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# New Year's Resolutions for Employers in 2024

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As we step into the new year, now is an opportune time for Canadian employers to reflect on the past year and develop resolutions to improve workplace practices, reduce potential liabilities, and ensure legal compliance in 2024. In 2023, there were several legal developments and trends that impose new obligations and will impact employers in 2024 and beyond.

Below is a summary of the key areas Canadian employers should be focused on to improve workplace practices, reduce liabilities and ensure legal compliance in 2024.

1. **Employment Agreements**

A primary concern for employers should be employment agreements. Written employment agreements are a best practice for employers. Employment agreements for existing employees and templates used to prepare agreements for new hires should be reviewed carefully to ensure they are compliant with the law. Employers risk significant termination costs to terminated employees if their termination entitlements are not set out in an employment agreement.

In 2023, the Ontario courts continued to follow the Court of Appeal for Ontario's ruling in *Waksdale v. Swegon North America Inc.* 2020 ONCA 391 ("*Waksdale*"), which affirms the principle that the unenforceability of one portion of a termination provision in an employment agreement because of non-compliance with the applicable employment standards legislation invalidates all other portions of the termination provisions of that agreement.

Recent decisions have built upon *Waksdale* and expanded the court's focus beyond the termination provisions to all terms and conditions of an employment agreement. One recent decision struck down the termination provision in an employment agreement due to language within the confidentiality and conflicts of interest provisions within the agreement.

While *Waksdale* is an Ontario decision, the courts in other provinces and territories have begun to consider and apply *Waksdale*.

Given recent developments, we recommend that all employers have their employment agreements for current and new employees reviewed by legal counsel if they have not done so within the past 12 months.

2. **Workplace Policies and Handbooks**

Workplace policies and handbooks should be evaluated in 2024 along with employment agreements. If policies and handbooks have not been updated in the last 12 months, these documents likely require an update to comply with new legislative requirements or revisions to remove provisions that are noncompliant with applicable employment standards. In 2023 and 2024, new legislation in several Canadian jurisdictions have introduced new workplace requirements. Employers must be aware of these changes and prepare to meet key upcoming dates and take action to comply with deadlines that passed in 2023.

Employers operating under policies of their parent company, particularly those based outside of Canada, should not rely on policies and handbooks from other jurisdictions. Canadian law in most cases significantly differs from that in the United States and other countries. Canadian employers must ensure that policies and handbooks are tailored for their size and operations, and compliant with applicable Canadian laws.

3. **Workplace Training**

The new year is an opportunity to train new and existing staff. Under federal and provincial occupational health and safety legislation, employers must ensure staff and managers are trained in workplace health and safety. In many jurisdictions, employers must also provide specific training on workplace harassment and sexual harassment. As a best practice, employers should also incorporate human rights considerations in these training sessions.

Failure to provide necessary training can result in statutory penalties and can be used as a factor in awarding damages against an employer where workplace harassment or discrimination is found to have occurred in the workplace. For example, in a 2017 decision, the Court of Appeal for Ontario upheld an order against an employer to pay $85,000 in moral and general damages to an employee who experienced harassment and discrimination in part due to the employer's failure to adequately train its staff and management on these issues.

4. **Investigating Complaints of Workplace Harassment and Discrimination**

While reviewing workplace training programs, employers should also ensure that they have appropriate policies and processes in place to address complaints of workplace harassment and discrimination. Similar to the requirement regarding workplace training, many jurisdictions impose statutory requirements on employers regarding the investigation of such complaints.

In most jurisdictions, employers have a duty to investigate all complaints of workplace harassment, including sexual harassment. Employers may also have a duty to investigate and address complaints of discrimination under the applicable human rights legislation. Such investigations should be undertaken promptly, should maintain confidentiality, and should be objective and thorough. Where appropriate, an investigation should be conducted by a neutral third-party. A failure to appropriately investigate and address complaints of workplace harassment or discrimination could lead to statutory penalties or a court award of general, aggravated or punitive damages.

5. **Diversity, Equity, and Inclusion**

Diversity, equity, and inclusion will continue to be among the key areas of focus for employers in 2024. As employers strive to attract, retain, and engage top talent and find innovative ways to solve complex issues, efforts towards DEI will continue to be front and center. WeirFoulds' DEI Practice is ready to guide and partner with employers to navigate and achieve their DEI needs/requirements.

WeirFoulds' team of DEI, Employment Law, and Human Rights experts has extensive experience in the areas of diversity, equity and inclusion, Indigenous rights and human rights. We have provided advice and have litigated matters involving these subject areas for a broad range of clients, including large financial institutions, professional regulators, hospitals, universities, and public and private companies across various sectors. We also have experience with conducting a racial equity audit for one of Canada's largest private sector employers. Given the many challenges confronting employers in 2024, it has never been more important to have DEI/Employment Law experts to help you navigate these uncertain and unprecedented times.

6. **Recruiting Practices and Pay Transparency**

Several provinces have implemented recruiting and pay transparency requirements impacting employer job posting and recruiting

practices.

In Ontario, Bill 149, the *Working for Workers Four Act,* proposes to introduce a number of new requirements impacting employer recruitment practices. If passed, the legislation will require employers who advertise public job postings to include in those postings information about the expected compensation or range of compensation for the position. Bill 149 also proposes to require Ontario employers to disclose in advertised job postings whether they use artificial intelligence to screen, assess or select applicants for employment. Also, if passed Bill 149 will prohibit Ontario employers from including in any public job postings requirements for Canadian work experience as a job requirement (although there may be exceptions to this prohibition in the final legislation or introduced by regulation).

At the time of this article, Bill 149 has been referred to a standing committee for review and is within the second reading stage. If Bill 149 is passed, these requirements will come into effect on a date to be confirmed by the government.

In 2023, British Columbia passed its own *Pay Transparency Act* which became effective November 1, 2023. Among other requirements, the legislation currently requires B.C. employers to include the expected salary or wage or the expected range for the position in any publicly advertised job posting.

Prince Edward Island and Newfoundland already have pay transparency requirements. Many other provinces are currently considering similar legislation. Accordingly, employers across the country should review their current recruiting and job-posting practices and ensure they are prepared for compliance with any new requirements.

7. **Economic Uncertainties**

The economy and job market will likely impact the operations and practices of many employers in 2024. Employers that anticipate a restructuring or a reduction in staff in 2024 should take steps in advance to estimate the termination costs, identify potential legal risks , and any statutory requirements that need to be satisfied.

Before taking any measures, an important step is reviewing all employment agreements for affected staff to determine whether they can be relied upon to calculate termination entitlements. Where agreements are unenforceable, employers need to account for potential enhanced common law reasonable notice entitlements when estimating termination costs. Employers should also consider whether providing employees with working notice of termination to fulfill some or all of their obligations is a viable approach.

Employers should carefully review statutory rules impacting upon mass terminations and determine any requirements that must be met. In the past few years, the mass termination provisions in some provinces have been updated with new requirements; for example in Ontario the *Employment Standards Act, 2000* was amended in 2023 to include remote workers when determining whether statutory mass termination entitlements and obligations apply.

Where temporary layoffs are being considered, employers should consider whether such approach may result in claims of constructive dismissal.

8. **Licensing Requirements for Temporary Help Agencies and Recruiters**

Commencing on July 1, 2024, temporary help agencies operating in Ontario must hold a licence to operate. Employers who contract with temporary help agencies should be aware of these requirements, as clients of such agencies will be prohibited from knowingly engaging or using the services of a temporary help agency unless the agency is licensed.

Similarly, effective July 1, 2024, recruiters operating in Ontario must hold a licence to operate. Employers, prospective employers, and

other recruiters will be prohibited from knowingly engaging or using the services of any recruiter that does not hold a licence. Employment agencies in B.C. are already subject to a similar licensing requirement in order to operate in B.C.

9. **Artificial Intelligence in the Workplace**

This is an area that will likely affect many employers in all Canadian jurisdictions, as important developments are likely to arise in 2024 and in the coming years.

The Canadian federal government and many provinces, including Ontario, have held consultations regarding the use and regulation of AI in many forms.

As noted above, Ontario is close to potentially passing a requirement that employers disclose the use of AI in the hiring, screening or assessing of job applicants. It is likely that other provinces and the federal sector will see other AI-related requirements in the near future.

At this time, employers are entitled to implement policies regarding employee use of AI in the workplace. However, employers should take great care in drafting such policies and ensure the policies are flexible enough to adapt to legal and practical developments in AI.

10. **Return to Office and Hybrid Work**

2024 will be a year in which many employers will implement return-to-work strategies and hybrid work models, or evaluate existing strategies and models. Employers should ensure they have clear and well-drafted return-to-work or hybrid-work policies setting out the rights of the employer and expectations of staff under the policy.

Before taking action on a return-to-work plan or hybrid work model, employers should ensure that managers are equipped to handle common situations that may arise. For example, managers must be prepared to properly handle accommodation requests, and identify where human rights obligations may be triggered.

Further, employers should assess any constructive dismissal risks that may arise in return-to-work plans and have a plan to handle employee refusals to cooperate or work effectively under such plans.

**Conclusion**

If your organization requires assistance with any workplace matters in 2024, feel free to contact Dan Wong, Megan Mah, Elizabeth Charles or Seth Holland from WeirFoulds' Employment & Labour Practice Group.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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