### **Index**

#### ACCOMMODATION—Cont'd **ABSENCE** Duty to accommodate, 4:34 Reasonable accommodation people with disabilities, APPA7 Union employees, of § A7:2 see union employees Request, employer response ACCOMMODATE, DUTY TO sample response, APPA1 § A1:5 Generally, 4:31 Selection process, APP A7 § A7:6 Adverse effect discrimination and, ACT OF GOD 4:33 AIDS, re Generally, 2:10 see AIDS disability ADVERSE EFFECT Alcohol addiction, 3:25 to 3:27 DISCRIMINATION Arbitration re. 3:9 See discrimination Described, 4:31 ADVERTISING, JOB Employee's, 4:38 Employer's, scope of Discrimination in, 4:8 absences caused by disability, AIDS DISABILITY 4:34 Generally, 2:34 financial costs, 4:34 Accommodate, duty to inconvenience vs. hardship, 4:34 generally, 4:50 Ontario Human Rights Code proemployee, of, 4:51 vision re, **4:34** Ontario Human Rights Commis-Ontario Human Rights Commission policy statement re, sion guidelines re, 4:34 4:50 poor job performance, 4:34 AIDS-related complex (ARC) undue hardship test, 3:9, 4:34 Bona fide occupational requirement Epilepsy, 3:20 defence Evolution of law re, 4:33 economic risk, 4:47 Pregnant police, 4:34 reasonable cause, 4:48 Proof of accommodation safety risk employer's onus, 4:37 ACR stage complications, 4:46 Purpose of, 4:32 medical care demands, 4:46 Rational connection requirement, physical conditions of employ-4:36 ment, 4:46 ACCOMMODATION risk of infection, 4:46 Assessment, reasonable accom-Discrimination modation, APP A7 § A7:4 effect of exclusion clause, re dis-Policy checklist, APP A7 § A7:7 ability insurance, 4:49

#### AIDS DISABILITY—Cont'd **BONA FIDE OCCUPATIONAL** Discrimination—Cont'd REQUIREMENT (BFOR) exemptions to prohibition —Cont'd against, **4:49** AIDS, re Union employee and, 3:28 see AIDS disability Defence, as, **4:18** ALCOHOL AND DRUG ABUSE Defined, 4:19 See illnesses; union employees Direct vs. adverse discrimination, ARBITRATION 4:18 Economics, based on, 4:28 Canada Labour Code Efficiency requirements, based on, generally, 3:12 4:29 attendance programs, 3:15 onus on employer to prove Charter of Rights, 3:11 decrease in efficiency, 4:29 Constitutional jurisdiction re, 3:8 Intelligence requirement, 4:29 Employment standards legislation, Proof re, standard of, 4:30 3:13 Questions, APP A7 § A7:10 Human rights legislation Safety risks, based on accommodation requirement, 3:9, generally, 4:22 3:10 individual testing, 4:24 arbitrator's duty to apply, **3:9** impossibility of, 4:25 discrimination prohibition, 3:9 real risk test, 4:23 non-culpable absenteeism, 3:9 successful BFOR defences occupational health and safety emergency uncertainty, 4:27 legislation, relationship to, uncontrolled disability, 4:27 3:13.50 visual acuity cases, 4:27 union as party to, 3:9 sufficiency of risk, 4:23 Jurisdiction of arbitrator, 3:2, 3:9 unacceptable risk test, 4:23 Legislation and, 3:7 unsuccessful BFOR defences Medical records, admissibility of, disability under control. 4:26 3:41 no connection between **ATTENDANCE** occupational requirement and work performed, 4:26 **Programs** small risk to employee/no risk Canada Labour Code, under, 3:15 to co-workers, 4:26 non-union employer, sample, waived BFORs, 4:27 APP A5 § A5:1 Steps in proving, 4:22 union employer, sample, APPA5 Tests re § A5:2 generally, 4:19 Requirements good faith requirement, 4:20 adverse effect discrimination, as, objective test, **4:21**, **4:22** 4:12, 4:16 subjective test, 4:20 **BONA FIDE OCCUPATIONAL** BOOKLETS, BENEFITS, REQUIREMENT (BFOR) **POLICIES AND** Accommodate, duty to **BROCHURES**

Generally, 5:15

see accommodate, duty to

#### **BREACH OF CONTRACT**

Damages for, 2:5, 2:6

#### CANADA LABOUR CODE

See arbitration

### **CANADA PENSION PLAN**

Administration of, 6:45

Benefits, 6:49

Contributions, payment and collection of, **6:48** 

Disability benefits

generally, 6:51

amount of, **6:51** 

contribution requirement, 6:51

extent of disability, 6:51

Eligibility, **6:47** 

History of, 6:44

Retirement pension, 6:50

Survivor's benefits, 6:52

Tax implications, 6:46

Workers' compensation and, 6:29

### **CHARTER OF RIGHTS**

Arbitration and, 3:11

Jurisdiction of, 4:4

Reasonable cause for discrimination and, **4:39** 

## CHRONIC FATIGUE SYNDROME

Generally, 2:35

## CHRONIC PAIN SYNDROME

Workers' compensation coverage, **6:10** 

## **CIVIL ACTION**

Disability benefits, re see disability benefits

Disability insurance

punitive and aggravated damages and costs, **5:36** 

remedies re

see disability insurance

Workers' compensation, re, **6:27** 

#### **COLLATERAL BENEFITS**

Disability benefits, and, 2:11 to 2:19

Effect of termination on

life insurance, 2:20

long-term disability, 2:20

Nature of insurance, 2:11 to 2:19

Non-deductibility, 2:11 to 2:19

Private insurance, 2:11 to 2:19

Rule against double recovery, 2:11 to 2:19

Severance payments, subtraction from, 2:11 to 2:19

Tortious interference, 2:21

### **COLLECTIVE AGREEMENT**

See also union employees—collective agreement

Disability insurance, description of benefit, **3:16**, **5:3** 

Effect of, on human rights legislation, **4:34** 

Medical certificate requirement, 3:31

## COMPASSIONATE CARE LEAVE

Generally, 6:42

### **COURTS**

Jurisdiction re union employee, 3:2

## COVID-19

As a disability, commission states regarding, **4:43** 

As a disability, tribunal findings

regarding, 4:44

Colds and Flus, 4:45

Concluding Remarks, 4:46

Introduction, 4:41

## **DEATH**

Reasonable notice period, during, **2:20** 

Workers' compensation coverage, **6:10, 6:18** 

#### **DIABETES**

Generally, 2:32, 3:19

#### DIRECT DISCRIMINATION

See discrimination

### **DISABILITY**

Accommodation checklist, APP A7 § A7:2

Benefits

see disability benefits

Discrimination, 4:6

Episodic disability, manager training, APP A7 § A7:8

Insurance

see disability insurance

Long-term benefits

see disability insurance

Meaning of, under human rights

legislation, 4:6

Perceived, 4:6

Permanent

see permanent disability

Short-term benefits

see disability benefits

Statutory Definitions of, 4:42

Visual

see visual disability

Voluntary disclosure by employee, form, APP A7 § A7:5

#### **DISABILITY BENEFITS**

Civil action re

statement of claim, APP A3 § A3:3

statement of defence, APP A3 § A3:4

Deduction from reasonable notice requirements

benefits vs. insurance payments, 2:11 to 2:19

collateral benefits

see collateral benefits

conflicting cases re effect of, 2:11 to 2:19

double recovery, 2:11 to 2:19 employee contribution requirement, 2:11 to 2:19

#### DISABILITY BENEFITS—Cont'd

Deduction from reasonable notice requirements—Cont'd

frustrating purpose of reasonable notice, as, 2:11 to 2:19

Liability for after termination, 2:20

Replacement benefits, cost of, 2:20

Short-term

collective agreement, under, 3:17 deduction from recovery of lost

wages, 2:11 to 2:19

sick-leave plans, **5:7** 

Termination, effect on, 2:20

Topping up, 2:39

Tortious interference with, 2:21

### DISABILITY INSURANCE

Generally, 5:2

Administration of

employer, 5:30

insurer, **5:29** 

Benefits

see also disability benefits

booklets re benefits

priority over policy, 5:15

description of, 5:3

limits to, 5:35

Cancellation of, due to non-remittance of premiums when due, 5:34

Collateral benefits and

see collateral benefits

Collective agreement provision for, 5:3, 5:4

Common law entitlement

absent specific agreement, 5:6

contractual based, 5:8

human rights implications, 5:9

short-term sick leave plans, 5:7

Damages for wrongful termination of benefits

aggravated damages, 5:36

punitive or exemplary damages,

5:36

| DISABILITY INSURANCE                                  | DISABILITY INSURANCE   |
|---|--|
| —Cont'd   | —Cont'd  |
| Employer's obligations                                | Proof, burden of   |
| duty to employee, <b>5:32</b>                         | employee, on, 5:27   |
| policy administration, 5:31                           | medical exam compelled, <b>5:28</b>                                |
| termination of employment, on,                        | shifting to insurer, <b>5:27</b>                                   |
| 5:33  | Recurrent disability, <b>5:19</b>                                  |
| Employment, continued availability                    | Rehabilitation programs, <b>5:26</b>                               |
| of  | Remedies   |
| occupation vs. job, 5:20                              | forfeiture, relief from, <b>5:39</b>                               |
| relevance of, <b>5:20</b>                             | injunction, 5:41   |
| Evidence of disability                                | limitation periods, <b>5:38</b>                                    |
| assessment of limitations, 5:17                       | proper forum, <b>5:37</b>  |
| burden of proof, 5:27                                 | subrogation, <b>5:42</b>   |
| medical diagnosis, 5:17                               | summary judgment, <b>5:40</b>                                      |
| other activities engaged in, 5:24                     | unionized employee, for, <b>5:4</b>                                |
| termination of benefits, <b>5:17</b>                  | Remuneration, level of, <b>5:21</b>                                |
| Group coverage  | Retraining, <b>5:22</b> , <b>5:26</b>                              |
| generally, 5:2  | Return to work, temporary, 5:23                                    |
| conversion to individual policy,                      | Self-employed persons, <b>5:2</b>                                  |
| 5:16  | Stress, for, 5:18  |
| Indemnity, 5:42                                       | Termination of employment  |
| Insurance legislation and, 5:5                        | effect of benefits on, 2:11  |
| Insurer's duty  | entitlement after, 5:16, 5:33                                      |
| duty of good faith and fair deal-                     | "Total disability," definition vari-                               |
| ing, <b>5:29</b>                                      | ety, <b>5:11</b> , <b>5:14</b>                                     |
| Legal principles, summary of, <b>5:43</b>             | Uniform Accident and Sickness                                      |
| Long-term, <b>5:10</b>                                | Policy Act, 5:5  |
| Medical exam, compelling, 5:28                        | DICCDIMINATION   |
| Medical treatment, <b>5:26</b>                        | DISCRIMINATION   |
| Mental disabilities and stress, <b>5:18</b>           | Adverse effect, <b>4:1</b>   |
| Policy  | attendance requirements, <b>4:12</b> ,                             |
| cancellation of, <b>5:13</b>                          | 4:16   |
| elimination period, <b>5:11</b>                       | described, <b>4:11</b>   |
| insurability, <b>5:12</b>                             | examples of, <b>4:12, 4:16</b>                                     |
| interpretation of                                     | minimum standards of perfor-                                       |
| contra proferentum doctrine,                          | mance, <b>4:12</b>   |
| 5:14  | AIDS, against persons with   |
| intention of parties, <b>5:14</b>                     | see AIDS disability  |
| rational and practical construction rule, <b>5:14</b> | Alcohol and drug policies, <b>4:15</b> , <b>4:26</b> , <b>4:34</b> |
| substantial ability test, 5:14                        | contravention of policy in union                                   |
| total disability, meaning of,                         | ized workplaces, <b>3:26.50</b>                                    |
| 5:14  | crafting policies in unionized                                     |
| Pre-existing condition, 5:25                          | workplaces, <b>3:26.30</b>   |

| DISCRIMINATION—Cont'd  | DISCRIMINATION—Cont'd                   |
|--|---|
| Attendance requirements and, 4:16                                | Reasonable cause for                    |
| Bona fide occupational requirement                               | Alberta Individual Rights Protec-       |
| defence  | tion Act, <b>4:39</b>                   |
| see bona fide occupational                                       | Charter test, 4:39                      |
| requirement (BFOR)   | Statutory exemptions allowing,          |
| Defences   | 4:49                                    |
| accommodation, proof of, 4:31                                    | Unified test, <b>4:2</b> , <b>4:3</b>   |
| BFOR, <b>4:18</b>  | DISEASE                                 |
| reasonable cause, <b>4:39</b>                                    | AIDS                                    |
| Direct, 4:1  | see AIDS disability                     |
| described, <b>4:12</b> , <b>4:16</b> , <b>4:25</b> , <b>4:33</b> | Diabetes, 2:32, 3:19                    |
| examples of, <b>3:9, 4:13</b>                                    | Epilepsy, <b>2:32</b> , <b>3:19</b>     |
| minimum medical standards,                                       | Heart disease                           |
| 4:14, 4:20   | see heart disease                       |
| poisoned work environment, <b>4:15</b>                           | Mental illness, 2:29, 3:24, 6:9         |
| proof of, <b>4:17</b>  | Workers' compensation coverage,         |
| Harassment and, 4:15   | 6:9                                     |
| Meaning of, evolutionary, 4:11                                   | DISMISSAL                               |
| Prima facie case, <b>4:5</b>                                     | See termination of employment           |
| advertising and recruitment                                      | • •                                     |
| context, 4:8   | DOCTOR'S CERTIFICATE                    |
| direct or adverse effect   | See medical — certificate               |
| discrimination, <b>3:9, 4:1</b>                                  | DRUG ADDICTION                          |
| disability   | See illnesses; union employees          |
| conditions considered, <b>4:6</b>                                | DRUG TESTING, MANDATORY                 |
| meaning of, 4:6  | Generally, 3:25 to 3:27                 |
| mistaken belief re, <b>4:6</b>                                   | Contravention of policy, <b>3:26.50</b> |
| perceived but undiagnosed, 4:6                                   | Crafting policies, <b>3:26.30</b>       |
| employment context, <b>4:7</b>                                   | Post-incident substance testing,        |
| exemptions   | 3:26.70                                 |
| domestic employees, <b>4:10</b>                                  | DUTY TO ACCOMMODATE                     |
| preferential treatment, 4:10                                     |   |
| protected categories, <b>4:10</b>                                | See accommodate, duty to                |
| retirement/employee benefit plans, <b>4:10</b>                   | EMERGENCY PREPAREDNESS                  |
| specific legislative provisions,                                 | Evacuation, employees with dis-         |
| 4:10   | abilities, APP A7 § A7:3                |
| liability, <b>4:9</b>  | EMPLOYEE                                |
| onus of proving, <b>4:5</b>                                      | Common law, 1:2                         |
| Proof of, <b>4:17</b>  | Disability insurance, burden of         |
| Alberta Human Rights Act, <b>4:39</b>                            | proof re, 5:27                          |
| Rational connection of rules to job,                             | Domestic, <b>4:10</b>                   |
| <b>4:36</b>  | Duty to accommodate, 4:38, 4:51         |

#### EMPLOYEE—Cont'd

Union

see union employees

## EMPLOYEE ASSISTANCE PROGRAMS

Generally, 3:27

#### **EMPLOYER**

Checklists and forms generally, APP A7 § A7:1

Common law employee, **1:2** Disability insurance obligations

see disability insurance

Duty to accommodate

see accommodate, duty to

Employee illness, response to see illnesses

Lump sum severance payment, liability for, **2:20** 

Permanent vs temporary illness factors, 2:10

#### **EMPLOYMENT**

Contract

see employment contract Discrimination in, **4:7 to 4:17** 

Fitness to resume, 3:33

Relationship

see employment relationship

Termination of

see termination of employment

## **EMPLOYMENT APPLICATION**

Falsification of re medical history, **3:37** 

#### EMPLOYMENT CONTRACT

Alcohol and drug abuse term, **2:22**Breach of, **2:5**, **2:6**Frustration of, **2:9**, **2:10**Human rights legislation, effect of,

# EMPLOYMENT INSURANCE BENEFITS

Coverage, **6:37** Eligibility, **6:38** 

## EMPLOYMENT INSURANCE BENEFITS—Cont'd

History of, **6:36** 

Purpose of, 6:36

Self-employment, 6:43

Special benefits, 6:40

compassionate care, **6:42** 

illness, 6:41

maternity, 6:41

parental, 6:41

Unemployment benefits, 6:39

#### EMPLOYMENT RELATIONSHIP

Breach of contract, 2:5, 2:6 Business efficacy factor, 2:10 Specific enforcement of, 2:2

## EMPLOYMENT STANDARDS LEGISLATION

Generally, 3:13

#### **EPILEPSY**

Generally, 2:32, 3:19

#### **EVIDENCE**

See also proof

Absences from work, 3:4

Disability, of

see disability insurance

Frustration of contract, of, **3:3 to 3:5** 

Surveillance, 3:38

#### FRUSTRATION OF CONTRACT

Absences from work as, **3:3 to 3:5**Termination of ill or disabled employee for, **2:9** 

## **HANDICAP**

Collective agreement benefits provision, APP A4 § A4:8

## **HEART DISEASE**

Physical illness, as, **2:31** Union employee with, **3:21** 

#### HIV

See AIDS disability

#### **HUMAN RIGHTS LEGISLATION** ILLNESSES—Cont'd Employer's response to See also discrimination assessment of problem, 2:37 Generally, 4:1 lump sum severance payment, Accommodate, duty to 2:39 see accommodate, duty to practical solutions, 2:36 to 2:39 Arbitration and reasonable notice of termination, see arbitration 2:39 Bona fide occupational requirement termination strategies, 2:38 defence topping-up disability payments, see bona fide occupational 2:39 requirement (BFOR) workers' comp. supplement, 2:39 Charter of Rights Gambling, 2:28 jurisdiction, 4:4 Mental illness, 2:29, 6:9 Contractual relationship, effect on, Physical illness 4:1 **AIDS** Contravention of see AIDS disability remedies, 4:40 chronic fatigue syndrome, 2:35 Discrimination, prohibition against diabetes, 2:32, 3:19 see discrimination epilepsy, 2:32, 3:19 Interpretation of, 4:1 heart disease Jurisdiction over disputes, 4:4 see heart disease Purpose of, **4:1** physical fitness, 2:33 Remedies for contraventions, 4:40 Stress-related illnesses, 2:29 **ILLNESSES INSURANCE** Alcohol and drug abuse See disability insurance generally, 2:22, 2:27 INSURANCE PAYMENTS alcoholism and drug abuse as disability, 4:34 Death during reasonable notice period, 2:20 alcoholism as illness, 2:26 Deductibility from reasonable employment contract term, 2:22 notice requirements, 2:11 to mitigating circumstances, 2:25 2:19 policies contravention of policy in **JURISDICTION** unionized workplaces, Arbitration, 3:8 3:26.50 Arbitrator, **3:2, 3:9** crafting policies in unionized Charter of Rights, 4:4 workplaces, 3:26.50 Courts over union employee, 3:2 summary dismissal, as grounds Human rights, 4:4 for, 2:22 Workers' compensation, 6:3 warnings re, 2:23 **JUST CAUSE** workers' compensation coverage, 6:10 Innocent absenteeism and, 2:8 work record as factor, 2:24 Termination, for, 2:2

## LONG-TERM DISABILITY **BENEFITS**

See disability insurance

#### **MEDICAL**

Certificate

requirement re union employees see union employees requirement to provide, 3:31

Examination

arbitrator's authority to order, 3:35

independent, 3:32

union employees, re see union employees

Fitness

union employees, re see union employees

falsification of employment application re, 3:37

Records

admissibility of, 3:41

## **MENTAL**

Disability

insurance benefits for, 5:18

Illness

see illnesses; union employees

## NOTICE, REASONABLE

Death during period of, 2:20

Deductions from

see disability benefits

Disability benefits, effect on, 2:11

Frustration of contract and, 2:9

Insurance payments, deductibility

of from, 2:11 to 2:19

Medical condition, effect on, 2:6

Termination of employment, of pay in lieu of notice, 2:39

requirement, 2:3

severance pay vs. notice, 2:8

## OCCUPATIONAL HEALTH AND SAFETY LEGISLATION

Duties under, and relation to obligations under human rights legislation, 3:13.50

## OCCURRENCE REPORT

Sample, APP A5 § A5:3

## **ONTARIO HUMAN RIGHTS** COMMISSION

Duty to accommodate guidelines, 4:34, 4:50

#### PARENTAL LEAVE

Generally, 3:29

### PERMANENT DISABILITY

Business efficacy factor, 2:10

Extent of disability, 2:10

Factors to determine, 2:10

Frustration of employment contract, 2:10

Long-term employee, 2:10

## Sick benefits as factor, 2:10

Generally, 2:33

#### PHYSICAL ILLNESS

PHYSICAL FITNESS

See Illnesses

## PRACTICAL SOLUTIONS

Generally, 2:36 to 2:39, 3:42

#### PREGNANCY LEAVE

Generally, 3:29

#### **PROOF**

Accommodation, of, 4:37

BFOR, standard re, 4:30

Disability insurance, burden re,

5:27

Discrimination, of, 4:17

Evidence of disability, burden re, 5:27

## REASONABLE NOTICE

See notice, reasonable

#### REHABILITATION

Addicts, of, **3:22**, **3:25 to 3:27** Benefits payable, **6:20** Programs, **5:26** 

#### RETURN TO WORK

Right to, 3:39

#### **RULES, EMPLOYER'S**

Generally, 3:27

#### SAFETY RISKS

See bona fide occupational requirement (BFOR)

## SEALED BUILDING SYNDROME

Generally, **6:10** 

### **SELF-EMPLOYED PERSONS**

Disability insurance for, **5:2** Unemployment insurance benefits for, **6:43** 

#### SEVERANCE PAYMENT

Generally, **3:40**Lump sum
continuing liability of employer, **2:20**to ill employee, **2:39** 

### SICK BENEFITS

Permanent disability factor, **2:10** Workers' compensation, effect on, **6:28** 

## SICK LEAVE

Collective agreement provision re, APP A4 § A4:1 to A4:4

Credits, effect of on absence complaint, **3:5**Misuse of, **3:36**Short-term plans, **5:7** 

Surveillance evidence of person on, 3:38

### SPECIFIC ENFORCEMENT

Employment contract, of, 2:2

#### STATEMENT OF CLAIM

Disability benefits, civil action re, APP A3 § A3:3 Wrongful dismissal action, APP A3 § A3:1

### STATEMENT OF DEFENCE

Disability benefits, civil action re, APP A3 § A3:4 Wrongful dismissal action, APP A3 § A3:2

### **STRESS**

Disability insurance for, **5:18**Physical illness, as, **2:28**Stress-related illness, **2:29**Union worker and, **3:24**Workers' compensation coverage for, **6:10** 

## SUBSTANCE USE

Policy checklist, APP A7 § A7:9

## TERMINATION OF EMPLOYMENT Common law and

generally, 2:2 assessment, 2:37 breach of contract, 2:5, 2:6 disability benefits effect of, 2:11 to 2:19 effect on, 2:20 tortious interference with, 2:21 employer considerations, 2:1 ill or disabled employee frustration, 2:9 permanent disability determining, 2:10 frustration due to, 2:9 right to notice or severance pay innocent absenteeism vs. just cause, 2:8 self-induced illness, 2:8 just cause, 2:2 letter of, A1:4 notice of, 2:3, 2:38, 2:39 see also notice, reasonable

#### **TERMINATION OF** UNION EMPLOYEES—Cont'd EMPLOYMENT—Cont'd Absences from work-Cont'd frustration of contract—Cont'd Common law and-Cont'd reasonable notice test re, 3:3 to 3:5 see also notice, reasonable lengthy length of notice period, 2:3 medical evidence, 3:4 obligation to work during, 2:3 termination, as justification for, pay in lieu of, 2:39 3:4 purpose of, 2:3 sick leave credits, effect of, 3:5 requirement, 2:3 surveillance evidence, 3:38 suspension of period, 2:11 to **AIDS** 2:19 discrimination, 3:28 specific enforcement of employ-HIV infection, 3:28 ment contract, 2:2 termination, justified, 3:28 Physical disability, employer Alcohol addiction checklist, APP A7 § A7:11 generally, 3:25 to 3:27 Union employees accommodation duty, 3:25 to see union employees 3:27 **TORTS** applicable grievance principles, Negligent interference with provi-3:25 to 3:27 sion of benefits, 2:21 employee assistance programs, 3:27 UNDUE HARDSHIP employer rules and policies, 3:26 Defence to accommodation duty, as, contravention of policy, 4:34 3:26.50 **UNION EMPLOYEES** crafting policies, 3:26.30 illegal drug use, 3:25 to 3:27 Generally AIDS, 3:28 mandatory drug testing, 3:25 to Generally, 1:3, 3:2 3:27 Absences from work post-incident substance testing, 3:26.70 bona fide illness or disability rehabilitation, 3:22, 3:25 to 3:27 discipline, 3:3 to 3:5 Arbitration process evidential burden, 3:3 to 3:5 see arbitration termination grounds, 3:3 to 3:5 Arbitrator, jurisdiction of, 3:2 culpable, 3:3 to 3:5 Attendance programs, APP A5 disability benefits, 3:5 § A5:2, 3:15 fitness to resume employment, Canada Labour Code 3:33 see arbitration frustration of contract Charter of Rights evidence to be considered, 3:3 see arbitration to 3:5 Collective agreement non-culpable nature of, 3:3 to 3:5 attendance programs, APP A5 sick leave credits, effect of, 3:5 § A5:2, 3:15

| UNION EMPLOYEES—Cont'd                  | UNION EMPLOYEES—Cont'd                                       |
|---|--|
| Collective agreement—Cont'd             | Medical certificate requirement                              |
| deemed termination provisions,          | generally, <b>3:30</b>                                       |
| 3:14                                    | collective agreement basis, 3:31                             |
| effect on termination right, <b>3:2</b> | independent verification, 3:32                               |
| illness and disability benefits         | reasonable grounds basis, 3:31                               |
| under                                   | Medical examinations   |
| long-term, 3:17                         | arbitrator's authority to order,                             |
| short-term, 3:17                        | 3:35   |
| sample provisions                       | consent to release information,                              |
| generally, APP A4 § A4:1 to             | APP A2 § A2:1  |
| A4:8                                    | general principles re, <b>3:34</b> independent, <b>3:32</b>  |
| benefits, APP A4 § A4:6                 | sample letters re, A1:1                                      |
| group insurance premiums,               | Medical fitness  |
| APP A4 § A4:6                           | generally, 3:18 to 3:23                                      |
| handicapped employees, APP A4 § A4:8    | disability discrimination, <b>3:23</b>                       |
| prepaid health benefits, <b>APP</b>     | employee removal onus, 3:23                                  |
| <b>A4 § A4:7</b>                        | impaired vision, 3:22  |
| sick leave, APPA4 § A4:1 to             | resumption of employment, <b>3:33</b>                        |
| A4:4                                    | safety concerns and  |
| workers' compensation, <b>APP</b>       | generally, <b>3:18 to 3:23</b>                               |
| A4 § A4:5                               | diabetes, 3:19   |
| Court jurisdiction re, limitations on,  | epilepsy, 3:20   |
| 3:2                                     | heart disease, 3:21  |
| Diabetes, 3:19                          | standards re, 3:22   |
| Drug addiction, 3:25 to 3:27            | Mental illness, <b>3:24</b>                                  |
| contravention of policy, 3:26.50        | Non-culpable dismissal, 3:3 to 3:5                           |
| crafting policies, 3:26.30              | Occupational health and safety                               |
| mandatory drug testing, 3:25 to         | legislation  |
| 3:27                                    | duties under, and relation to                                |
| post-incident substance testing,        | obligations under human                                      |
| 3:26.70                                 | rights legislation, 3:13.50                                  |
| Employment and labour standards         | Practical considerations, <b>3:42</b> Pregnancy, <b>3:29</b> |
| see arbitration                         | Return to work, fitness to                                   |
| Epilepsy, <b>3:20</b>                   | see also medical   |
| duty to accommodate, 3:20               | right to, 3:39   |
| Heart disease, 3:21                     | Sick leave, misuse of, <b>3:36</b>                           |
| Human rights legislation and            | surveillance evidence of, 3:38                               |
| see arbitration                         | Smoking bans, 3:22   |
| Jurisdiction, federal and provincial    | Stress, <b>3:24</b>  |
| see arbitration                         | Summary re, <b>3:42</b>                                      |
| Legislation and                         | Surveillance evidence, admissibil-                           |
| see arbitration                         | ity, 3:38  |

| UNION EMPLOYEES—Cont'd                 | WORKERS' COMPENSATION                |
|--|--------------------------------------|
| Termination of employment              | —Cont'd                              |
| deemed collective agreement            | Coverage re:—Cont'd                  |
| provisions, 3:14                       | employer, definition of, <b>6:6</b>  |
| letter re, A1:4                        | industries covered, 6:5              |
| severance pay, <b>3:40</b>             | injuries, <b>6:9</b>                 |
| Wrongful dismissal law, non-ap-        | mental disorder, <b>6:9</b>          |
| plicability of, 3:2                    | misconduct of worker, 6:10           |
| UNIONIZED WORKPLACE                    | period of, <b>6:8</b>                |
| See also union employees               | persons covered by legislation,      |
| Court jurisdiction re, limitations on, | 6:7                                  |
| 3:2                                    | sealed building syndrome, 6:10       |
| VISUAL DISABILITY                      | stress, <b>6:10</b>                  |
| BFOR cases, 4:27                       | Distinguished from other benefits,   |
| Medical fitness and, 3:22              | 2:11 to 2:19                         |
|  | Introduction, 6:2                    |
| WORKERS' COMPENSATION                  | Jurisdiction re, <b>6:3</b>          |
| Generally, <b>6:2</b>                  | Limitation periods, <b>6:24</b>      |
| Appeals, <b>6:22</b>                   | Other systems, interaction with      |
| Assessments, <b>6:25</b>               | generally, <b>6:26 to 6:35</b>       |
| Benefits payable                       | auto insurance benefits, <b>6:32</b> |
| generally, <b>6:11 to 6:20</b>         | Canada/Quebec Pension Plan,          |
| death, <b>6:18</b>                     | 6:29                                 |
| disability payments, 6:14              | civil liability, <b>6:27</b>         |
| permanent, 6:17                        | disability insurance, <b>6:31</b>    |
| temporary partial, 6:16                | Government Employees                 |
| temporary total, 6:15                  | Compensation Act, <b>6:35</b>        |
| income replacement, <b>6:13</b>        | occupational health and safety,      |
| medical, 6:12                          | 6:34                                 |
| protection of, 6:19                    | sick pay, <b>6:30</b>                |
| rehabilitation and care, <b>6:20</b>   | unemployment insurance               |
| Boards, <b>6:4</b>                     | benefits, <b>6:28</b>                |
| Claims, <b>6:21 to 6:23</b>            | welfare, <b>6:33</b>                 |
| appeals, 6:22                          | Waiver of benefits, <b>6:19</b>      |
| primary adjudication, 6:21             | varver or benefits, 0.19             |
| Class action lawsuits, <b>6:23</b>     | WRONGFUL DISMISSAL                   |
| Coverage re                            | ACTION                               |
| alcoholism, 6:10                       | Sample pleadings, APP A3 § A3:1      |
| Coverage re:                           | statement of claim, APPA3            |
| generally, <b>6:5 to 6:10</b>          | § A3:1                               |
| causation, 6:10                        | statement of dismissal, APP A3       |
| chronic pain syndrome, 6:10            | § A3:2                               |
| death, <b>6:10</b>                     | Union employee, non-applicability    |
| diseases, 6:9                          | to, <b>3:2</b>                       |
|  |                                      |

## Illness and Disability in the Workplace

# WRONGFUL TERMINATION OF BENEFITS

Insurance benefits, **5:36**