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CURRENT HOURLY RATES

Lawyers

Loreta Zubas \$ 475
Voula Michaelidis \$ 375
Lambert Boenders \$ 250

Law Clerk

Debbie Tilley \$ 150

Note: HST is applicable on our rates.

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NEW NAME, NEW LOOK!

Those of you who have been clients for many years will notice that we have changed the name of our newsletter. The former title, "Pragmatic Litigator" dates back to an era where employment disputes moved more swiftly towards a litigated solution. Now with changes in the Rules of Civil Procedure, mediation, arbitration and settlement have become more common. Therefore in recognition of a more active approach to parting of ways, we decided to publish under the title of 'Working Notice'.

Over the past few years, one of the most common issues that clients have come to us to seek advice on is termination, whether employees who feel they have been wrongfully terminated or employers who wish to terminate an employee.

'Working Notice' is a term that is often used in these interactions so we thought it an appropriate new name for our publication.

OUR TEAM

Loreta Zubas has spent more than 25 years helping clients avoid or resolve legal issues, especially in the area of Employment law. She has acted as counsel for employers and employees in civil actions for wrongful dismissal, breach of employment contract and other related matters. As a Specialist in Civil Litigation she has represented both plaintiffs and defendants in actions, applications and appeals. Her significant experience in administrative law has included appearances before the Ontario Labour Relations Board, the Human Rights Tribunal of Ontario, the Canadian Human Rights Commission and the Employment Insurance Commission.

Voula Michaelidis joined the firm in 2009 and brings more than 10 years experience in employment law and human rights matters. In addition to her law degree from the University of Western Ontario Voula has an M.A. and a BSc. in Occupational Therapy from the University of Toronto. Voula is especially knowledgeable about cases dealing with maternity and pregnancy discrimination. She has represented clients in court, mediations, grievances, arbitrations as well as at employment standards and workers compensation proceedings. She has achieved successful results in areas such as wrongful dismissal, constructive dismissal, injunctions and directors' liability. She is bi-lingual in English and Greek

Lambert Boenders is the newest member of our team. He graduated from Osgoode Hall Law School in 1994 and was called to the Bar in 2010. His more than 25 years of experience in retail, travel and insurance operations, coupled with his legal training, have been extremely useful in analysing employment issues from both an employee and employer perspective based on a practical hands-on workplace point of view. Lambert is fluent in French and Dutch.

We will be happy to provide you with strategic solutions for all your employment legal needs.



HE SHOOTS, HE SCORES!

SETTING WORKPLACE POLICIES FOR LARGE SCALE SPORTING EVENTS

Having just gone through Olympic fever, with the FIFA World Cup in full swing, and now beginning the Wimbledon season here are a few points to consider in ensuring that staff remain productive while they are preoccupied with the accomplishments of their favourite athlete or team.

True die-hard fans will have made plans long before the event to take vacation time and cheer their favourites, others may be taking time off ad-hoc or as events unfold. Here are a few pointers for employers which employees should keep in mind to ensure everyone can enjoy these events without losing productivity, and without potentially attracting serious repercussions.

1. Clearly set out the company's expectations of all staff during these events well in advance.
2. Be clear about the objective and state business operational needs and staffing levels in advance.
3. Be fair, consistent and equitable in treatment of staff, remember that members of both sexes are fans, sometimes for different reasons.
4. Where operations permit, ask staff if they wish to book vacation time off in advance to coincide with the potential absence.
5. Allot vacation time fairly, based on job function/need, seniority, date of the initial request etc.. Be consistent and transparent in how the selection of those granted time off is made.
6. Remember that different job classes have different needs, i.e. operational staff may need to be there during regular hours, administrative staff may be able to stagger working hours.
7. If internet is accessible, ensure that employees understand whether they can keep up with the scores on static web pages. Remind them that live-stream video takes a lot of computer resources and could impact regular business processes. Set a clear and consistent policy on what will be allowed and whether streaming sites will be blocked.
8. Indicate the consequences if someone does not show up for work, without a legitimate excuse, during the times/days when these events take place.
9. Be consistent with the application of the rules and clear about any disciplinary procedure that is in place i.e. time unpaid, unauthorised absence warning etc.
10. Remind employees that those who may be keeping up with the action at their favourite pub during lunch time be mindful of the company's policy on alcohol consumption during the work day.
11. If the work environment permits, televisions may be set up in strategic areas and scores may be posted or communicated regularly so everyone can do their work while keeping up.

Remember, setting the rules in advance and ensuring a fair and equitable application will ensure that the management referee's decisions come as no surprise to the employee team!

For help with drafting and implementing workplace employment policies, see our team of professionals!

PLUS QUE ÇA CHANGE...

In the 1945 novel "Animal Farm" by George Orwell Boxer, a horse and the strongest animal on the farm, lives by the motto of "I will work harder".

He supports his boss' decisions, works long and extra hours - including when he is injured on the job - but in the end the reward for his loyalty is the glue factory.

If this sounds familiar, come and see us!



HUMAN RIGHTS TRIBUNAL OF ONTARIO ONE YEAR ANNIVERSARY

In June 2008 the responsibility of administration and hearing of human rights cases in Ontario moved from the Ontario Human Rights Commission to the Human Rights Tribunal of Ontario (HRTO). Now an expanded team of more than 40 adjudicators are handling the Tribunal's significantly increased caseload.

Currently the major areas of alleged discrimination include disability, race and colour and sex. Almost 60% of cases relate to these grounds. By far the most common area where complaints are laid is discrimination in employment. Some recent employment decisions give an indication of the Tribunal's current direction and concerns.

The decision in *McLean v. DY4 Systems* (2010 HRTO 1107) dealt with an employee who was fired because she had (erroneously) presumed to have been infected with TB. Even though the employer was made aware that the employee did not suffer from TB, they fired her as it was felt that she might take more time off and that potentially the production line would be affected in the event of a TB breakout. The Tribunal awarded 13.5 months salary and benefits and \$20,000 of general damages.

Many cases deal with maternity and parental leave issues which are classified under sex discrimination. In *Maciel v. Fashion Coiffures* (2009 HRTO 1804) Ms. Maciel was hired as receptionist for two beauty salons. On her first working day she notified her employer that she was 4 months pregnant and she was fired almost immediately. It was found that that her pregnancy was the reason for the termination and, even though Ms. Maciel only worked one day, she was awarded more than \$20,000 for lost wages including those lost during up to the maternity period as well as during this time. In addition she was awarded a further \$15,000 for injury to her dignity, feelings and self-respect.

For information on, and help with, human rights and discrimination issues please give us a call!

UPDATE ON WORKPLACE HARASSMENT AND BULLYING

Employers in Ontario have a new obligation to protect employees from workplace violence and harassment. The much talked about Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 2009 came into effect on June 15, 2010.

The *Occupational Health and Safety Act* now defines **workplace harassment** as:

"engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably be known to be unwelcome".

Workplace violence is defined as:

1. "the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to a worker;
2. "an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to a worker"; or
3. "a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker".

Employers have the obligation to prepare written policies on workplace violence and harassment which are to be reviewed at least annually. The policies must be posted in an obvious place in the workplace.

In addition, programs to implement the workplace violence and harassment policies must be developed and implemented. This includes measures and procedures for reporting and investigation incidents.

With respect to workplace violence, measures and procedures to control the risks identified in a workplace assessment as likely to expose a worker to physical injury and for seeking assistance are to be included in the program. The risk assessment and its results should be in writing and shared with the joint health and safety committee or health and safety representative.

Employees must be informed about how their employers will address workplace violence and harassment. Employers must provide employees with information and education about the contents of workplace violence and harassment policies and programs. As well, an employee has the right to refuse work if workplace violence is likely to endanger the employee.

Employers now have an additional duty regarding domestic violence. If an employer is aware, or ought reasonably be aware, that domestic violence that would likely expose an employee to physical injury may occur in the workplace, must take every precaution reasonable to protect that employee.

See us for assistance with setting up workplace policies to ensure compliance with Bill 168.

TO TWEET OR NOT TO TWEET? THAT IS THE QUESTION

Personal internet usage on the job

For many years the issue of personal or unauthorised use of the internet at the office has been a factor in terminations. It is fairly well settled that if the employer has set a policy that is fairly, and not selectively, enforced employees can be asked to stop using the internet for personal reasons while at work.

And while abuse of the web has generally not been the main cause for termination, often internet usage is added on to the letters as an example of lack of dedication the employee has to the company. References to excessive web-surfing, visiting adult or gambling websites or to downloading music and other files have been taken as proof of a pattern of disinterest in the job. To combat internet usage at work many businesses have taken to restricting access to unauthorised websites and put blocks on office computers, in effect stopping this type of activity from taking place.

Social Networking

Now with the significant increase in the use of social networking sites, we have noticed an increase in warnings or terminations as a result of the use, or abuse, of this type of activity. Based on client experience, we can advise that when certain aspects of your work or the way you are treated by your boss make you see red, posting this information on your Facebook or tweeting it may not be the best method to vent your frustrations. It is not uncommon for an employer to issue 'Cease and Desist' letters when information posted on Facebook or a blog has come to the attention of the employer. This passing on of information is often done by a well-meaning co-worker 'Friend' and it is generally not well received by management.

Remember when you post work-related information online, you may be contravening the conditions of your employee contract in several ways. Posting information on potential business transaction, mergers or acquisitions, or new clients, that you may have overheard by the water cooler in the office could not only be contrary to your employment policies, but also contravene a regulatory body. Posting unsubstantiated rumours about your boss or the company can give rise to libel charges and just simply venting your frustrations about your boss on-line may provide proof that you are unhappy about your work situation and cause your boss to help you out the door. Best to deal with your work issues with your human resource department directly at work and keep these matters from being distributed on the word-wide web.

I-Phones, Blackberry and other PDAs

The proliferation of personal digital assistants has made it easy to stay in constant contact with your office and friends. Many of you use the same email address for personal and corporate correspondence. You expect that your personal emails are not company property, however this is incorrect. Information processed through a company issued Blackberry, especially where the company uses its own Blackberry Enterprise Server (BES) is maintained and can be retrieved. Recently evidence of several highly risqué communications between a manager and an employee, even though done after business hours, were relied on by the company to institute disciplinary action. The courts have ruled that information on company issued devices is company property and should comply with company policy. Even if Blackberry users set up their company issued devices to access their private email accounts any communication can be retrieved at a later date. We recommend that you set up a personal email address through your internet provider or one of the free services (hotmail, gmail) and keep this separate from your corporate email. In addition, best to use your personal PDA and keep your business and private lives separate.

If you have questions on how internet or e-mail usage can affect your employment situation, call us!

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