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EMPLOYMENT STANDARDS HANDBOOK, THIRD EDITION

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Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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The *Employment Standards Handbook, Third Edition* offers a thorough explanation of the scope of the Ontario *Employment Standards Act, 2000*, a clearer understanding of the policies used by the Employment Practices Branch of the Ministry of Labour in the administration of the Act and reliable updates on this rapidly changing area of law. It includes the full text of the Act and all regulations, a discussion of the various provisions of the Act and a collection of Digests referenced to the applicable portions of the book.

What's New in This Update:

This release includes updates to the caselaw and commentary in Chapters 1 (Definitions); 3 (Application of the Act); 5 (Payment and Statement of Wages); 13 (Public Holidays); 17 (Leaves of Absence); 18 (Termination and Severance of Employment); 24 (Liability of Directors); 26 (Complaints and Enforcement); 27 (Reviews by the Board) and 30 (Miscellaneous Evidence).

Highlights

DEFINITIONS – EMPLOYER-EMPLOYEE RELATIONSHIP – INTRODUCTION – *CDA AZ-DZ Driver Services Inc.*, 2019 CarswellOnt 20622, presented a unique situation where the applicant employer conceded that the respondent truck drivers were employees. The applicant argued, though, that another entity was the actual employer of those drivers. In determining the issue of the truck drivers' "true" or "real" employer, the Ontario Labour Relations Board applied what it referred to as a "fundamental control" test. The test applied by the board was articulated by the Supreme Court of Canada in *Pointe-Claire (Ville) c. Syndicat des employées & employés professionnels-les & de bureau, local 57*, 1997 CarswellQue 86 (S.C.C.) and previously followed by the Board in *1527992 Ontario Inc. v. Prydatko*, 2016 CarswellOnt 11272. The following non-exhaustive list of factors was relevant to the Board's determination in *CAN AZ-DZ Driver Services Inc.*: the selection process, hiring, training, discipline, evaluation, supervision, assignment of duties, remuneration and integration into the business.

TERMINATION AND SEVERANCE – CONSTRUCTIVE DISMISSAL – In *ALL Canada Crane Rental Corp.*, 2021 CarswellOnt 11645, the Board considered applications for review of orders to pay holding that the employer had constructively dismissed two claimants. The Board was guided by the Supreme Court of Canada's decision in *Potter v. New Brunswick (Legal Aid Services Commission)*, 2015 CarswellNB 87 (S.C.C.), a decision in which the Court suc-

cinctly outlined the forms of, principles underlying, and tests for constructive dismissal. In *All Canada Crane Rental Corp.*, the Board allowed the applications for review. The Board agreed that the claimants had been constructively dismissed but found they had not resigned in response to their constructive dismissal within a reasonable period of time. Delays of just short of four and one-half months and just short of five months surpassed that reasonable period.

DIRECTOR LIABILITY – DIRECTORS’ LIABILITY FOR WAGES-SECTION 81 – INTRODUCTION – In *Haase (Brian), a Director of 2171445 Ontario Inc. (Re)*, 2021 CarswellOnt 727 the Board confirmed the limited situations in which a director may be relieved from personal liability where an order to pay has been issued against them. Those circumstances are limited to the following: “(a) they fall within a class of directors exempted from liability under section 80 of the [Employment Standards] Act; (b) they were not directors at the relevant time; (c) the amounts are excessive having regard to the nature of the claim or the temporal limitations on recovery under subsections 81(3) and (7) of the Act; or (d) where the directors of an employer establish that the employer does not owe to the employee the wages that are the subject of the order to pay.”

REVIEWS BY THE BOARD – APPLICATIONS FOR REVIEW-SECTION 116 – INTRODUCTION – In *Candollar Silver Blockchain Inc. (Re)*, 2020 CarswellOnt 3657 (O.L.R.B.) an employer who utilized blockchain technology in its business requested an exception to the requirement to pay monies into trust when filing an application for review of an order to pay. (The employer’s application had been filed late.) The employer attributed its late filing and non-payment of funds to the fact that it operated on shareholder loans, had no funds, had no bank account, and had no revenue since November 2018. “While not unsympathetic,” the Board rejected the employer’s request for an exception saying: “...the Board has no discretion under the Act to accept the filing of the application without the payment of the monies owing under the Order to Pay into trust or the provision of an irrevocable letter of credit.”

ProView Developments

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