

Employing staff in **Canada**



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This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice on any particular feature you should seek advice from the IRIS HR Consulting representative.

1.0 INTRODUCTION

Employers in most Canadian provinces are governed by both legislation and the common law, with an exception of Quebec, which does not follow the common law system, but rather adopts a civil law system in the form of the civil code.

The Canadian Constitution divides legislative authority between the Parliament of Canada and the provincial branches of government. The federal Parliament governs banking, the postal service, and shipping, and other employers whose core activities extend beyond provincial limits, whilst the majority of companies and employers in Canada are provincially regulated. For this reason, this guide focuses on provincial laws and specifically, those of the four major business centres in Canada, namely:

- > Toronto, in the Province of Ontario
- > Montreal, in the Province of Quebec
- > Vancouver, in the Province of British Columbia
- > Calgary in the Province of Alberta

2.0 EMPLOYMENT OF FOREIGNERS

An employer seeking to bring a worker to Canada must first obtain from Service Canada a favourable Labour Market Opinion (LMO). This opinion will confirm the genuineness of the job offer and the likelihood of its neutral or positive economic effect on the Canadian labour market. This process is referred to as a 'Request for Job Offer Confirmation'.

When the employment is based in Québec, the province's consent will also be required and the LMO will be provided jointly by Service Canada and the Québec Immigration Department.

Upon the confirmation of a positive LMO, it is the responsibility of the prospective employee to apply for the Work Permit to a Canadian Visa Office outside of Canada for processing.

There are a number of confirmation-exempt categories available for Foreign Workers, which include:

- > NAFTA Provisions for Foreign Workers (for citizens of the United States and Mexico)

- > Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA)
- > Special Programmes (e.g. the IT programme)

3.0 EMPLOYMENT CONTRACT

3.1 Form of Employment Contract

Except in the case of domestic employees, who must be provided with a written contract, employment contracts need not take any particular form, and all other employees may be employed under oral or written contracts. However, for the purposes of clarity, it is advisable for employers to issue written contracts to their employees.

3.2 Written Particulars

There is no legal requirement as to the written particulars of the employment contract.

However, employers must keep written records of key information (including contractual benefits) regarding each employee and the exact requirements vary between different provinces.

3.3 Variations

Contractual terms may be varied with the consent of both parties. Unilateral variation can be practically achieved by giving reasonable notice, in which case the old contract will expire at the end of the notice period and thereafter a new contract with the varied term(s) will come into force provided both parties agree to continue the relationship on the new terms.

3.4 Fixed Term Contracts

Fixed term contracts are generally permissible in all four provinces. However due care must be taken in the use of fixed term contracts. Successive fixed term contracts over an extended duration may establish an indefinite employment relationship and deemed as such by the employment courts. As a general rule, it is good practice to define the fixed term contract between the term and particular activities of the business, for example by specifying that the employment relationship will terminate upon the completion of a specified project or maternity cover for example. Due consideration

should also be given to the termination clause in fixed term employment agreements.

4.0 PROBATION

Probationary periods of between 1 and 6 months generally apply to unionised employees and lower-level non-unionised employees, whilst non-unionised employees in technical or management roles do not commonly serve probationary periods, although some employers do impose one.

Unionised employees do not gain the full protection of the applicable collective agreement until after they have completed probation, and so such periods serve to provide employers with greater protection to dismiss any new employees who fail to meet the expected standards of work performance. In the case of non-unionised employees, a probationary period may limit an employee's entitlement to notice upon termination.

In any case, under general employment standard legislations in all jurisdictions, employees do not gain the statutory notice for termination, until they have completed a set period of employment. The employer may not extend this set period.

5.0 REMUNERATION

5.1 Basic Pay

The period of payment of wages differs between the provinces. The Employment Standards Act of Ontario provides only that employee must be paid on the regular pay day as established by the employer. However, in Alberta the payment period must be no longer than one month, whilst in British Columbia and Quebec pay periods cannot exceed 16 days.

Employees are entitled to receive pay slips and again the exact requirements vary between provinces.

5.2 Other Elements of Remuneration

There is no legal entitlement to an end-of-year bonus in the four provinces.

6.0 WORKING HOURS AND TIME OFF

6.1 Standard Working Hours

In British Columbia, standard working hours are 8 hours per day and 40 hours per week, and overtime must generally be paid for any hours worked beyond these limits up to 12 hours a day. Any time worked over 12 hours during a day is paid at a more enhanced rate. In Alberta, the maximum working hours before overtime is payable are 8 per day or 44 per week. Employers in Ontario can require their employees to work up to 48 hours in a week, with overtime payable after 44 hours. In Quebec, there is generally no maximum limit on weekly working hours, although overtime is payable after 40 hours. Employees can refuse to work more than four additional hours in a day or more than 14 hours in a 24-hour period.

Employees in the four provinces are entitled to a meal break of at least 30 minutes when working over 5 hours.

In all four provinces, certain categories of workers are exempt from the working time regulations. These include, for example, professional employees, such as lawyers and accountants, managerial employees, sales staff and many others. Notably, in British Columbia, "high technology professionals" (as defined) in high technology companies - those in which more than 50% of the employees are either high technology professionals or managers of those professionals, or are employed in an executive capacity, are excluded from the application of certain parts of the Employment Standards Act, including working time.

6.2 Overtime

In British Columbia, overtime is paid at 1.5 times of the normal rate of pay for any time worked in excess of 40 hours per week (up until 12 hours of work per day). Any time worked beyond 12 hours per day is paid at twice the normal rate of pay. In Alberta and Ontario, hours worked beyond 44 hours per week are paid at 1.5 times the normal rate. In Quebec, overtime is normally paid at 1.5 times for hours worked beyond 40 hours per week except night-time working. In all four provinces, overtime worked may be accrued as time off in lieu or 'banked time' subject to agreement from both parties.

Collective agreements generally set overtime rates for unionised employees, while for non-unionised employees statutory overtime rates will apply where individual agreements are silent on this subject.

7.0 LEAVE

7.1 Vacation and Public Holidays

Vacation

In all four provinces, employees with at least one year's continuous service with an employer are entitled to 2 weeks' paid vacation. In British Columbia, Alberta and (but not Ontario), this entitlement increases to 3 weeks after five years' service and three years' service in Quebec. Furthermore, in Quebec, employees with less than one year's service by the end of the vacation reference year are entitled to one working day of vacation per month of service up to a maximum of 2 weeks, and those who are entitled to 2 weeks' vacation may request an additional leave of 1 week without pay, increasing the total leave to 3 weeks.

Payment in lieu of vacation and the carry over of unused vacation is normally not allowed.

Generally, employees in the four provinces are entitled to vacation pay equal to 4% of gross pay for those entitled to two weeks' vacation, and 6% of gross pay for those entitled to three weeks' vacation in a year. In Alberta, this calculation does not apply to employees paid on a monthly basis; for such employees, each week of vacation pay is calculated by dividing their monthly pay by 4.33.

Collective agreements and individual employment contracts may provide for increased entitlements.

Public holidays

Employees are generally entitled to paid public holidays as designated by the different provinces, with some exceptions and subject to meeting qualifying criteria. Some holidays are taken across the whole of Canada, while others are province specific. For the provinces of Alberta, British Columbia, Ontario and Quebec, the public holidays are as follows:

- > 1 January - New Year's Day
- > The third Monday in February - Family Day (Alberta, British Columbia and Ontario)
- > Good Friday (in Quebec, employers have the option of giving time off on either Good Friday or Easter Monday)
- > The Monday preceding 25 May – Victoria Day (National Patriots' Day in Quebec)
- > 24 June - National Holiday (Quebec)
- > 1 July - Canada Day
- > Civic Holiday - The first Monday in August (except Quebec)
- > The first Monday in September - Labour Day
- > The second Monday in October - Thanksgiving Day
- > 11 November - Remembrance Day (Alberta and British Columbia)
- > 25 December - Christmas Day
- > 26 December - Boxing Day (Ontario)
- > The local governments may also designate other days in addition to those listed above.

7.2 Sick Leave and pay

Employees in Quebec, who have at least three months' continuous service with an employer, are entitled to up to 26 weeks' leave per 12-month period owing to illness or injury (with an entitlement to 2 paid days towards sickness and caring obligations). Such leave may extend to up to 104 weeks for serious injuries suffered following a crime. In Ontario, an employee is entitled to up to 10 days of personal emergency leave from day one, which can be taken for his own personal injury, illness or medical emergency, or for the death, illness, injury, medical emergency or urgent matter relating to a close family member, as defined. The first 2 days of this leave in each calendar year is paid if the employee has been employed for a week or more. In Alberta, employees are entitled to 16 weeks of sick leave (3 days in British Columbia) after 90 days of employment. In British Columbia and Alberta, there are no statutory paid sick leave requirements.

For provinces without mandatory provision of paid sick leave or for those that do and employer sick

pay has been exhausted, Employment Insurance benefits are available to eligible employees from social security subject to a one week waiting period for a maximum period of 15 weeks at a rate of 55% of salary which is capped.

It is worth noting that in 2022, legislation is in progress to provide 10 days paid sick leave for all federal employees, which it is hoped will be reflected by the provinces.

Aside from employment insurance benefits, most employers provide some form of contractual sick pay to employees, and in unionised businesses, collective agreements provide for sick leave benefits.

7.3 Family Leave

Maternity

A pregnant employee is entitled to unpaid maternity leave of 17 weeks in Ontario and British Columbia, 16 weeks in Alberta, and 18 weeks in Québec, subject to meeting the length of service requirement in the applicable employment standards legislation (there is no qualifying condition in Québec and British Columbia).

Eligible employees on maternity leave are entitled to benefits under the federal Employment Insurance programme (EI) or Québec parental insurance plan (QPIP) in Québec. EI benefits are paid at the rate of 55% of the employee's average insurable weekly earnings up to a maximum of CAD \$638 per week (as of January 2022) for a total of 15 weeks. In Québec, QPIP offers the pregnant employees a choice between the basic plan (18 weeks of benefits at 70% of her average weekly income) and the special plan (15 weeks of benefits at 75% of her average weekly income). The QPIP calculates maternity benefits subject to the maximum insurable income fixed at CAD\$88,000 in 2022.

Paternity

In Québec, an employee is entitled to 5 consecutive weeks of paternity leave without pay. This 5-week period is in addition to the 52 weeks of parental leave that both parents are entitled to. Fathers on paternity in Québec may choose to receive benefits from QPIP's basic plan (5 weeks of benefits at 70% of their average weekly income) or from QPIP's special

plan (3 weeks of benefits at 75% of their average weekly income). The QPIP calculates paternity benefits subject to the maximum insurable income fixed at CAD\$88,000 in 2022.

For all the other provinces, employed fathers may be entitled to access parental leave.

Parental Leave

Parents are entitled to an unpaid leave of absence of between 52 to 63 weeks, depending on the jurisdiction, subject to meeting the length of service requirement in the applicable legislation within the province.

Under the EI, eligible employees on parental leave may be entitled to receive the standard parental benefits paid at a weekly benefit rate of 55% of average weekly insurable earnings, up to a maximum amount. For 2022, this amount is CAD\$638 per week for up to 35 weeks for one parent or 40 weeks if split. Alternatively, eligible employees may choose to access their entitlement in the form of extended parental benefits paid at a weekly benefit rate of 33% of the average weekly insurable earnings, up to a maximum amount of CAD\$ 357 per week (in 2022) for up to 61 weeks for one parent or 69 if split.

Under the QPIP in Québec, there is a choice between the basic plan (32 weeks of benefits at 70% for the first 7 weeks and at 55% for the following 25 weeks) and the special plan (25 weeks of benefits at 75%). Eligible adoptive parents may access 37 weeks, with 12 weeks at 70% of income and 25 weeks at 55% of income under the basic plan or 28 weeks at 75% of income under the special plan. The QPIP calculates paternity benefits subject to the maximum insurable income fixed at CAD\$88,000 in 2022.

7.4 Other leave

Entitlements to other types of leave vary between the provinces, and such entitlements are generally, though not always, without pay. For example, employees in Quebec are entitled to 10 days' leave to care for a child or a sick relative (with 2 days' paid), as defined, with the possibility of extending the leave up to 104 weeks if a minor child has a potentially fatal illness. In Ontario, employees may receive unpaid Family Medical Leave of up to 8 weeks in a 26 week period. There are also

provisions for jury duty leave and reservists' leave, among others.

Employees taking unpaid leave to care for family members may be eligible for Compassionate Care Benefits under the EI. Notably many of these types of leaves are 'job-protected' which mean that the employee has the right to return to their role following the leave period.

7.5 Extended leave

Since the statutory provision of paid leave is not extensive, employers generally look to enhance their leave of absence policies. This is discretionary and subject to requirements of each employer.

8.0 SOCIAL SECURITY COVERAGE

8.1 Introduction

The social security system in Canada is the joint responsibility of federal and provincial governments. Old Age Security pension (OAS), Canada Pension Plan (CPP) and Employment Insurance (EI) all fall under the federal governmental jurisdiction, Service Canada, alongside other welfare plans. Healthcare benefits and Workers Compensation insurances are managed at provincial level.

8.2 Basic Pension

The retirement system of Canada is made up of the following components:

Old Age Security Pension (OAS). This is the cornerstone of the Canada retirement programme and is a monthly payment made to Canadian residents who are at least 65 years old and who meet the Canadian legal status and residence requirements.

It can be enhanced by the benefits below:

- **Guaranteed Income Supplement (GIS).** This is available to residents only in conjunction with the OAS and is specifically for residents who have little or no other income to support themselves. It is funded by federal tax revenue. Eligible Canadian residents are automatically enrolled for the GIS if they are automatically enrolled into the OAS pension. Residents who are not automatically enrolled into the GIS and

believe they qualify can complete a form to apply for this benefit.

- **Allowance.** This benefit is paid to Canadian residents with low incomes who are aged between 60 and 64 years old and whose spouse or common-law partner is in receipt of GIS payments, subject to eligibility criteria. The amount payable is calculated based on the previous years' income and marital status.
- **Allowance for the Survivor.** This allowance is paid to Canadian residents aged between 60 and 64 who have a low income and whose spouse or common-law partner has died, subject to eligibility criteria. It is calculated based on the previous years' income.

CPP – Canada Retirement Pension Plan.

This is a monthly taxable benefit which replaces part of eligible residents' income from when they retire for the rest of their life. It is operational in every Canadian province, with the exception of Quebec, which has its own pension system, the Quebec Pension Plan (QPP). All residents aged 18 and above have to pay a prescribed portion of their earnings into the CPP. The benefit payable is calculated based on average income throughout the working life, the level of contributions made to the CPP, and the age when the resident decides to start their CPP pension payments. For pension calculation purposes, average income is capped at a level set annually (\$64,900 in 2022). To be eligible, residents must be at least 60 years old and must have made at least one valid contribution to the CPP.

QPP – Quebec Pension Plan. This plan is similar in structure to the Canada Pension Plan.

CPP and QPP contributions are paid by both employees and employers, at a rate of 5.25% each for CPP and 5.70% each for QPP of earnings between CAD\$3,500 and CAD\$64,900. Under the CPP system, other benefits are provided, namely disability, survivor's pension, death, and children's benefits.

8.3 Basic Health Coverage

Public medical services, Medicare, are funded by the federal government but managed at provincial level by 13 independent provincial and territorial health care insurance plans. All must provide a basic level of care to provincial residents as defined in the Canada Health Act and each plan must be transferrable from province to province.

The majority of services covered under these plans include the following (many with a capped monetary amount):

- > Diagnostics and laboratory tests
- > Anaesthetics
- > Surgical treatments
- > Maternity
- > Preventative care (e.g., inoculations)
- > Dental care (where the service must be performed in a hospital)

Other services provided in some provinces, again at a restricted level, include:

- > Physiotherapy
- > Chiropractor
- > Podiatry
- > Osteopath
- > Prosthetics and orthotics
- > Vision care
- > Prescription drugs

8.4 Employment Insurance (EI)

EI contributions are paid by employees and employers. Contribution rates are as follows:

	Employer	Employee	
Quebec	1.68%	1.20%	Both capped at earnings of CAD\$ 60,300
All other provinces	2.212%	1.58%	

For most people, the basic rate for calculating EI benefits is 55% of your average insurable weekly earnings, up to a maximum amount. As of 1 January 2022, the maximum yearly insurable earnings amount is \$60,300.

EI provides benefits for unemployment, sickness and compassionate care leave. It also provides benefits for parental and maternity leave in all provinces except Quebec.

9.0 WORKERS' COMPENSATION INSURANCE

Worker's Compensation Insurance is mandatory in Canada since employees have a right to compensation for work-related injuries and illnesses, and in the case of death as a result of a work-related injury or illness, the beneficiaries are entitled to claim compensation. Workers' Compensation is province driven, so requirements for each province can vary. Each employer is required to secure an insurance policy for their workers. Benefits from Workers Compensation insurance include:

- > Paying income during time the employee is off work
- > Vocational rehabilitation
- > Payment of a disability pension in the case of long-term disability

Premiums for this insurance are based on their industry rate, payroll and individual experience rating. Should an employee suffer injury or illness under this category, then the employer is obliged to assist in the rehabilitation and re-employment of the individual.

10.0 SUPPLEMENTAL BENEFITS

10.1 Health Insurance

It is common for Employers to provide group health insurance plans for their employees, to complement the state-provided Medicare provision. Typically, such schemes provide enhanced benefits including:

- > Semi-private or private wards
- > 100% reimbursement basis for emergency treatment out of Canada
- > Higher level and reimbursement of prescription drugs
- > Dental care
- > Vision care
- > Prosthetics
- > Paramedical services

Top-level plans also include services such as spectacles or hearing aids. The terms of each plan will vary depending on the province, for example, in Quebec, an employer sponsored medical plan must offer a “drug plan” to all registered employees. Funding for these schemes varies from co-payment where the employees pay a percentage of the premiums, to employer-funded schemes, where the employer pays the full premium for the employee and their dependents.

10.2 Sickness Benefits

There are a number of approaches adopted by employers in provision of sickness benefits:

- > Providing a plan that comes into effect after the 15-week EI benefit has been paid
- > Providing an integrated plan that pays an allowance to disabled employees whilst they are not eligible for EI benefits
- > Implementing a scheme superior to the EI benefit plan, which then allows the employer to claim a rebate from the provincial government for the employee's EI benefits.

10.3 Occupational Pension

Amongst larger employers, defined benefit pension schemes are widespread although defined contributions schemes are becoming more popular within smaller companies.

‘Registered’ pension plans are tax-deferred schemes and are subject to various federal and provincial laws and regulations. Any registered pension plan may be contributory or non-contributory for employees.

In addition to pension plans, individuals may contribute into a registered retirement savings plan (RRSP). Such schemes are regulated by the CRA, since contributions into these plans are deducted from the employees’ gross salary, thereby reducing their taxable income. Some employers offer a group RRSP (GRRSP) instead of a registered pension plan – this option is particularly common amongst smaller companies, simply because of administrative costs in establishing a registered pension plan.

10.4 Death & Disability Insurance

Life Insurance

Separate life insurance plans are common. Employers within Canada will provide their workforce with a Life Insurance scheme with a typical sum insured of 1 to 2 times their basic annual salary (2 to 3 times for Executives) although this is generally capped at around CAD 500,000. For sums insured in excess of CAD 100,000, medical underwriting is expected, and employees will need to complete an evidence of insurability form declaring their medical history. The outcome of the underwriting will determine if there is a change in the insurability limit and premium rate payable.

Accidental Death and Dismemberment (AD&D)

Accidental Death and Dismemberment (AD&D) coverage is a common rider to the Life Insurance coverage, with the benefit payable being the same as the Life Insurance sum insured amount.

If Life Insurance and the AD&D rider are provided as part of a packaged scheme it becomes a mandatory element of the plan and cannot be removed.

If Life Insurance and the AD&D rider are fully funded by the employer, the premium is treated as a taxable benefit. If the intention is to provide this benefit “tax-free”, employees should contribute towards the cost of the cover - a 20% contribution is a typical amount.

Dependant Life Insurance

It is common for all packaged plans to include an element of insurance for dependant Life cover. Typical cover is offered at CAD 5,000 for spouse and CAD 2,500 per child, in the event of their death whilst the employee is covered under the plan.

Where this coverage is secured as a component of a packaged scheme, it subsequently becomes a mandatory element and cannot be removed. As with Life Insurance if this is fully funded by the employer it is treated as a taxable benefit. If the intention is to provide this benefit “tax free”, employees should contribute towards the cost of the cover - a 20% contribution is a typical amount.

Short Term Disability Insurance

Short Term Disability Insurance is becoming a common benefit for employers to fund, it is typically an added option, available under a packaged scheme and can sometimes be funded by employees. A typical plan offering is 66.67% of monthly earnings up to CAD 1,500, for a maximum period of 17 weeks. The benefit becomes payable from the first day of an accident or hospitalisation, and from the eighth day onwards for periods of sickness.

Unless this benefit is funded 100% by the employee, the cover will be taxable to them, regardless of if this is provided in a larger packaged scheme or under the umbrella of a separate plan.

Long Term Disability Insurance

Long Term Disability Insurance is a common benefit offered by employers within Canada. This scheme is secured either as part of a larger packaged policy or as a separate scheme. A typical plan would provide coverage at 66.67% of salary, capped at CAD 10,000 per month, from the 120th day of sickness absence through to age 65. It is better for employees to fund

this benefit as if they do ever need to make a claim, they will not be taxed on the benefit.

As with the Short-Term Disability Insurance, unless the employee funds this insurance plan at 100% of the premium, the cost of this insurance is taxable to the employee.

10.5 Company Car

Provision of a company car or a car allowance is a common benefit in Canada. Both attract a level of taxation and neither one is more advantageous than the other.

Where an employee is using his/her car to travel on company business, a ‘reasonable rate’ determined by the Canadian Revenue Agency is to be used for fuel reimbursement purposes.

10.6 Others

Tuition reimbursement

This is another popular benefit commonly offered and highly valued amongst employees. Provision depends largely on the company’s philosophy towards learning and development as does the amount paid.

Employee Assistance Programme (EAP)

Employee Assistance Programmes are an increasingly popular employee benefit. They typically offer support to employees such as toll-free phone lines hosted by qualified consultants, face-to-face counselling and wellness services.

11.0 TERMINATION OF EMPLOYMENT

11.1 Means of Termination

Terminations are commonly achieved in three ways:

- > termination for cause;
- > termination without cause with reasonable notice or pay in lieu of notice; and
- > termination due to frustration of contract.

Termination by the employer

Generally, termination is either for cause or with reasonable notice, or payment in lieu thereof, where no cause exists.

For unionised employees, collective agreements will almost always provide that employees may only be dismissed for just cause. However, under most collective agreements, newly-hired employees will be required to serve a probationary period of between one and six months, during which time their rights to the “just cause” protection either do not exist or are extremely limited.

Employers are entitled to dismiss non-unionised employees at any time, whether with or without cause. Where dismissal is without cause, the employer must provide sufficient notice or payment in lieu thereof. It should be noted that employees on fixed term contracts cannot be dismissed within the term of the contract except for cause. If the contract is terminated early without cause, then the employer must pay salary and benefits representing the duration of the unexpired term.

Cause is generally deemed to arise where the employee has been guilty of very serious misconduct, going to the root of the employment relationship. However, progressive discipline for less serious misdemeanours may, in aggregate, constitute cause, depending on the circumstances.

11.2 Notice of Termination

Provincial statutes provide minimum requirements regarding notice periods, but in practice notice periods vary considerably, and contractual notice entitlements will usually exceed the statutory minimum requirements, particularly in the case of managerial and executive level employees. At common law, the terminating party is required to give “reasonable” notice of termination. What is deemed reasonable will depend on a number of factors, including age, level of responsibility, position in the corporate hierarchy, the circumstances surrounding the hiring of the individual, among many others. Generally, the longer the period of employment, the older the employee and the more senior the position, the greater the notice period required under common law.

The statutory notice periods by employers are as follows:

Province	Length of service	Notice period
British Columbia	Over 3 – 12 months 1 – under 3 years 3 – under 4 years 4 years+	1 week 2 weeks 3 weeks 1 additional week for each year (max. 8)
Alberta	Over 3 – 24 months 2 – under 4 years 4 – under 6 years 6 – under 8 years 8 – under 10 years 10 years +	1 week 2 weeks 4 weeks 5 weeks 6 weeks 8 weeks
Quebec	Over 3 – 12 months 1 – under 5 years 5 – under 10 years 10 years +	1 week 2 weeks 4 weeks 8 weeks
Ontario	Over 3 – 12 months 1 - under 3 years 3 - under 4 years 4 years+	1 week 2 weeks 3 weeks 1 additional week for each year (max. 8)

Notice periods are longer in the case of mass dismissals (generally 50 or more employees within a specified timeframe, although the threshold in Quebec is 10 employees).

Employers may make a payment in lieu of notice, whether or not they have a clause to that effect in the employment contract. However, garden leave may only be imposed where there is an express contractual right to do so.

Notice requirements for employees resigning from their jobs differ between the provinces and generally, by common law, employees are required to give reasonable notice of resignation.

Where termination is for cause, then prior notice is not required.

11.3 Redundancy

Dismissals based on economic factors are recognised as valid terminations, and are generally caused by technological changes, or a reduction in workforce numbers. Such dismissals are termed

“layoffs” and may require certain notice and consultation requirements, along with any agreed severance obligations.

Severance pay is only a statutory requirement in Ontario, where it is payable to employees with at least 5 years’ service with the employer at the time of termination, in the following circumstances:

- > where 50 or more employees are terminated in a 6-month period or less, and the terminations are caused by the permanent discontinuance of all or part of the employer’s business at an establishment, or
- > one or more employees have their employment terminated by an employer with an annual payroll in Ontario of CAD\$2.5 million or more.
- > The severance pay is 1 week’s pay for every year of service to a maximum of 26 weeks. Collective agreements and companies often offer enhanced severance benefits.

In the case of collective or mass redundancies (generally 50 or more employees in a specific timeframe, although in Quebec the obligation is triggered at 10 employees in 2 consecutive months), employers have specific obligations to notify the provincial Minister of Labour. In addition, advance notice of termination must be given to the employees and the union should also be notified where applicable. Furthermore, there may be consultation obligations arising from the provisions of a collective agreement or pursuant to certain statutory provisions in some provinces.

11.4 Settlement Agreements

Settlement agreements are generally enforceable as long as: i) consideration is paid to the employee in return for the release of claims ii) they are not signed under duress and iii) they are not so unfair as to be considered unconscionable. It is preferable for employees to have received legal advice prior to signing a settlement agreement.

11.5 Post-Employment Restrictions

Post termination restrictions, particularly non-competition clauses, are generally difficult to enforce, and are only likely to be upheld where the former employee may be deemed to owe a

fiduciary duty to the employer. It is essential that the scope of the restrictions in terms of duration, geographical area and type of activity, is reasonable, and limited only to whatever is necessary to protect the legitimate interests of the employer.

Employees are generally not compensated during the period of restriction from using confidential information or from soliciting customers of the former employer.

11.6 Providing References

There are no statutory or common law requirements regarding the provision of employment references. However, where employers fail to provide a reference, and subsequently find themselves subject to a wrongful dismissal action, the absence of a suitable letter may impact on the level of damages payable to the former employee. Moreover, minimal references that merely confirm dates of employment and positions held may be construed as a negative opinion of the former employee’s performance. Employers must therefore exercise care when providing references, so as to avoid litigation both from the former employee, as well as the new employer.

In Quebec, if requested by a former employee, employers must issue a work certificate detailing the nature of the employment, its duration, the start and end dates, and the name and address of the employer.

12.0 DISCRIMINATION

Human rights legislation in all four provinces prohibits discrimination in employment on a variety of grounds including:

- > Race
- > Ancestry
- > Place of origin
- > Colour
- > Ethnic origin
- > Citizenship
- > Creed
- > Sex

- > Sexual orientation
- > Gender identity
- > Gender expression
- > Age
- > Record of offences
- > Marital status
- > Family status
- > Disability
- > Trade union membership

Protection against harassment in the workplace on similar grounds is provided via provincial human rights legislation and other employment related statutes.

13.0 INDUSTRIAL RELATIONS

In Canada, unions exist primarily in the public sector, the traditional manufacturing enterprises and the transportation sector. In the financial, insurance and 'high tech' sectors they are virtually non-existent.

In all provinces, employees have a statutory freedom to join or not join a union of their choice except for those employees who are classified as 'managerial' or 'confidential in matters relating to labour relations' (and, in Alberta, certain professionals).

Collective agreements are normally negotiated annually or for periods of two to three years and contain various terms and conditions of employment. The collective agreement is binding on the employer, the trade union and all the employees within the bargaining unit regardless of whether or not they belong to the union.

14.0 DATA PROTECTION

Data protection is governed by the federal Personal Information Protection and Electronic Documents Act 2000 (PIPEDA), which offers a national standard for protection of individuals' data across virtually all private industries.

The PIPEDA stipulates 10 basic principles regarding the collection, use or disclosure of employees' personal information:

- > Accountability.
- > Identifying purposes.
- > Consent.
- > Limiting collection and use.
- > Disclosure and retention.
- > Accuracy.
- > Safeguards.
- > Openness.
- > Individual access.
- > Challenging compliance

Every province and territory has its own laws that apply to provincial government agencies and their handling of personal information. Some provinces have private-sector privacy laws that may apply instead of PIPEDA. This means that those laws apply instead of PIPEDA in some instances. These provinces are:

- > Alberta
- > British Columbia
- > Québec.

These three provinces have general private-sector laws that have been deemed substantially similar to PIPEDA. PIPEDA does not apply to businesses that operate entirely within these three provinces unless the personal information crosses provincial or national borders. Businesses that operate in Canada and handle personal information that crosses provincial or national borders are subject to PIPEDA regardless of which province or territory they are based in.

Alberta, British Columbia and Québec have also enacted legislation on the protection of employees' personal information with Ontario enacting health-related privacy laws concerning health information, e.g. the Personal Information Protection Act in Alberta, Personal Information Protection Act 2003 in British Columbia and the Personal Health Information Protection Act 2004 in Ontario, Act Respecting the Protection of Personal Information in the Private Sector in Quebec.



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