - agreement, **7:17**
 - conspiracy by unlawful means, **7:17**
 - intent to injure, **7:17**
- Defamation, **7:4 to 7:12**
 - defences, **7:6**
 - absolute privilege, **7:7**
 - fair comment, **7:7**
 - justification, **7:7**
 - qualified privilege, **7:8**
 - examples of defamation in the employment context, **7:12**

TORT LIABILITY—Cont'd

- Defamation, **7:4 to 7:12**—Cont'd
 - introduction, **7:4**
 - what constitutes actionable defamation, **7:5**
 - definition, **7:5**
 - libel, **7:5**
 - slander, **7:5**
- Employer liability for employee torts, **7:25**
 - non-profit organizations and, **7:25**
 - policy considerations, **7:25**
 - compensation, **7:25**
 - deterrence, **7:25**
- General principles, **7:1 to 7:3**
 - damages in tort law, **7:3**
 - duty, **7:3**
 - individual liability for actions on behalf of the employer, **7:2**
 - inducing breach of contract, **7:15**
 - introduction, **7:1**
 - intentional torts, **7:1**
 - negligent torts, **7:1**
- Harassment, **7:29**
- Injurious falsehood, **7:20**
- Intentional infliction of mental suffering, **7:18**
 - requirement of separate actionable wrong, **7:18**

TORT LIABILITY—Cont'd

- Intentional interference with economic relations and inducing breach of contract, **7:13 to 7:15**
 - intentional interference with economic relations, **7:14**
 - introduction, **7:13**
 - Intimidation, **7:16**
 - elements, **7:16**
 - Invasion of privacy, **7:24, 27:19**
 - Malicious prosecution, **7:23**
 - Negligence, **7:21**
 - Negligent infliction of mental suffering, **7:28**
 - Negligent investigation, **7:27**
 - Negligent misrepresentation, **7:19**
- TRADE UNION ACT**
- Collective agreement not precluding complaint under Human Rights Code, **1:15**
- TRIAL**
- See LITIGATION
- UNEMPLOYMENT INSURANCE**
- See EMPLOYMENT INSURANCE
- UNSATISFACTORY EMPLOYEES**
- General, **31:5**
- WORKERS' COMPENSATION BENEFITS**
- See DAMAGES (mitigation of damages)