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BARRISTERS & SOLICITORS

Workplace Law E-ssentials

Monday, January 28, 2013

Psychological Health and Safety in the Workplace: Prevention, Promotion and Guidance

The Road To Psychological Safety

Over the last 20 years there have been significant developments in both law and various scientific disciplines with regard to defining the need for, and characteristics of, what has been termed the psychologically safe workplace.



Workplace Factors Affecting Psychological Health And Safety

The statements for each factor are provided to help you think about the current state of your own workplace.

The more strongly you agree with the statements, the more likely you will have a psychologically safe workplace:

(1) organizational culture

An organization with good organizational culture would be able to state that:

- (a) all people in the workplace are held accountable for their actions;
- (b) people at work show sincere respect for others' ideas, values, and beliefs;
- (c) difficult situations at work are addressed effectively;
- (d) workers feel that they are part of a community at work; and
- (e) workers and management trust one another.

(2) psychological and social support

An organization with good psychological and social support would be able to state that:

The Standard

Click on the link below to download the entire National Standard of Canada for Psychological Health and Safety in the Workplace report.

[Download CAN/CSA-Z1003-13/BNQ 9700-803/2013 Standard](#)

>> <http://Download.CAN/CSA-Z1003-13/BNQ.9700-803/2013.Standard>

In Other News...

On January 30, 2013, Mark Fletcher will be speaking at the Law Society of Upper Canada on the topic "Disability Benefits in Employment and After Dismissal".

On February 7, 2013 Mark Fletcher will be speaking at the Ontario Bar Association on the topic "Back to Basics: Litigating Human Rights Applications".

On May 8, 2013 Norm Grosman will be speaking for Federated Press Publications on the topic "Executive Employment Contracts".

Lexpert's Peer Review process has selected Norm Grosman and Bill Gale as two of the "Top 500 Lawyers in Canada" for 2013.

- (a) the organization offers services or benefits that address worker psychological and mental health;
- (b) workers feel part of a community and that the people they are working with are helpful in fulfilling the job requirements;
- (c) the organization has a process in place to intervene if an employee looks distressed while at work;
- (d) workers feel supported by the organization when they are dealing with personal or family issues;
- (e) the organization supports workers who are returning to work after time off due to a mental health condition; and
- (f) people in the organization have good understanding of the importance of worker mental health.

(3) clear leadership and expectations

An organization with clear leadership and explicit expectations would be able to state that:

- (a) in their jobs, workers know what they are expected to do;
- (b) leadership in the workplace is effective;
- (c) workers are informed about important changes at work in a timely manner;
- (d) supervisors provide helpful feedback to workers on their expected and actual performance; and
- (e) the organization provides clear, effective communication.

(4) growth and development

An organization with good growth and development would be able to state that:

- (a) workers receive feedback at work that helps them grow and develop;
- (b) supervisors are open to worker ideas for taking on new opportunities and challenges;
- (c) workers have opportunities to advance within their organization;
- (d) the organization values workers' ongoing growth and development; and
- (e) workers have the opportunity to develop their "people skills" at work.

(5) recognition and reward

An organization with good recognition and reward program would be able to state that:

- (a) immediate supervision demonstrates appreciate of workers' contributions;
- (b) workers are paid fairly for the work they do;
- (c) the organization appreciates efforts made by workers;
- (d) the organization celebrates shared accomplishments; and
- (e) the organization values workers' commitment and passion for their work.

(6) involvement and influence

An organization with good involvement and influence would be able to state that:

- (a) workers are able to talk to their immediate supervisors about how their work is done;
- (b) workers have some control over how they organize their work;
- (c) worker opinions and suggestions are considered with respect to work;
- (d) workers are informed of important changes that can impact how their work is done; and
- (e) the organization encourages input from all workers on important decisions related to their work.

(7) psychological protectionAn organization with good psychological protection would be able to state that:

- (a) the organization is committed to minimizing unnecessary stress at work;
- (b) immediate supervisors care about workers' emotional well-being;
- (c) the organization makes efforts to prevent harm to workers from harassment, bullying, discrimination, violence, or stigma;
- (d) workers would describe the workplace as being psychologically healthy; and
- (e) the organization deals effectively with situations that can threaten or harm workers (e.g., harassment, bullying, discrimination, violence, stigma, etc.)

Clearly, the above is not an all inclusive list of the various areas and considerations pertaining to a psychologically healthy and safe workplace. That said it should provide a quick and useful guide to analyzing your own workplace on what is becoming an increasingly important area of labour and employment law.

We have inserted the link which will allow you to download the entire Standard on the main page.

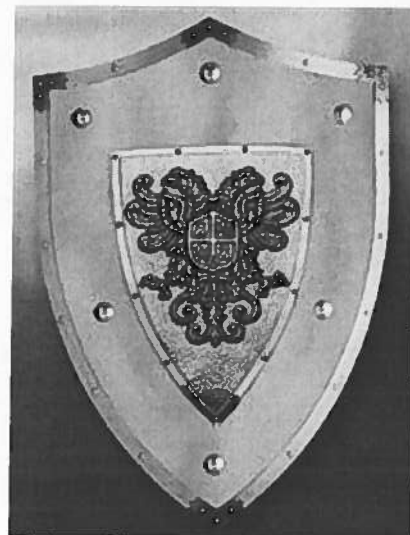
If you have any questions on this important issue, or otherwise wish to discuss in more detail, feel free to give us a call.

Security in the Absence of a Legal Release - Severance Packages Revisited

When drafting or negotiating a severance package it is fundamental to make the signing of a release by an employee mandatory. A release is often a short 1-2 page legal document in which an employee agrees to forfeit any past, present or future legal right to damages relating to their dismissal, typically for a sum of money, etc. (the severance package).

But what happens when you have already cut and delivered the cheque and do not have a release signed or omit to include one all together?

A recent Ontario Superior Court (*Bland v. Canadian Farm Insurance*, 2012 ONSC 3021) tells us that despite the absence of a release, a court will apply an "objective observe test" to determine if the parties agreed to settle all matters relating to the employee's dismissal.



While employers may welcome this decision, we always advise that any severance package provide that a release must be executed in exchange for any amount provided by the company outside of the mandated statutory minimums.

When requiring an employee to execute a release it is also important to keep a few key points in mind:

- You should provide the employee a reasonable amount of time to consider their rights and consult with legal counsel to guard against a future argument that they were placed under duress at the time of termination, which could result in a release being deemed void.
- In Ontario, courts have questioned whether offering an employee their basic statutory entitlements (i.e.: *Employment Standard* or *Canada Labour Code* minimums) is sufficient consideration for a release. It is advisable to offer (at least) slightly more than the statutory amount to guard against an argument that there is a lack of proper consideration.
- In the absence of a signed release and a (termination for cause), an employee is still entitled to their statutory minimum. These amounts are not contingent on the signing of release.

Is Honesty Always the Best Policy?

On Monday, one Wall Street banker received an email from a young applicant hoping to secure a summer internship – yet instead of flicking it straight through to HR or to the junk folder, the banker was struck by the applicants' refreshing and honest approach. Sending it onto some mates, the email has since gone viral.

It has been reported that people on Wall Street are calling it one of the best cover letters they have ever seen. As the cover letter was sent around to bankers via email, it becomes clear that numerous recipients are touched by the young man's honesty, and have intentions to hire him.

He acknowledged that it is highly unusual for undergraduates from "average universities" like the one he attends to get internships at such prestigious organisations – but hoped on this occasion they would make an exception.



From: [REDACTED]
Sent: Monday, January 14, 2013 1:14 PM
To: [REDACTED]
Subject: Summer Internship

[REDACTED]

Dear [REDACTED]

My name is [REDACTED] and I am an undergraduate finance student at [REDACTED]. I met you the summer before last at Smith & Wollensky's in New York when I was touring the east coast with my uncle [REDACTED]. I just wanted to thank you for taking the time to talk to me that night.

I am writing you to inquire about a possible summer internship in your office. I am aware it is highly unusual for undergraduates from average universities like [REDACTED] to intern at [REDACTED] but nevertheless I was hoping you might make an exception. I am extremely interested in investment banking and would love nothing more than to learn under your tutelage. I have no qualms about fetching coffee, shining shoes or picking up laundry, and will work for next to nothing. In all honesty, I just want to be around professionals in the industry and gain as much knowledge as I can.

I won't waste your time inflating my credentials, throwing around exaggerated job titles, or feeding you a line of crapp about how my past experiences and skill set align perfectly for an investment banking internship. The truth is I have no unbelievably special skills or genius eccentricities, but I do have a near perfect GPA and will work hard for you. I've interned for Merrill Lynch in the Wealth Management Division and taken an investment banking class at [REDACTED] for whatever that is worth.

I am currently awaiting admission results for [REDACTED] Masters of Science in Accountancy program, which I would begin this fall if admitted. I am also planning on attending law school after my master's program, which we spoke about in New York. I apologize for the blunt nature of my letter, but I hope you seriously consider taking me under your wing this summer. I have attached my resume for your review. Feel free to call me at [REDACTED] or email at [REDACTED]. Thank you for your time.

Sincerely, [REDACTED]

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