

STANCER GOSSIN ROSE LLP

LAWYERS • MEDIATORS

FALL 2018 – EMPLOYMENT NEWSLETTER

CHANGING OF THE SEASONS

Change is in the air. The leaves have turned bright colours, and many, if not most, have fallen to the ground. Seemingly endless summer heat waves have turned to cold days, rain and frost. Meanwhile, the days grow shorter. Is it any surprise then that Ontario employment law, which seems to be in an almost constant state of flux, has changed again this autumn? Just as we need to switch to winter tires for safety, turn off the water to avoid frozen pipes, and dig out our warmer clothes for comfort and protection, employers need to be informed of recent legal developments, and take appropriate steps to make their workplaces compliant to avoid legal liability and excess costs. Employees need to understand how the winds of change have affected their rights – which are not always what they might first appear. In either case, we are here to help lead you out of the wilderness.



Making Ontario Open for Business Act, 2018

The new Conservative provincial government introduced a controversial new bill (47) with the sunny title *Making Ontario Open for Business Act, 2018*. The Act repeals many (but not all) of the sweeping changes to employment standards legislation which the previous government created via the equally controversial (and also sunny titled) *Fair Workplaces, Better Jobs Act, 2017* (Bill 148). The most well-known of the new government's changes is to keep the general minimum wage at \$14.00 for the time being (after it was raised from \$11.40 in January, 2018) by cancelling another scheduled increase to \$15.00 in January, 2019. However, Bill 47, which is not yet law, contains many other important changes. This is not intended to be political or economic commentary, nor is it an exhaustive review of the pending legislation. A brief summary of Bill 47 can be found [here](#).

However, before making any changes to employment contracts, verbal employment terms, workplace policies or daily practices to take into account Bill 47 it is vital that employers not unilaterally make amendments that could result in a common law constructive dismissal claim by employees. Similarly, employees should not assume that any and all changes to the terms of their employment are legal or illegal. It

is important that people seek legal advice from experienced an employment lawyer.



As one example only, while the Bill removes the “reverse onus” provision with regard to an employer having to prove to the Ministry of Labour that an independent contractor is not an employee, in our view, the law with respect to who is an actual, legal independent contractor (and who is not) has not changed in most respects. A seemingly independent contractor may, in fact, still be an employee at law (or even a dependent contractor, a common law classification that is unaffected by legislation), which can create significant severance and other obligations for employers that they might not have considered if they did not obtain, and follow, expert advice.

Legalized Cannabis

By now, we assume you might be tired the of stereotypical photos of a green marijuana leaf that introduce almost every article about “legal weed”. So, instead, we are displaying (below) this lovely photo of (non-intoxicating) vine

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leaves turning a multitude of fall colours. It also does a better job at making a point: Everything changes and we need to adapt by embracing diversity and uncertainty. As you probably know, the federal *Cannabis Act*, which has the effect of legalizing recreational cannabis across the country, came into effect on October 17, 2018. While Ontario will be passing legislation with respect to further rules and regulations regarding the sale and consumption of cannabis in this province, there is little guidance about recreational and medical cannabis in the workplace.



The only things that seem certain are that consuming recreational cannabis in the workplace is not legal, and an employee cannot, generally, work while intoxicated by any controlled substance.

However, this doesn't mean that employers can disregard the *Human Rights Code* when it comes to employees with substance abuse issues, or genuine requests for reasonable accommodation for the use of

medical cannabis. It is vital, therefore, that employers have new and suitable workplace policies and procedures which deal not only with cannabis, but all intoxicating substances, (including alcohol and prescription medication) and to ensure the reasonable accommodation of those with disabilities. Otherwise, employers and employees can pay a heavy price.

This is definitely not a time for a DIY policy. We can create a customized controlled substances workplace policy for employers, and provide them with appropriate legal advice on how to implement and enforce it.

Employees also need legal advice if they have issues regarding controlled substances like cannabis. Speak to us today about this novel issue.

Employment Contracts Need to Be Continuously Reviewed and Updated

Along with the legislative changes outlined above, the common law (law made by judges as opposed to legislatures) continues to evolve with respect to the enforceability of employment contracts, particularly termination clauses which purport to restrict a terminated employee's severance entitlements. Now, more than ever, it is vital to have your employment contract, if any,

reviewed by us. Employers may or may not require an amended contract and a change in protocol. Of course, if you do not already have an employment contract prepared by an experienced employment lawyer, we recommend that you discuss with us the pros and cons of such contracts, including termination clauses and restrictive covenants (like non-solicitation and non-compete provisions).

Employees should need legal advice prior to signing an offer of employment or employment contract, or before assuming that the contract they signed is necessarily enforceable in all respects.

Finally: New Government Mandated No-Smoking and No-Vaping Signs Are Now Available

With the rise of vaping (e-cigarettes) it was only a matter of time before business owners' obligations under the *Smoke-Free Ontario Act, 2017* also changed. The long-awaited, mandated No-Smoking and No-Vaping signs were recently made available by the government. Learn about your obligations, and obtain the signs [here](#).

For assistance with any employment law, employment mediation or workplace related matters, please contact [Mitchell Rose](#) at (416) 224-1996 ext 209, or mrose@sgrllp.com.