MLT AIKINS

SK LABOUR UPDATE 2023

LAND ACKNOWLEDGEMENT

MLT Aikins acknowledges that our offices are located on the territories of Indigenous peoples who have occupied these lands since time immemorial, including the First Nations of Treaty 1 (Winnipeg), Treaty 4 (Regina), Treaty 6 (Edmonton and Saskatoon), Treaty 7 (Calgary), the Coast Salish peoples (Vancouver), as well as other non-Treaty First Nations and Métis.

We recognize that we benefit from the lands. We are dedicated to ensuring that the spirit of reconciliation is honoured and respected.

UPCOMING EVENTS

- 2023 IP, Data & Technology Update: Safeguarding your Business into the Future
  - Winnipeg & virtual – June 1, 2023
- SK HR Professionals Seminar
  - Regina – October 18, 2023
  - Saskatoon & virtual – October 26, 2023

For more events and event details, visit us at events.mltaikins.com

MLT AIKINS

CHANGING LANDSCAPE OF HARASSMENT AND BAD BEHAVIOUR IN THE WORKPLACE

John Agioritis

Amy Gibson

OVERVIEW

Increase in Occupational Health & Safety Obligations

- *An Act to Amend the Saskatchewan Employment Act, 2022*
- *Canada Labour Code*

Human Rights and Common Law Decisions

- Increase in penalties
- Human rights complaints in Saskatchewan
- Recent common law decisions

Changing Arbitral Landscape

- Cases on racial harassment, threats of violence, bullying, and sexism & sexual harassment
- Determination of penalties

AN ACT TO AMEND THE SASKATCHEWAN EMPLOYMENT ACT, 2022

GENERAL DUTIES

Employers and supervisors

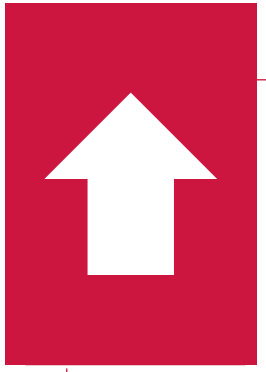
- Ensure, insofar as reasonably practicable that workers are not exposed to violence in the workplace

Employees

- Refrain from causing or participating in any violent act towards another worker

ADDITIONAL WORKPLACE INVESTIGATIONS

- Employers are now required to conduct an investigation into **any** incident of harassment at the place of employment
- The same requirement applies to incidents of violence in the place of employment starting May 17, 2024



Number of investigations taken by employers

Incidents to include formal complaints and circumstances of suspected harassment or violence

DEFINITION OF DISCRIMINATION

- Altered to include acts taken by a person acting on behalf of an employer

WORKPLACE VIOLENCE

Section 3-26 of *The Occupational Health and Safety Regulations* defines violence as:

"the attempted, threatened or actual conduct of a person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that the worker is at risk of injury."

WORKPLACE VIOLENCE POLICIES

Existing obligation for:

- Prescribed employers: e.g. providers in health care facilities, education services, police services, corrections, etc.
- Workplaces where a violent situation has occurred or is likely to occur

WORKPLACE VIOLENCE POLICIES

By May 17, 2024 ALL employers required to have a written policy statement and prevention plan in place

Must include:

- A commitment to minimize or eliminate risk
- Identification of the worksites
- Identification of staff positions
- Procedure to inform workers of the nature and extent of the risk from violence
- The actions the employer will take to minimize **o**r eliminate risk
- Violent incident reporting procedure
- Documenting and investigation procedure
- Recommendation for post-incident counselling or consultation with physician
- Commitment to training

WORKPLACE VIOLENCE POLICIES

Definition of worker expanded to include students, volunteers, and contract workers

Copies will need to be readily available to employees

Employers will have until May 17, 2024 to implement the policy

WORKPLACE VIOLENCE TRAINING

Employers will need to train workers on workplace violence

Must include:

- Means to recognize potentially violent situations
- Procedures, work practices, administrative arrangements and engineering controls that have been developed to minimize risk of violence
- Appropriate response to incidents of violence
- Reporting procedures

CANADA LABOUR CODE

Work Place Harassment and Violence Prevention Regulations

Violence Policy to include:

- Descriptions of roles in relation to harassment and violence in the workplace
- A description of risk factors that contribute to workplace harassment and violence
- A summary of emergency procedures

RECENT HUMAN RIGHTS & COMMON LAW DECISIONS

HUMAN RIGHTS COMPLAINTS IN SASKATCHEWAN

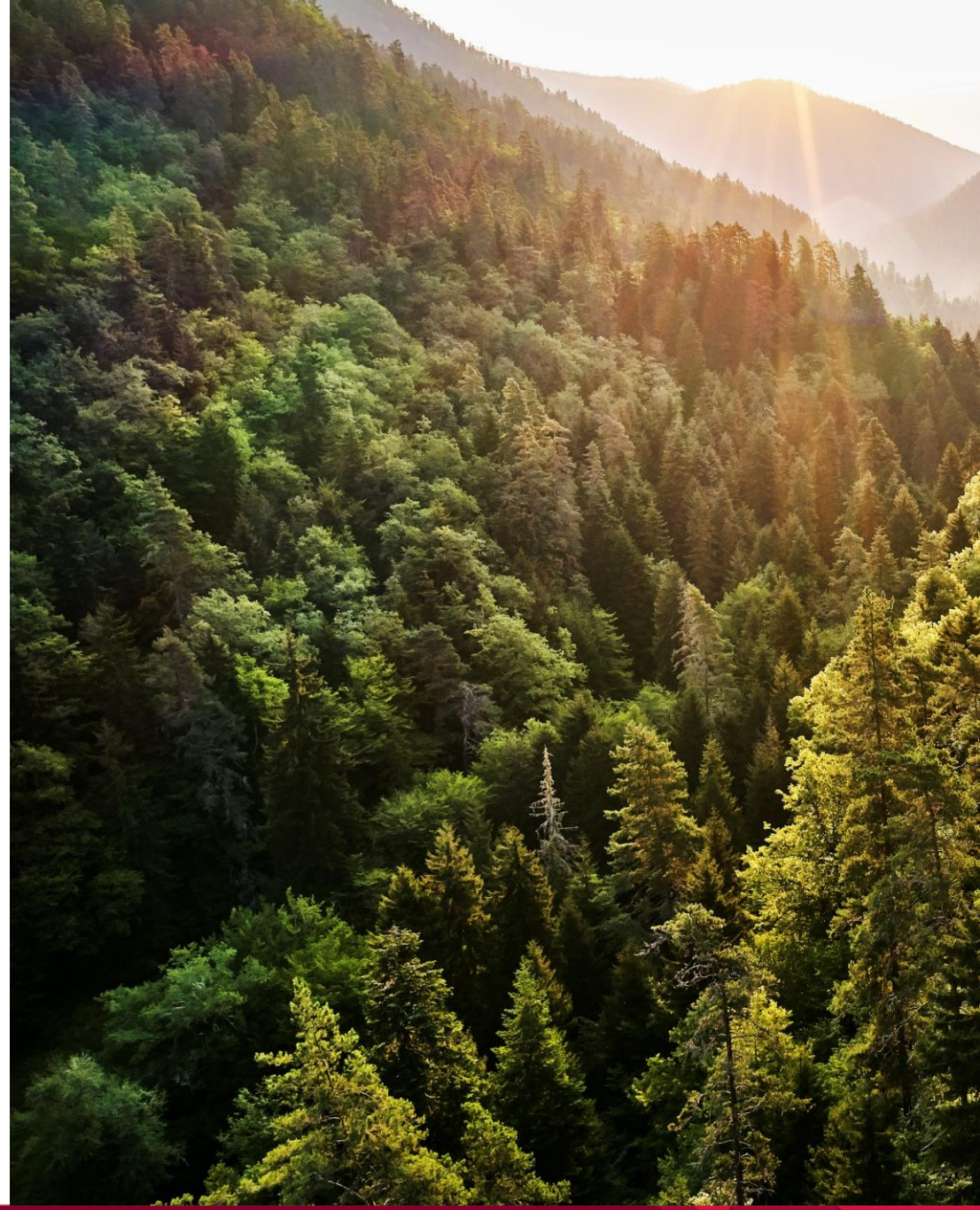
Cap of $20,000 for special damages

Court of King's Bench has the jurisdiction to make other damage awards

INCREASE IN HUMAN RIGHTS PENALTIES

Francis v BC Ministry of Justice (No. 5), 2021 BCHRT 16

- Subject to poisoned work environment – contributed to mental illness and deterioration in physical health
- Left employment in 2013 and medically unfit to return
- Employer to pay the complainant $964,197.24 in damages and lost earnings for a failure to properly investigate and prevent chronic and abhorrent racist discrimination



INCREASE IN HUMAN RIGHTS PENALTIES

McCharles v Jaco Line Contractors, 2022 AHRC 115

- Discrimination on the basis of gender
- Sexually harassed while on a business trip
- Respondent denied all allegations and terminated her employment
- Awarded $50,000 in general damages

CASE LAW ON TERMINATION FOR CAUSE

THOMAS V SASKATCHEWAN INDIAN GAMING AUTHORITY, 2021 SKCA 164

- Employee terminated for breach of Employee Code of Conduct and Anti-Harassment and Workplace Violence Policy
- Employee had a heated exchange with a member of management after being informed he was not the successful candidate for a management position and that it had been awarded to a female co-worker
- The employee accused the director of procurement of being racist and not supportive of the advancement of Indigenous men

THOMAS V SIGA CONT'D.

Court of Queen's Bench determined that SIGA had just cause for dismissal

Court of Appeal upheld the decision:

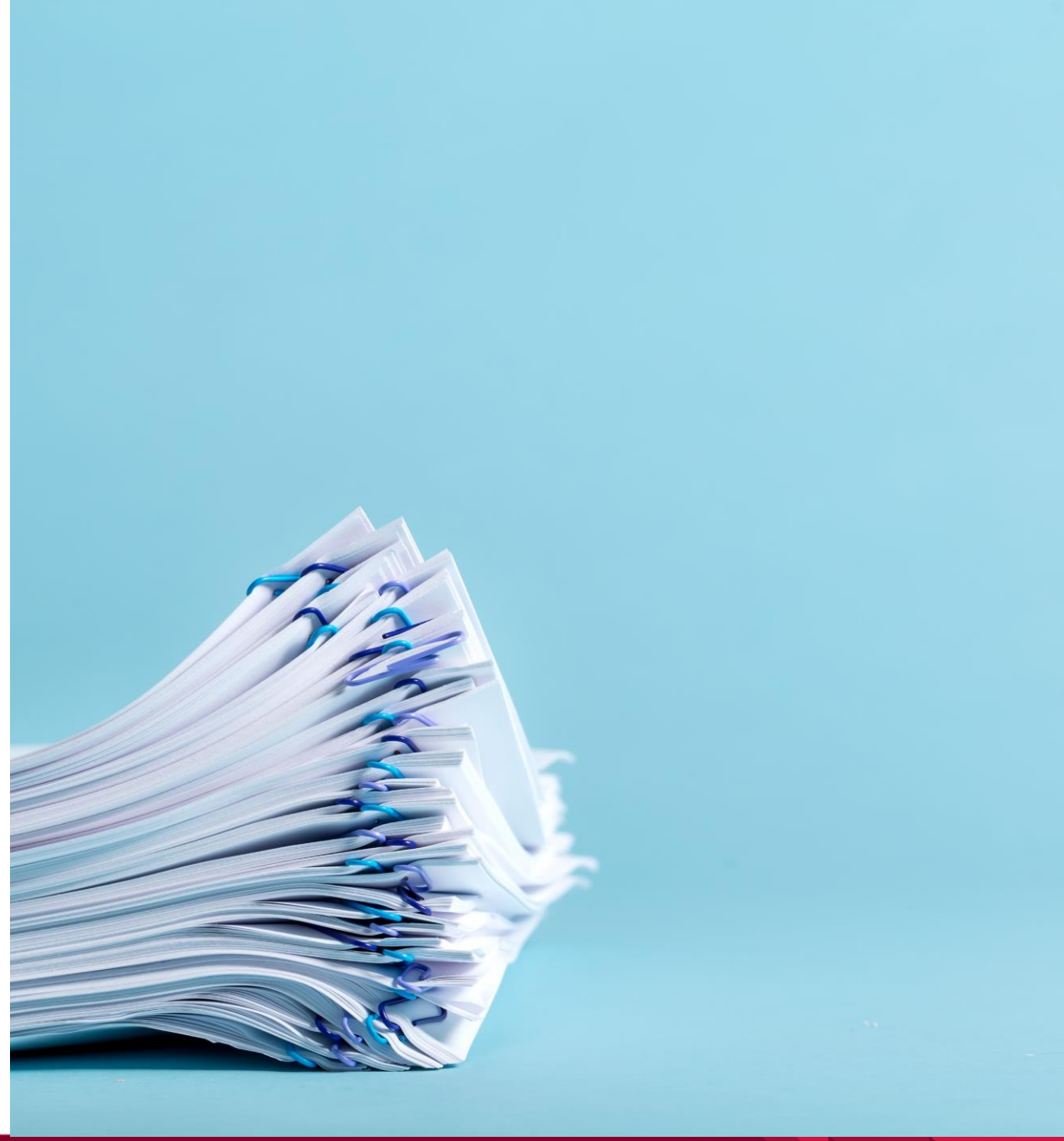
- Employee's actions had irreparably damaged the employment relationship
- Although a single incident, the employee's conduct was problematic and caused the supervisor to be fearful

HUSCKO V A.O. SMITH ENTERPRISES LIMITED, 2021 ONCA 728

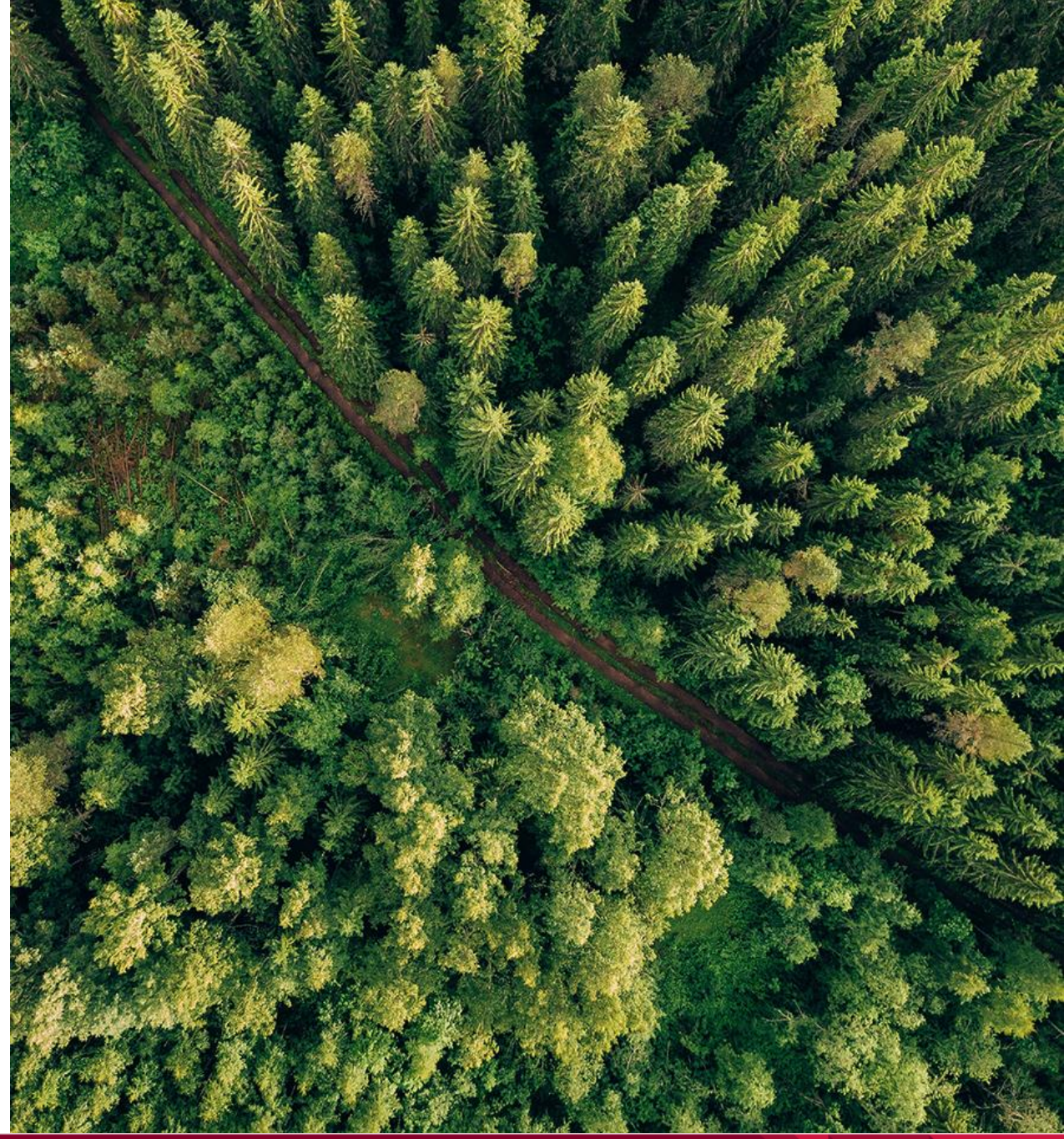
- 62-year-old employee with 21 years of service terminated for sexual harassment
- Employee had made 4 sexually inappropriate comments to a female coworker
- Employee denied the incidents and did not accept responsibility or show remorse

HUSCKO CONT'D.

- Trial judge determined the employer did not have just cause
    - Overturned on appeal
- Trial judge failed to consider the employer's Workplace Harassment Policy and the employee's training on such policy
- Employee's actions clearly amounted to misconduct



CHANGING ARBITRAL LANDSCAPE



RACIAL HARASSMENT

Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic, 2020 CanLII 78471 (SKLA)

- Carpentry instructor terminated following his response to an email requesting donations for the Indigenous Student Holiday Hamper, and other racist comments made during the course of the investigation
- Arbitrator Wallace determined that the conduct warranted discipline, but termination was too severe
- A six-month unpaid suspension was ordered, along with re-instatement and compensation for lost wages

RACIAL HARASSMENT

Saskatchewan Polytechnic CONT'D.

- Employee had not received the mandatory Indigenous Awareness Training
- There were deficiencies in the investigation of the misconduct
- Failed to follow the established harassment policy process

RACIAL HARASSMENT

Saskatchewan Gaming Corporation – Casino Regina v Public Service Alliance of Canada, 2021 CanLII 5520 (SK LA)

- Grievor terminated following two complaints of harassment:
  - #1: insensitive and racist remarks towards an Indigenous female colleague
  - #2: rude and possibly racist remarks towards a server of Asian origin
- Behaviour combined with previous discipline and a lack of remorse and acceptance of responsibility justified dismissal
- There was little confidence that the misconduct would not be repeated if the grievor was reinstated
- Grievance was dismissed

RACIAL HARASSMENT

Federated Co-operatives Limited v Miscellaneous Employees, Teamsters Local Union No.987 of Alberta, 2022 CanLII 78226 (AB GAA)

- 20-year FCL employee terminated for expressing racist views in the workplace
  - Wrote “I AM NOT A MUSLIM” on his mask during one of his shifts
- Employee’s decision was a “deliberate, intentional, defiant and offensive act of misconduct”
- FCL’s consistent response to the employee’s racial, religious and/or ethnic comments was key to upholding the termination

THREAT OF VIOLENCE

***United Food and Commercial Workers Local No. 1400 v P&h Mining Group (Parrish & Haimbecker, Limited Saskatoon),* 2021 CanLII 134374 (SK LA)**

- 10-year employee received a two-day suspension after an incident in which he stood over a co-worker with a hammer and said “guess now would be a good time to get even with you”
- Grievor had received two written warnings for previous instances of name calling
- Union’s argument that there were deficiencies in the investigation of the first two instances of misconduct was dismissed

THREAT OF VIOLENCE

***United Food and Commercial Workers Local No. 1400* CONT'D**.

- Arbitrator found that the suspension was light and the grievance was dismissed

> "Aggressive and abusive behavior towards others, including verbal abuse, is unacceptable in the workplace and universally regarded as being at odds with the employer's interest in creating a positive and productive working environment, and safeguarding the health and safety of employees. This can amount to serious misconduct, deserving of discipline, and, depending on the circumstances, can justify immediate discharge. Arbitrators must show deference to disciplinary decisions made by employers, unless those decisions can be shown to be manifestly or demonstrably unreasonable."

BULLYING

United Steelworkers, Local 7916 v Nutrien Ltd. 2019 CanLII 127840 (SK LA)

- Grievor terminated following an investigation into a complaint of verbal and physical harassment
- Grievor singled out a particular employee and tormented them on a daily basis
  - This was different from the “usual” employee conduct in the workplace (poking, shoving and verbal exchanges)
  - Physical assaults included pinching the inside of the employee’s arm, grabbing and shaking their chair, and purposefully bumping into him to spill his coffee

BULLYING

United Steelworkers, Local 7916 v Nutrien Ltd. CONT'D.

- Arbitrator Wallace noted that:
  - "While there is nothing wrong with good humor and joking in a workplace, and while the use of profanity might be acceptable in certain circumstances, it is not the words themselves that determine whether profanity is abusive or offensive, but rather the tone and intention of the user…"
- Abusive behaviour had a significant impact on the targeted employee
- Grievance was dismissed and the termination upheld

BULLYING

Sasktel v Unifor, Local 2S, 2019 CanLII 57057 (SK LA)

- Employee dismissed following a review of her behaviour following allegations of harassment and bullying
- Employee had a letter of warning and a 2-day suspension on her record
- Dismissal arose from her interpersonal relationships and interactions with managers, co-workers and internal clients
  - Aggressive, offensive and disrespectful behaviour
  - Use of vulgar and inappropriate language

BULLYING

Sasktel v Unifor, Local 2S CONT'D.

- Employee denied responsibility and provided no sign that she was capable of changing her behaviour
- Dismissal was upheld
- Employer successfully raised these issues with employee on several occasions

SEXISM AND SEXUAL HARASSMENT

Unifor, Local 922 v Nutrien Ltd., 2020 CanLII 108481 (SK LA)

- Employee terminated following an incident in which he brought a sexually inappropriate t-shirt to work
- Committed a similar act of misconduct the preceding month
- Previous incident of inappropriate graffiti in the work area had also been discussed with all employees
- Employee had received extensive training on the employer's policies and was fully aware of behavioural expectations in the workplace

SEXISM AND SEXUAL HARASSMENT

Unifor, Local 922 v Nutrien Ltd., CONT'D.

- Found that he knew or ought to have known that the t-shirt's vulgar and demeaning messages would cause his female coworker to be humiliated and intimidated
- Employee was dishonest in the course of the investigation
- Employee was AWOL for two days after the t-shirt was found
- Termination upheld

DETERMINATION OF PENALTIES

IMPACT OF THE HARASSMENT

Section 3-1(1) of the SEA defines harassment as:

(i) any inappropriate conduct, comment, display, action or gesture by a person towards a worker:

(A) that either:

(I) is based on any prohibited ground as defined in *The Saskatchewan Human Rights Code, 2018* or on physical size or weight; or

(II) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause the worker to be humiliated or intimidated; and

(B) that constitutes a threat to the health or safety of the worker; or

(ii) any conduct, comment, display, action or gesture by a person towards a worker that:

(A) is of a sexual nature; and

(B) the person knows or ought reasonably to know is unwelcome

IMPACT OF THE HARASSMENT

- No required intention to cause harm
- More weight to be placed on the impact of the harm rather than the intent of the harasser
- Significant penalty may be imposed whether or not the employee knew what they were doing was wrong
- An employee does not need to be told directly that a specific act of conduct is inappropriate

PROPORTIONATE DISCIPLINE

- Was the discipline imposed proportionate to the employee's conduct?
- Arbitrator Ponak in *Casino Regina* noted that:
  - "[t]he Grievor does not have a clean record and under progressive discipline principles misconduct that on its own might not result in discharge can justify termination if an employee had previously been disciplined and warned that his or her conduct must improve"
- Will be instances where progressive discipline in not appropriate
  - For example, in FCL the employee's actions were serious enough to warrant termination

PROPER INVESTIGATION

Adequacy of the investigation into the misconduct

Employers need to ensure investigations are conducted properly and according to their policies

- Arbitrators are less likely to uphold disciplinary action or termination if they are not followed

ACCEPTANCE OF RESPONSIBILITY AND REMORSE

What is the likelihood of re-offending or committing further harassment?

Has the employee demonstrated that they understand their actions were wrong and that they have learned from them?

Has the employee apologized?

Has the employee shown remorse for their actions?

Was the employee dishonest in the investigation?

TYPE OF WORKPLACE

- Safety Sensitive Workplaces:
    - Offshore production platform in oil field - Unifor, Local 2121 and Hibernia Platform Employers' Organization, 2022 CarswellNfld 142
- Public Sector:
    - Emergency call operator - L'assoc. des Policiers et Policières, Répartiteurs et Répartitrices D'edmundston et Gaëtan Beaulieu et D'Edmundston (Ville), 2021 CarswellNB 489
    - Public casino - Casino Regina
- But nature of the workplace is not an excuse!

CONCLUSION

- Review and update violence prevention policies and procedures to ensure compliance
- Remain alert to instances of harassment and violence in the workplace and address them promptly
- More severe penalties are being upheld for employee harassment and violent behaviour
- Ensure you have reviewed the circumstances before imposing discipline to ensure penalty can be supported if challenged

Q&A

THANK YOU

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BREAK

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SASKATCHEWAN CASE LAW AND LEGISLATION UPDATE

Brent Matkowski

AGENDA

1. Employment law update
2. Arbitration law update
3. Labour board decisions update
4. Human rights decisions update
5. COVID-19 case law update
6. Legislation update

EMPLOYMENT LAW UPDATE

“PICK A LANE”

***Ayalew v The Council for the Advancement of African Canadians in Alberta*, 2023 ABKB 113**

- Allegations of misconduct against employee
- Third-party investigation – complaints not substantiated
- Employer terminated without cause, subsequently discovered the investigation report was incorrect
- Employee made wrongful dismissal claim

“PICK A LANE”

***Ayalew v The Council for the Advancement of African Canadians in Alberta*, 2023 ABKB 113**

- Employer argued that despite the without cause termination, it had just cause to terminate the employee
- Employer stated that relying on the investigator’s interim report was a mistake – but in any case, it had after-acquired cause to terminate

“PICK A LANE”

***Ayalew v The Council for the Advancement of African Canadians in Alberta*, 2023 ABKB 113**

- Employer was precluded from relying on after-acquired cause
  - *Employer was fully aware of all material information concerning the alleged misconduct prior to termination*
- Employer waived choice to rely on “just cause” by proceeding with a without-cause termination and providing severance
- Employee entitled to 14-months pay in lieu of notice

FEDERAL ADJUDICATORS' JURISDICTION

***Miapukek First Nation v. Howse*, 2022 FC 1501**

- Investigation revealed employee had engaged in harassment
- Employee was terminated for cause, and filed complaint for wrongful dismissal under the *Canada Labour Code*
- The Adjudicator held that the employee was wrongfully dismissed and ordered the employer reinstate the employee to a different position

FEDERAL ADJUDICATORS' JURISDICTION

***Miapukek First Nation v. Howse*, 2022 FC 1501**

- Unjust dismissal decision was reasonable because the employer had failed to follow the proper steps of progressive discipline
- Reinstatement was a potential remedy but not the only remedy, nor an automatic remedy
- Necessary for Adjudicator to use "common sense" considerations – i.e., would a new position need to be made or freed up through a dismissal/transfer?

FEDERAL ADJUDICATORS' JURISDICTION

***Miapukek First Nation v. Howse*, 2022 FC 1501**

Court's Decision:

- Fundamental flaw in reinstating employee
  - Adjudicator failed to identify alternative position for reinstatement
  - Adjudicator failed to consider "common sense" considerations
- Ordered matter to be remitted back to Adjudicator for redetermination

ARBITRATION UPDATES

NATIONAL DAY FOR TRUTH AND RECONCILIATION

Provincially-regulated (Saskatchewan) workplaces

- Saskatchewan has not marked it as a public (statutory) holiday
- For unionized workplaces, dependent upon collective bargaining agreement:
  - *RWSDU v. SYSCO Regina* (unreported, May 20, 2022) (Sask Arb) (Keet): fell within the paid holiday provisions of the CBA
  - *Retail, Wholesale and Department Store Union, Local 558 v. Coca-Cola Canada Bottling Ltd*., 2022 CanLII 126110 (Sask Arb) (Ball, K.C.): did not fall within the paid holiday provisions

EXCLUSIVE ARBITRAL JURISDICTION

***Livingston v Saskatchewan Human Rights Commission*, 2022 SKCA 127**

- Union filed grievance regarding workplace accommodations
- Separately, the employee filed a civil claim against employer (Saskatchewan Human Rights Commission) and its executive director on basis of breach of privacy and procedural fairness
- Issue was whether the civil claim fell within the parameters of the collective bargaining agreement

EXCLUSIVE ARBITRAL JURISDICTION

***Livingston v Saskatchewan Human Rights Commission*, 2022 SKCA 127**

- Court of Appeal confirmed that labour arbitrators have exclusive jurisdiction to hear and determine all issues that arise under a CBA
- Can extend to human rights complaints, many civil claims and privacy claims
- Here, the essential nature of the claim fell within the scope of the CBA – therefore, claim was dismissed

EXCLUSIVE ARBITRAL JURISDICTION

***Livingston v Saskatchewan Human Rights Commission*, 2022 SKCA 127**

Notable takeaways:

- Arbitrator's jurisdiction precludes a unionized employee from advancing most civil claims against employers
- However, unclear whether this applies to human rights complaints
  - Supreme Court provided guidance in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42
  - View of the Saskatchewan Human Rights Commission appears to be that unionized employees can advance a human right complaint

ACCOMMODATION COOPERATION

***Service Employees International Union - West (Maria Celles, Grievor) v Wynyard Carres Inc.*, 2023 CanLII 13666**

- Employee worked for 12 years in “Direct Support Worker” position
- Employee requested three forms of accommodation due to medical concerns
  - (1) shift restrictions – could not work morning shift, then could only work night shift
  - (2) drivers’ license – could not obtain a drivers’ license (a requirement of position)
  - (3) communication – managers and supervisors could not communicate verbally with the grievor without union representative present
- Employee went on a leave of absence

ACCOMMODATION COOPERATION

***Service Employees International Union - West (Maria Celles, Grievor) v Wynyard Carres Inc.*, 2023 CanLII 13666**

- Employer requested medical information to support accommodation requests
- Repeated requests were made over several months
  - Requests for clarification of restrictions and an independent medical examination
  - Information provided was general without information to determine accommodations
- Employer viewed lack of communication from grievor as abandonment of position

ACCOMMODATION COOPERATION

***Service Employees International Union - West (Maria Celles, Grievor) v Wynyard Carres Inc.*, 2023 CanLII 13666**

Decision:

- Grievor did not provide any medical information that suggested she suffered from anxiety
- Medical information that had been provided was insufficient – merely stated grievor required restrictions
- Employees are required to provide sufficient medical information about the nature of the disability and its connection to the claimed inability to perform the job duties

ACCOMMODATION COOPERATION

***Service Employees International Union - West (Maria Celles, Grievor) v Wynyard Carres Inc.*, 2023 CanLII 13666**

Decision:

- It was reasonable to request an independent medical evaluation
  - Employer had received two insufficient medical notes from the grievor's physicians
  - The physicians refused to provide sufficient information for several months
  - Employer gave the grievor a choice of alternate medical professionals
- Employer was justified in terminating employment – grievance dismissed

LABOUR BOARD UPDATES

DUTY OF FAIR REPRESENTATION

***Lapchuk v Saskatchewan Government and General Employees' Union*, 2023 CanLII 10988**

- Employee terminated for cause; resulting grievance was dismissed
- Labour Board determined the union had failed to properly represent employee in two ways
  - (1) failed to represent him in the issues that led to his termination (e.g., ensuring he received proper workplace accommodation for his PTSD)
  - (2) failed to properly represent him in the preparation and conduct of the arbitration
- Board found union's breach reflected an inability or unwillingness to understand and accommodate mental health illnesses

DUTY OF FAIR REPRESENTATION

***Lapchuk v Saskatchewan Government and General Employees' Union*, 2023 CanLII 10988**

- Employer not at fault – no joint responsibility for damages
- Union required to pay damages commensurate to the position employee would have been in "but for" breach
- Total damages = $294,755
    - Breach of duty, legal expenses, out of pocket expenses, moral damages, pre-judgment interest

UNION (AS EMPLOYER) ULP

***COPE, Local 342 v CUPE*, 2022 CanLII 48057**

- CUPE (Employer) and COPE (Union)
  - One of CUPE's employees, was on COPE's bargaining committee
  - CUPE determined it was not comfortable with its CUPE employee bargaining on behalf of COPE at CUPE tables, viewed it as a conflict of interest
- CUPE sent employee a letter stating he was prohibited from bargaining against CUPE and a failure to abide by this would result in disciplinary action up to and including dismissal

UNION (AS EMPLOYER) ULP

***COPE, Local 342 v CUPE*, 2022 CanLII 48057**

Decision:

- Not in a conflict of interest
  - On union leave during bargaining
  - Union-management relationship is inherently adversarial
- Legislation prohibits employers with interfering with the exercise of “any” union right
- CUPE had interfered with rights and committed an ULP by threatening to terminate employment to discourage his union activity

HUMAN RIGHTS UPDATES

FAMILY STATUS DISCRIMINATION

***Desai v. North Ridge Development Corporation*, 2023 SKKB 3**

- Complainant alleged family status discrimination
- Employee unilaterally took additional time off during busy season
- Employer refused extension for time off and gave complainant a disciplinary letter when the complainant refused to attend work
- Complainant quit in response and alleged discrimination

FAMILY STATUS DISCRIMINATION

***Desai v. North Ridge Development Corporation*, 2023 SKKB 3**

Decision:

- Protected ground of “family status” includes elder-care
- To establish *prima facie* case of discrimination, complainant does not have to establish “self-accommodation requirement”
    - i.e., no need to demonstrate that the complainant had made reasonable efforts to meet their family status obligations (e.g., childcare/elder-care obligations) through reasonable alternative solutions

FAMILY STATUS DISCRIMINATION

***Desai v. North Ridge Development Corporation*, 2023 SKKB 3**

- Complainant had to establish "*Moore*" factors
  - (1) have a characteristic protected from discrimination
  - (2) suffered an adverse impact
  - (3) the protected characteristic was a factor in the adverse impact
- Complainant failed to establish the reason she was away from work was due to a family care obligation

CREDIBILITY ASSESSMENT IMPORTANT

***Arnot (Commissioner of the Saskatchewan Human Rights Commission) v. Arcand*, 2022 SKQB 188**

Summary:

- Complainant alleged his supervisor made several derogatory and racial comments to him throughout his employment
  - Swearing, shouting slurs
  - Making derogatory comments about Indigenous peoples
- Supervisor denied making all comments
- No third-party witnesses or documentary evidence

CREDIBILITY ASSESSMENT IMPORTANT

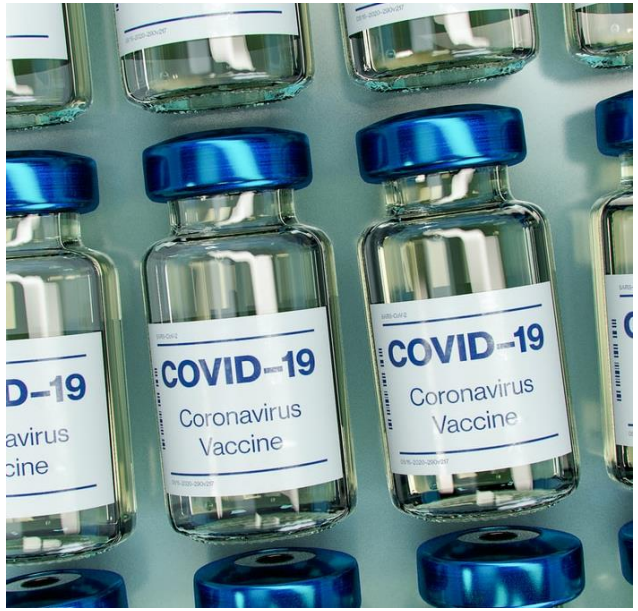
***Arnot (Commissioner of the Saskatchewan Human Rights Commission) v. Arcand*, 2022 SKQB 188**

Decision:

- Complainant never brought forward issues to employer's human resource labour advisor – despite repeated inquiries
- Lack of supporting documentary evidence weighed against complainant's testimony
- Discrimination had not been established on balance of probabilities

COVID UPDATES

VACCINATION POLICIES



- Enforceability and reasonableness of policies primarily considered in arbitral decisions
- Majority of arbitral decisions have upheld employers' vaccination policies
- Highly fact-dependent decisions

VACCINATION POLICIES

***Parmar v. Tribe Management Inc.*, 2022 BCSC 1675**

- BC employer implemented a mandatory vaccination policy – non-compliant employees placed on an unpaid leave of absence
- Plaintiff did not disclose vaccination status and was placed on unpaid leave
- Plaintiff brought a claim of constructive dismissal against employer

VACCINATION POLICIES

***Parmar v. Tribe Management Inc.*, 2022 BCSC 1675**

- In light of what was known about COVID-19 at the time, the policy was a “reasonable and lawful response”
- Rejected notion that vaccination policies force unwilling employees to get vaccinated

Decision: placing an employee on unpaid leave under this vaccination policy did not amount to constructive dismissal

SICK PAY ENTITLEMENTS

***P&H Milling Group a Division of Parrish & Heimbecker, Limited Saskatoon v. United Food and Commercial Workers Local 1400*, 2023 SKCA 14**

Summary:

- Several non-symptomatic employees were required to self-isolate and miss work due to potential COVID-19 exposure
- Requirement to self-isolate due to both public health orders and the employer's direction
- Employees requested sick pay – employer denied request
  - Arbitrator agreed with employer and found that the employees were not entitled to sick pay under the CBA
  - Union judicially-reviewed decision; SKKB Court reversed decision

SICK PAY ENTITLEMENTS

***P&H Milling Group a Division of Parrish & Heimbecker, Limited Saskatoon v. United Food and Commercial Workers Local 1400*, 2023 SKCA 14**

Analysis:

- Only reasonable interpretation of sick leave provisions was that employees were entitled to sick pay when required to be away from work for legitimate health-related reasons
- Being “potentially infectious” was a legitimate health-related reason

Decision: non-symptomatic employees required to be off work due to potential COVID-19 exposure were entitled to sick pay

LEGISLATIVE UPDATES

PROVINCIAL CHANGES

The Labour Mobility and Fair Registration Practices Act

- Came into force on May 18, 2022
- Creates oversight process for regulatory bodies to approve the skills and credentials of individuals who were trained outside of Saskatchewan
  - 20 business days to make a decision regarding individuals who trained in other parts of Canada
  - 50 business days to make a decision regarding internationally-trained individuals

FEDERAL CHANGES

Canada Labour Code

- Paid Medical Leave
  - December 1, 2022: paid medical leave of up to 10 days
  - Medical certificate may be requested for leaves of 5 consecutive days or more

- Unpaid Medical Leave
  - Maximum amount of protected medical leave increased from 17 weeks to 27 weeks

- Minimum Age Increase for Workers
  - Comes into effect June 12, 2023
  - Increase from 17 to 18, subject to exceptions

FEDERAL CHANGES

Competition Act

- Changes in force June 23, 2023
- No Poach Agreements
  - New criminal offence for employers to conspire, agree, or arrange to not solicit or hire each other's employees
- No Wage-Fixing Agreements
  - New criminal offence for employers to conspire, agree, or arrange to fix, maintain, decrease or control salaries, wages, or terms and conditions of employment
- Both offences carry a penalty of up to 14 years imprisonment, a fine at the court's discretion, or both

Q&A

THANK YOU

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MLT AIKINS

HUMAN RIGHTS UPDATE: WHAT'S NEW IN ACCOMMODATING MENTAL HEALTH?

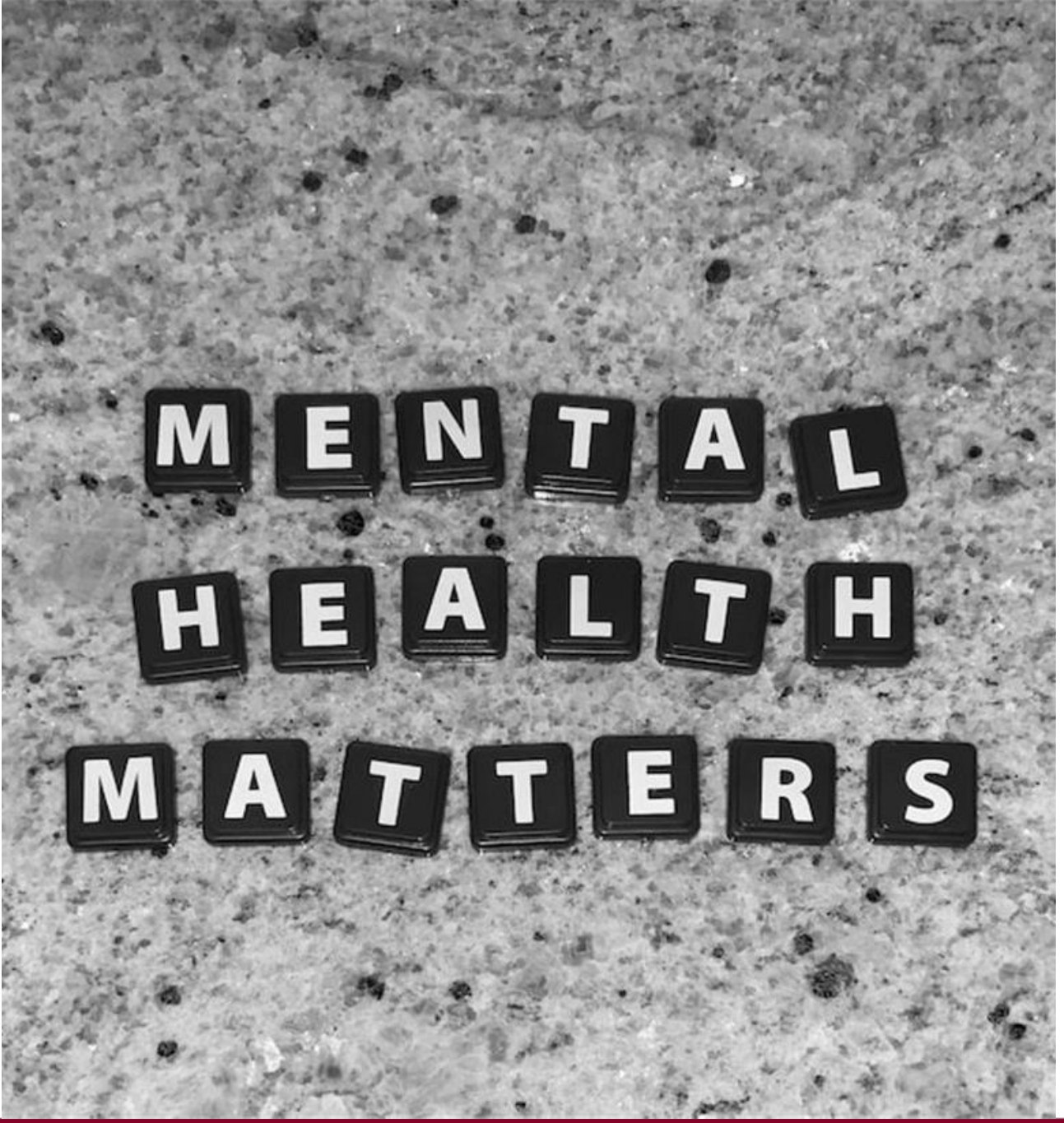
Robert Frost-Hinz

Zoe Johansen-Hill

AGENDA

1. Introduction
2. Overview of Legal Framework
3. Updates to DSM-5
4. The Impact of the Changing Landscape to Mental Health Accommodations
5. What Medical Information Employers Can Request
6. Best Practices for Preparing for Human Rights Complaints

INTRODUCTION



MENTAL HEALTH IN THE WORKPLACE

- There has been an increasing societal focus on mental health over the last several years
- COVID-19 pandemic has exacerbated many conditions, while the stigma surrounding these conditions has continued to decline

WHY DOES IT MATTER?

- Employers must accommodate employees for mental health conditions where those conditions constitute a “disability”
- Employers need to be aware of the changing scientific understanding of mental health conditions, as well as of the continuing evolution of the law of workplace accommodation as it applies in this context

THE LAW OF WORKPLACE ACCOMMODATION

HUMAN RIGHTS AND DISCRIMINATION

- *The Saskatchewan Human Rights Code* (provincially-regulated employers); *Canadian Human Rights Act* (federally-regulated employers)
- Human rights legislation prevents discrimination in employment on "prohibited grounds", which includes “disability, which in turn includes “mental disorder”
- Discrimination does not have to be intentional or overt
- Not sufficient to treat all employees the same - this can still result in discrimination

“MENTAL DISORDER”

Under *The Saskatchewan Human Rights Code, 2018*, “mental disorder” is defined as follows:

> “mental disorder” means a disorder of thought, perception, feelings or behaviour that impairs a person’s:
>
> (a) judgment
>
> (b) capacity to recognize reality
>
> (c) ability to associate with others
>
> (d) ability to meet the ordinary demands of life

ESTABLISHING *PRIMA FACIE* DISCRIMINATION

In order to establish prima facie discrimination, a Complainant (employee) must be able to establish the following:

i. the employee possesses a protected characteristic (protected ground)

ii. the employee is subjected to an adverse effect

iii. the protected characteristic was a factor in the adverse effect

THE DUTY TO ACCOMMODATE

The duty to accommodate arises once an employee has established *prima facie* discrimination

An employee may request accommodation formally, or informally

- Where an employee does so, an employer must engage in accommodation
- Accommodation is a collaborative process in which the employee must be willing to participate

Each party has their own duties within the accommodation process

GENERAL ACCOMMODATION OBLIGATIONS

- Primary accommodation obligation is on the employer
- Employers must accommodate to the point of undue hardship
- Employer must accommodate based on medical evidence, rather than subjective observations or anecdotal evidence
- Employee has an obligation to cooperate in the accommodation
- Union must facilitate and cannot block a reasonable accommodation

THE POINT OF UNDUE HARDSHIP

Employers must accommodate to the point of undue hardship

There is no bright line or test for what constitutes undue hardship

- *It is a flexible and intentionally vague concept*
- *More than minor inconvenience, more than de minimis*
- *Accommodation can require changing hours of work, modifying job duties, providing physical aids, training, or granting leave of absence*
- *No requirement to create a make-work position*

Factors that might be considered in evaluating whether further accommodation would be an undue hardship include:

- *Financial cost*
- *Health or safety risk*
- *Effect on co-workers*
- *Size and nature of business*
- *Disruption of the collective agreement*
- *Interchangeability of the workforce*
- *Disruption to the public*
- *Business efficiency*

UPDATES TO DSM-5

DSM-5 UPDATES AND CONTEXTUAL BACKGROUND

- Increasing societal focus on mental health, especially in the workplace, and gradual decrease in stigma associated with mental illness and mental health issues
- *Diagnostic and Statistical Manual of Mental Disorders* ("**DSM-5**") is the authoritative guide on diagnosing mental disorders
- Can help employers determine if an employee has a condition which falls within the protective scope of human rights legislation
- Recent amendments to the DSM-5 are text revisions reflect recent developments in the area of psychiatry

OVERVIEW OF DSM-5 UPDATES

- Many of the changes are minor text amendments to make the text more precise, culturally sensitive, or to clarify the criteria of certain disorder
- Updates regarding DSM-5 and diagnoses for children
- Suicidal Behavior and Nonsuicidal Self-Injury have been added under other conditions
- Updates regarding specific disorder
  - Majority of these updates are very minor
  - Addition of new disorder, Prolonged Grief Disorder
  - Specific changes with respect to Bipolar I and Bipolar II Disorders

CULTURE, RACISM AND DISCRIMINATION

Amendments to the DSM-5 attempt to update terminology to be more sensitive with respect to race, gender and discrimination

- New language is aimed at highlighting the socially constructed nature of race
  - Example: “Racialized” has replaced the use of race/racial
- Terms “minority” and “non-White” have been removed/avoided
- Term “ethnoracial” has been introduced
- “Caucasian” is no longer used

What does this mean for employers?

- Employers should be conscious and intentional about their wording when communicating with employees regarding mental disorders
- Mirror language used in the DSM-5 when dealing with a specific mental disorder
  - Help to show the employer understands the nuance of the disorder but will also help ensure employers are engaging appropriately with respect to sensitive matters

DIAGNOSES FOR CHILDREN

Updates with respect to the diagnostic criteria related to children

- Specific experiences and symptoms they might have
- Emphasis on the fact that no child should be diagnosed with a mental disorder without careful and comprehensive evaluation by medical professional
- No medication should be prescribed without same level of vigilance and care
- Parents often play a large role in diagnosis of children

What does this mean for employers?

- Employers should be aware of these changes as they may engage accommodation based on family status in very specific circumstances
- Employees under 18 (rare circumstances)

SUICIDAL BEHAVIOR AND NON SUICIDAL SELF-INJURY

Diagnostic Codes for Suicidal Behavior and Nonsuicidal Self-Injury were added under "other conditions that may be a focus of clinical attention"

- Not mental disorders in and of themselves but often are the result of mental disorders under the DSM-5 and assist in improving documentation of these behaviors, which can help reduce risk factors for future suicide attempts or death

What does this mean for employers?

- Signs of suicidal thoughts, idealization or self-harm can be a sign to employers that an employee may have another mental disorder which is classified under the DSM-5 and which may require treatment/accommodation

PROLONGED GRIEF DISORDER

Prolonged Grief Disorder is an entirely newly recognized condition under the DSM-5

- Disorder is defined as “intense yearning or longing for the deceased (often with intense sorrow and emotional pain), and preoccupation with thoughts or memories of the deceased (in children and adolescents, this preoccupation may focus on the circumstances of the death)”

What does this mean for employers?

- Employers should be aware of this newly recognized mental disorder as it may bring an employee within the protective scope of human rights legislation
- Duty to accommodate may be triggered when it previously had not been triggered
- Employers may need to consider new options with respect to accommodation given that this is an entirely new mental disorder (may require more long-term solutions with respect to accommodation)

BIPOLAR I AND BIPOLAR II DISORDERS

Amendments to the criteria used to diagnose Bipolar I and II Disorders

Previous criterion for both Bipolar I Disorder and Bipolar II Disorder:

- “The occurrence of the manic and major depressive episode(s) is not better explained by schizoaffective disorder, schizophrenia, schizophreniform disorder, delusional disorder, or other specified or unspecified schizophrenia spectrum and other psychotic disorder”

Updated criteria for Bipolar I Disorder:

“At least one manic episode is not better explained by schizoaffective disorder and is not superimposed on schizophrenia, schizophreniform disorder, delusional disorder, or other specified or unspecified schizophrenia spectrum and other psychotic disorder”

Updated criteria for Bipolar II Disorder:

At least one hypomanic episode and at least one major depressive episode are not better explained by schizoaffective disorder and are not superimposed on schizophrenia, schizophreniform disorder, delusional disorder, or other specified or unspecified schizophrenia spectrum and other psychotic disorder”

BIPOLAR I AND BIPOLAR II DISORDERS

Updated severity scale with respect to a bipolar episode:

Previous severity scale language:

Mild: Few, if any, symptoms in excess of those required to meet the diagnostic criteria are present, the intensity of the symptoms is distressing but manageable, and the symptoms result in minor impairment in social or occupational functioning

Moderate: The number of symptoms, intensity of symptoms, and/or functional impairment are between those specified for “mild” and “severe”

Severe: The number of symptoms is substantially in excess of those required to make the diagnosis, the intensity of the symptoms is seriously distressing and unmanageable, and the symptoms markedly interfere with social and occupational functioning

Updated severity scale language:

Mild: Minimum symptom criteria are met for a manic episode

Moderate: Very significant increase in activity or impairment in judgment

Severe: Almost continual supervision is required in order to prevent physical harm to self or others

ADDITIONAL UPDATED DISORDERS

- New culturally sensitive wording for specific disorders
  - “Gender Dysphoria,” “Intellectual Developmental Disorder (Intellectual Disability),” Olfactory Reference Disorder (olfactory reference syndrome),” and “Social Anxiety Disorder”
  - For example, “desired gender” was changed to “experienced gender,” “cross-sex medical procedure” was updated to “gender affirming medical procedure”
- Unspecified Mood Disorder has been added back into the DSM-5 after unintentional removal
- Changes with respect to specific disorders such as “Bipolar and Related Disorder Due to Another Medical Condition,” “Depressive Disorders Due to Another Medical Condition,” and “Substance/Medication-Induced Bipolar and Related Disorders”

CONTINUING EVOLUTION OF LAW RESPECTING MENTAL HEALTH CONDITIONS

CHANGING LEGAL AND SCIENTIFIC LANDSCAPE

- One of the most significant challenges employers face when dealing with requests for accommodation based on mental health conditions is the changing legal and scientific landscape
- There is no “one size fits all” approach to the conditions themselves, let alone what accommodations are required for employees who have those conditions
- This has resulted in employers, employees and unions fighting about whether an employee even has a disability, before getting to the issue of accommodation at all

ASSESSING MENTAL HEALTH CONDITIONS

SEIU-West and Saskatchewan Health Authority (Nordick), Re, 2022 CarswellSask 168 (Sask Arb)

- Employee advised that she had “multiple chemical sensitivity” (“MCS”), or environmental sensitivities, which caused her to have allergies to scents, dusts, and other environmental materials in the workplace
- MCS is a controversial diagnosis, with no identified scientific cause
- The employee sought accommodation from her employer, who implemented a scent policy and offered a work from home arrangement
- Employee rejected this offer from the employer, and the employer terminated her employment

ASSESSING MENTAL HEALTH CONDITIONS

SEIU-West and Saskatchewan Health Authority (Nordick), Re, 2022 CarswellSask 168 (Sask Arb)

- Arbitrator Wallace first considered whether MCS qualified as a disability, and whether the employer's duty to accommodate was triggered
- She noted that the nature of the disorder could be considered irrelevant because there was no debate she had a disability and that it prevented her from fulfilling her duties
- She considered other decisions where arbitrators were critical of employers who delayed accommodation because of uncertainties around the MCS condition, and concluded that the employee's MCS and environmental sensitivities triggered the duty to accommodate

ASSESSING MENTAL HEALTH CONDITIONS

SEIU-West and Saskatchewan Health Authority (Nordick), Re, 2022 CarswellSask 168 (Sask Arb)

- Arbitrator Wallace went on to consider the adequacies of the accommodations the employer offered to the employee
- She concluded that the accommodations were reasonable and that the employee could not realistically eliminate all scent producing products and chemicals from the workplace. This was particularly so because the employee's physicians had indicated that the sources of her allergies were a "moving target"
- She ultimately determined that the employer was justified in terminating the employee's employment

REQUESTING MEDICAL INFORMATION FOR MENTAL HEALTH CONDITIONS

REQUESTING INFORMATION

- Employers do not have to accept an employee's own opinion about their disability, and about accommodations
- They are entitled to information that allows them to assess both whether an employee has a disability, and what the appropriate accommodation is for that disability
- They are not entitled to information about the specific medical condition – only about the employee's ability to safely work

REQUESTING MEDICAL INFORMATION

Saskatchewan (Labour Relations and Workplace Safety) v Saskatchewan Government and General Employees' Union, 2015 CanLII 23030 (Sask Arb)

- Employee sought access to sick leave benefits during a prolonged absence from work, but provided medical certificates that only stated she was taking a "medical leave due to work conditions", with no estimated return to work
- The employer requested more information several times, but did not receive any, and eventually warned the employee that her job would be in jeopardy if she did not provide more information
- She was ultimately terminated, and her union grieved the employer's refusal to provide sick leave benefits

REQUESTING MEDICAL INFORMATION

Saskatchewan (Labour Relations and Workplace Safety) v Saskatchewan Government and General Employees' Union, 2015 CanLII 23030 (Sask Arb)

- Arbitrator Ish dismissed the grievance, finding that employees must provide the employer with sufficient information to serve the function for which it is requested
- The employe's medical certificates said that the date of return to work was unknown and could not be estimated, and the employer was entitled to seek more information
- The employee had been given numerous opportunities to provide medical information to the employer and to cooperate with the employer in its efforts to determine whether an accommodation in the workplace might be possible

REQUESTING MEDICAL INFORMATION

Saskatchewan (Labour Relations and Workplace Safety) v Saskatchewan Government and General Employees' Union, 2015 CanLII 23030 (Sask Arb)

"An employee does not have a veto over the decision to accommodate and yet still claim salary or sick leave benefits"

REQUESTING MEDICAL INFORMATION

SEIU and Wynyard CARRES Inc. (Celles), Re, 2023 CarswellSask 90 (Sask Arb)

- The employer had accommodated the employee for a number of years, including by making adjustments to her shift schedule, giving her extra time to obtain a driver's license and accommodating absences, based on very little medical information
- The employer then sought additional medical information or the employee's participation in an Independent Medical Examination (IME) because operational changes had changed such that these accommodations were no longer possible
- The union brought a grievance alleging that the employer's requests for additional information and an IME were an overreach and that the employee had anxiety that triggered the duty to accommodate

REQUESTING MEDICAL INFORMATION

SEIU and Wynyard CARRES Inc. (Celles), Re, 2023 CarswellSask 90 (Sask Arb)

- The employer did not dispute that anxiety was a disability that could trigger the duty to accommodate but argued that the duty was not triggered in this case.
- Arbitrator Wallace agreed with the employer. She found that the requests for additional information were warranted because the medical notes that had been provided were vague, and were inadequate for the employer to engage in the accommodation process
- She then endorsed the following summary of what type of information an employer may request, depending on the sitaution

REQUESTING MEDICAL INFORMATION

SEIU and Wynyard CARRES Inc. (Celles), Re, 2023 CarswellSask 90 (Sask Arb)

- Nature of the illness: For example, “degenerative disc in the neck”, “blood disorder” or “abdominal surgery.” The diagnosis itself is not required.
- Permanent or temporary: Is the illness or condition likely to stay the same, improve, or worsen over time. If the illness or condition is likely to improve, what is the estimated time frame for improvement to occur?
- Restrictions and limitations: In as much detail as possible, what the employee can do and what the employee cannot do in relation to their current job duties and possible alternative duties.
- How the medical conclusions were reached: Were diagnostic or other objective tests performed or was most information self-reported? For example, were x-rays taken? The results of the x-rays and the x-rays themselves do not necessarily have to be provided nor do clinical notes have to be provided.
- Treatment or medication: Any treatment or medication that might impact the accommodation or the employee’s ability to perform his or her job should be disclosed.

REQUESTING MEDICAL INFORMATION

SEIU and Wynyard CARRES Inc. (Celles), Re, 2023 CarswellSask 90 (Sask Arb)

- Because the employee had refused to provide any medical information and the employer had no medical information to support the claim restriction, the Arbitrator found that the duty to accommodate never arose
- She also found that the employer's decision to terminate the employee's employment was reasonable given her role in stymieing the accommodation process

REQUESTING MEDICAL INFORMATION

Arnot v Baildon No. 131 (Rural Municipality), 2022 SKQB 99

- The employee suffered a serious concussion in a non-workplace accident, and unsuccessfully attempted to return to work twice
- The employer sought further medical information from the employee, and asked that the employee undergo an Independent Medical Examination, and the employee refused
- Her doctor later approved her readiness to return to work on a gradual basis, with a gradual return to work plan
- Her employer advised that it could not support the gradual return to work plan, that nothing short of full-time work could be accommodated and terminated her employment

REQUESTING MEDICAL INFORMATION

Arnot v Baildon No. 131 (Rural Municipality), 2022 SKQB 99

- Justice Klatt found that *prima facie* discrimination had been established and that the employer had not proven that the accommodation recommended by the physician would have resulted in undue hardship
- While the employer argued that the employee had frustrated the process by not providing the medical information or undergoing an IME, the judge found that the employer had sufficient information from the employee's physician – and that it knew the employee's ability to cope could not be assessed until she returned to work
- She ordered the employer to pay the employee damages for lost income, lost commissions, out of pocket expenses, special compensation of $10,000 and remit its share of CPP and MEPP contributions

BEST PRACTICES FOR PREPARING FOR HUMAN RIGHTS COMPLAINTS

HUMAN RIGHTS COMPLAINTS

- In Saskatchewan, an employee can make a complaint to the Saskatchewan Human Rights Commission alleging that their employer has discriminated against them
- Generally speaking, the Commission then conducts a mediation between the employer and the employee and undertakes an investigation, before referring the matter on to a hearing before the Court
- During the Court proceedings, the Commission presents the case against the Employer

POTENTIAL CONSEQUENCES FOR HUMAN RIGHTS COMPLAINT

Employers may face significant liability for discriminating against an employee, including:

- Monetary damages for the employee's losses (such as for wages and benefits lost);
- Reinstatement of a dismissed employee;
- Monetary damages to a maximum of $20,000 for injury to self-respect; and
- Orders to institute regular human rights training or educational workshops

PRACTICAL TIPS

Before the Complaint is Made:

- Take employees seriously when they advise you that they have a mental disability (or other disability) that requires accommodation
- Document, document, document! Document all requests for accommodation and how the employer became aware of the request, and keep notes of all conversations about the request, any proposals considered (and any rejected by the employee) and what actions were taken
- Diarize follow-ups that the employer must have with the employee, and ensure that those follow-ups occur and are documented
- Request additional medical documentation if you are uncertain about whether a disability has been established
- Request additional medical documentation with respect to required modifications and restrictions
- Do not jump to conclusions in the absence of supporting documentation by imposing discipline/dismissal - ask whether there is additional information you can request
- Keep communication with the employee open, sensitive and respectful
- Be proactive with respectful workplace training to help avoid issues from arising
- Engage legal counsel to assist with medical record request and accommodation to ensure employer obligations are being met

PRACTICAL TIPS

After the Complaint Comes In:

- Once a complaint is made, be proactive and take it seriously. Responding to a complaint can be costly, and the best opportunity to prevent a bad outcome is at the beginning.
- Cooperate and maintain a respectful relationship with the Commission. It does not help an employer to be unresponsive, aggressive or rude with the Commission's staff.
- Ensure that there is no reprisal against the complainant employee for the complaint – this could be its own ground for a complaint to the Commission!
- Gather and preserve all documents. It is important to gather everything right away. This will allow the employer to evaluate whether there are any potential problems and identify whether they are prepared to settle the matter with the employee. The information and documents provided to the Commission are also important as they will inform whether the Commission will dismiss the complaint and/or what the scope of the Commission's investigation will be

Q&A

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LUNCH

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PRIVACY CONSIDERATIONS IN A HYBRID WORK WORLD

Kristél Kriel

Shane Buchanan

REMOTE WORK IN A POST-PANDEMIC WORLD

- COVID-19 has dramatically shifted the way employers think about remote work
- During the pandemic, the number of people working from home skyrocketed
- While those numbers have come down, they are still more than double the pre-pandemic numbers

THE STATS

Prior to February 1, 2019:

- **9.2%** working remotely 50% of the time
- **5.9%** working remotely 100% of the time

The 4th quarter, 2022:

- **23%** working remotely 50% of the time
- **8%** working remotely 100% of the time

- Statistics Canada

OVERVIEW

1. General privacy law in Saskatchewan
2. Using software to track employee productivity
3. Employee surveillance during remote work
4. Best practices for employers
5. Responding to requests for employee personal information
6. Privacy and Security Incidents

REMOTE EMPLOYEE MONITORING

Work / Financial Times

'Productivity paranoia' driving rise in employee monitoring — and it's not even that effective

Commentary: Employee surveillance causes stress and resentment

FT Financial Times
Rana Foroohar

TECH AT WORK

Your boss can monitor your activities without special software

Apps like Microsoft Office, Zoom, Google Workspace and Slack may provide bosses information on workers' digital activities. It's not an accurate representation of productivity or performance, experts say.

By Danielle Abril
October 7, 2022 at 7:00 a.m. EDT

ALEX CHRISTIAN SECURITY 21.09.2020 06:00 AM

Corporate snitches are using screen monitoring to find and fire slackers

Surveilling software is booming thanks to Covid. And some employees have been tasked with monitoring their workmates' productivity from home

THE LEGISLATIVE RESPONSE

Ontario's – *Working for Workers Act, 2022*

Employers with more than 25 employees as of January 1 are required to have a written policy on electronic monitoring by October 11

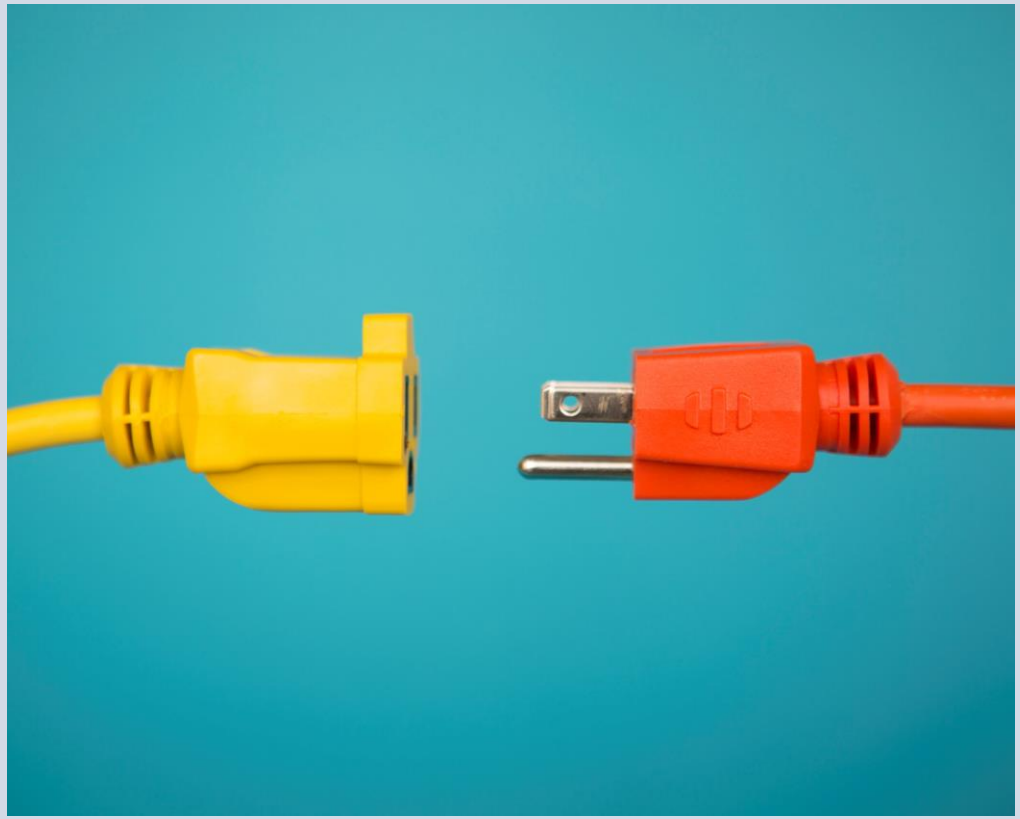
- In future years, that deadline will be March

Guidance documents from the Ontario government give examples of electronic monitoring:

- Using GPS to track the movement of delivery vehicles
- Using sensors to track how quickly a cashier scans items
- Tracking websites visited by employees during work hours

WORKING FOR WORKERS ACT, 2022

- The Act also requires these employers to have a written policy on **“disconnecting from work”** which is defined as:
  - “not engaging in work-related communications including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work”
- **This doesn’t create a new right for employees to disconnect from work, but only requires the existence of a policy – the contents of which can be determined by each employer**



THE LEGISLATIVE RESPONSE

Quebec - *Act to modernize legislative provisions as regards the protection of personal information*

- First set of requirements came into force on September 22, 2022
- Remaining requirements will come into force in September 2023 and 2024
- Applies to Quebec private sector entities and out-of-province companies doing business involving the personal information of Quebec residents

ACT TO MODERNIZE LEGISLATIVE PROVISIONS AS REGARDS THE PROTECTION OF PERSONAL INFORMATION (QUEBEC)

September 22, 2023

- Act will introduce limitations on employers' right to monitor employee work performance
- Obligation to inform employees of reason for data collection and the means available to activate the functions that allow the employee to be identified, located or profiled

WHAT ABOUT SASKATCHEWAN?

GENERAL PRIVACY LAW IN SASKATCHEWAN

Considerations for Public and Private Sector Employees

THE LEGISLATIVE REGIME IN SASKATCHEWAN

Private sector employers:

- ***PIPEDA*** (federal employers)

Public sector employers:

- ***FOIP*** (government institutions)
- ***Privacy Act*** (federal employers)
- ***LAFOIP*** (local authorities)

The Privacy Act (Saskatchewan)

Health information:

- ***The Health Information Protection Act*** (**HIPA**)

Anti-Spam Legislation:

- **Canada's Anti-Spam Legislation (CASL)**

“PERSONAL INFORMATION”

- Privacy law legislation regulates the collection, use, and disclosure of “personal information” which is defined as:

“Information about an identifiable individual”

- When collecting and using information about an employee, the preliminary consideration is whether that information is about an identifiable individual

“PERSONAL INFORMATION”

- Information about employee:
- Computer usage
- Online habits
- Productivity
- Can all be “personal information” when the information can be tied to an identifiable employee
- Anonymized information will not fall under this definition

PRIVATE SECTOR LEGISLATION

PIPEDA

- Applies to personal information held by private-sector organizations, including federally-regulated organizations
  - Does not apply to employees in industries that are not federally regulated – consider best practices
- Regulates collection, use, and disclosure of “personal information”
- Regulate how private sector employers handle access to information requests

FOUR GUIDING RULES FOR PRIVATE SECTOR EMPLOYERS:

1. Personal information can only be collected for purposes that are reasonable, and limited to only what is necessary
2. Personal information can only be used for the same reasonable purpose it was collected
3. Disclosure of personal information can only be to the extent necessary to carry out the reasonable purpose
4. Employers must generally get consent before collecting, using, or disclosing personal information – except for limited circumstances such as upon reasonable notice

PUBLIC SECTOR LEGISLATION

FOIP, LAFOIP, and the *Privacy Act* are also similar in content:

- Regulate the collection, use, and disclosure of “personal information”
- Employers must identify a specific purpose directly related to the operation of one of the public body’s programs or activities before collecting, using, or disclosing personal information

CONSENT AND PRIVACY LEGISLATION

- Informed consent is important in privacy law but sometimes only notice is required
- In the **private sector** (*PIPEDA*) employee consent is not required where:
    1. the collection of personal information is for the purpose of establishing, managing, or terminating an employment relationship
    2. the employee has been adequately notified that the collection will occur
    3. the collection is reasonable in the circumstances

CONSENT AND PRIVACY LEGISLATION

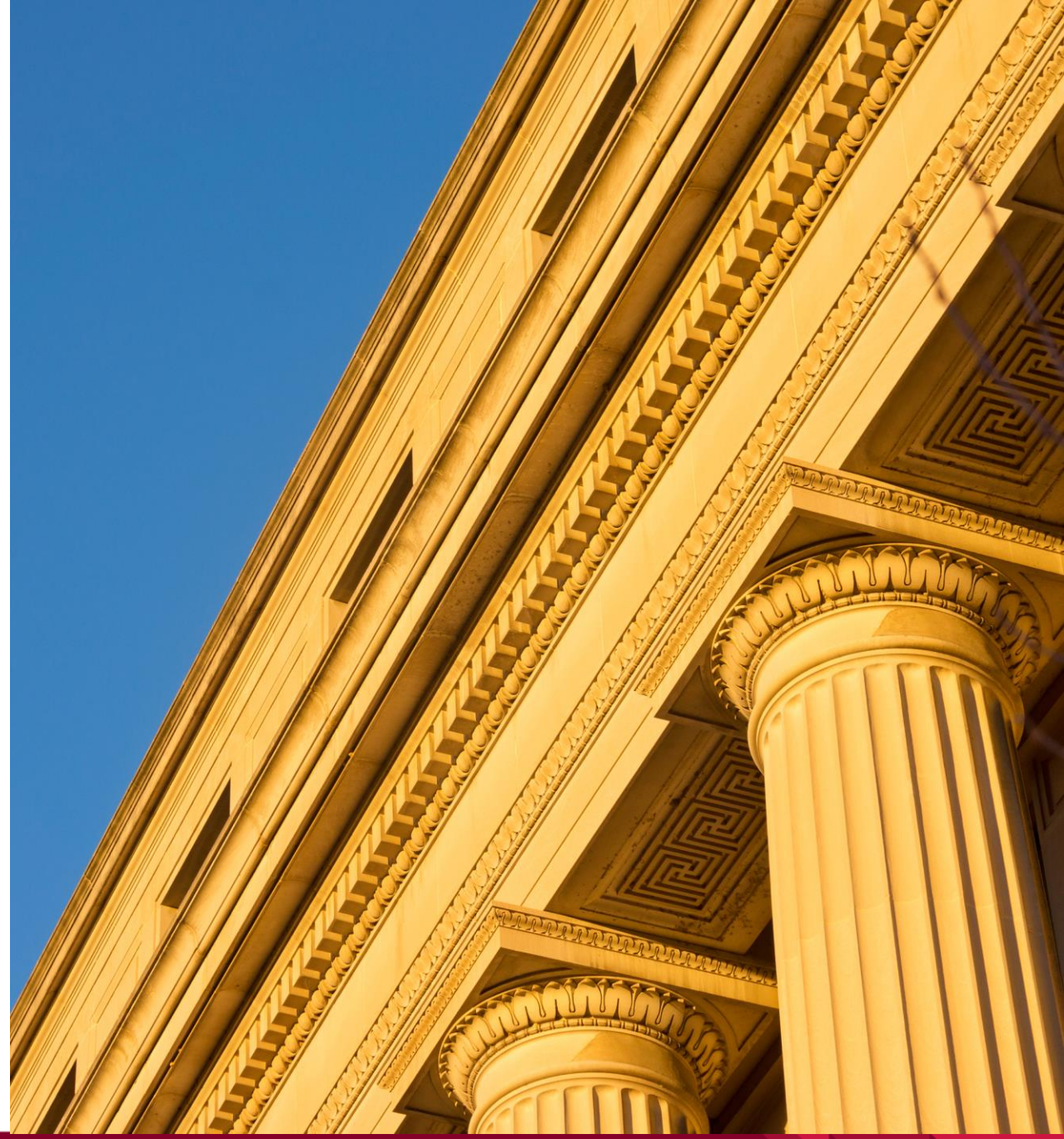
Public sector legislation *(FOIP*, *LAFOIP* and the *Privacy Act*)

- whether the collection of private information is directly related to and necessary for the operation of a public program

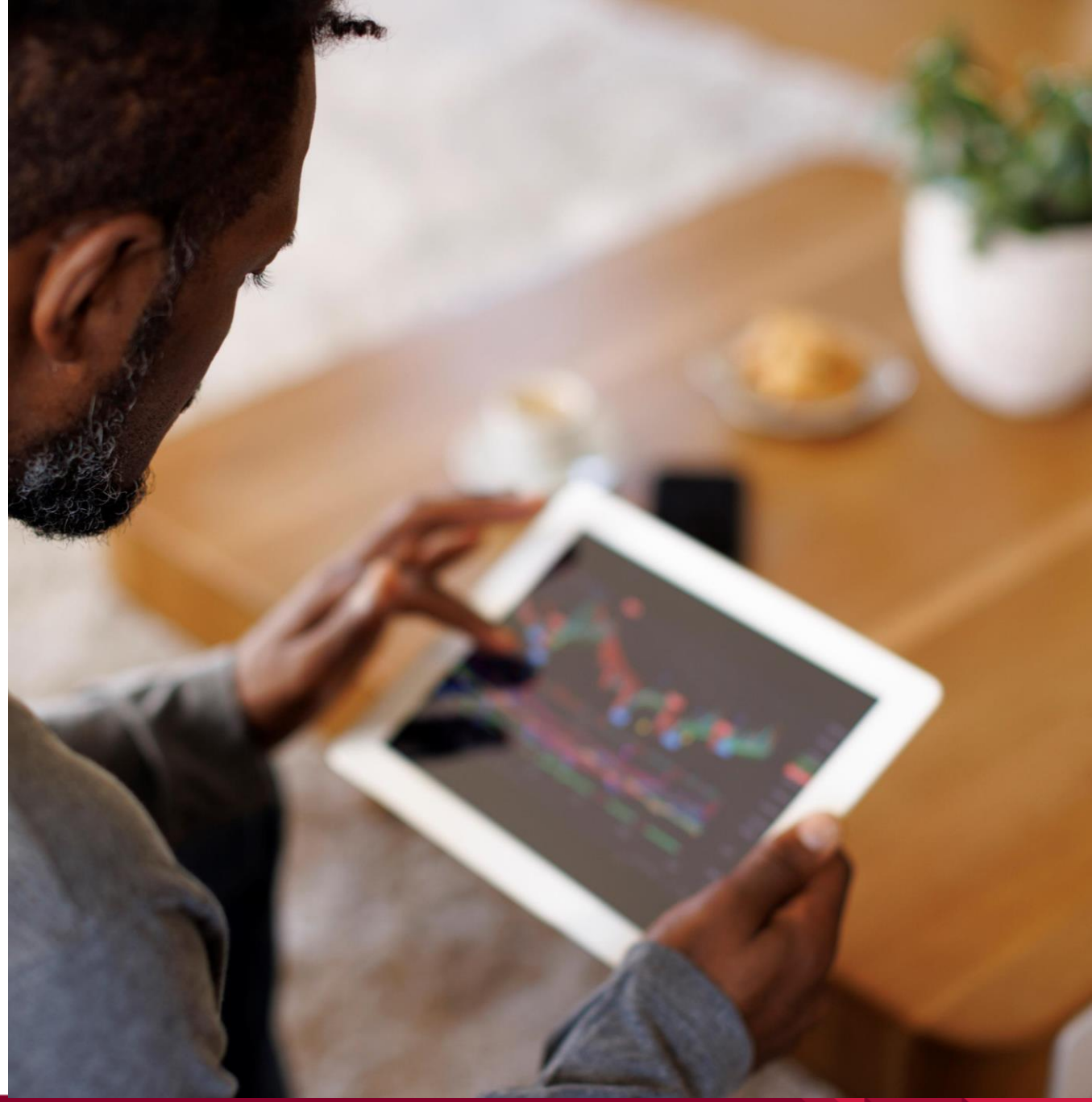
Under **both** public and private regimes, the preliminary question is whether the information being collected is "personal information"

BILL C-27 AND *PIPEDA*

- Before Parliament
- Would replace Part 1 of *PIPEDA* with a new *Consumer Privacy Protection Act*
- The new legislation would have the same definition of personal information and the same exception to the consent requirement for employment management



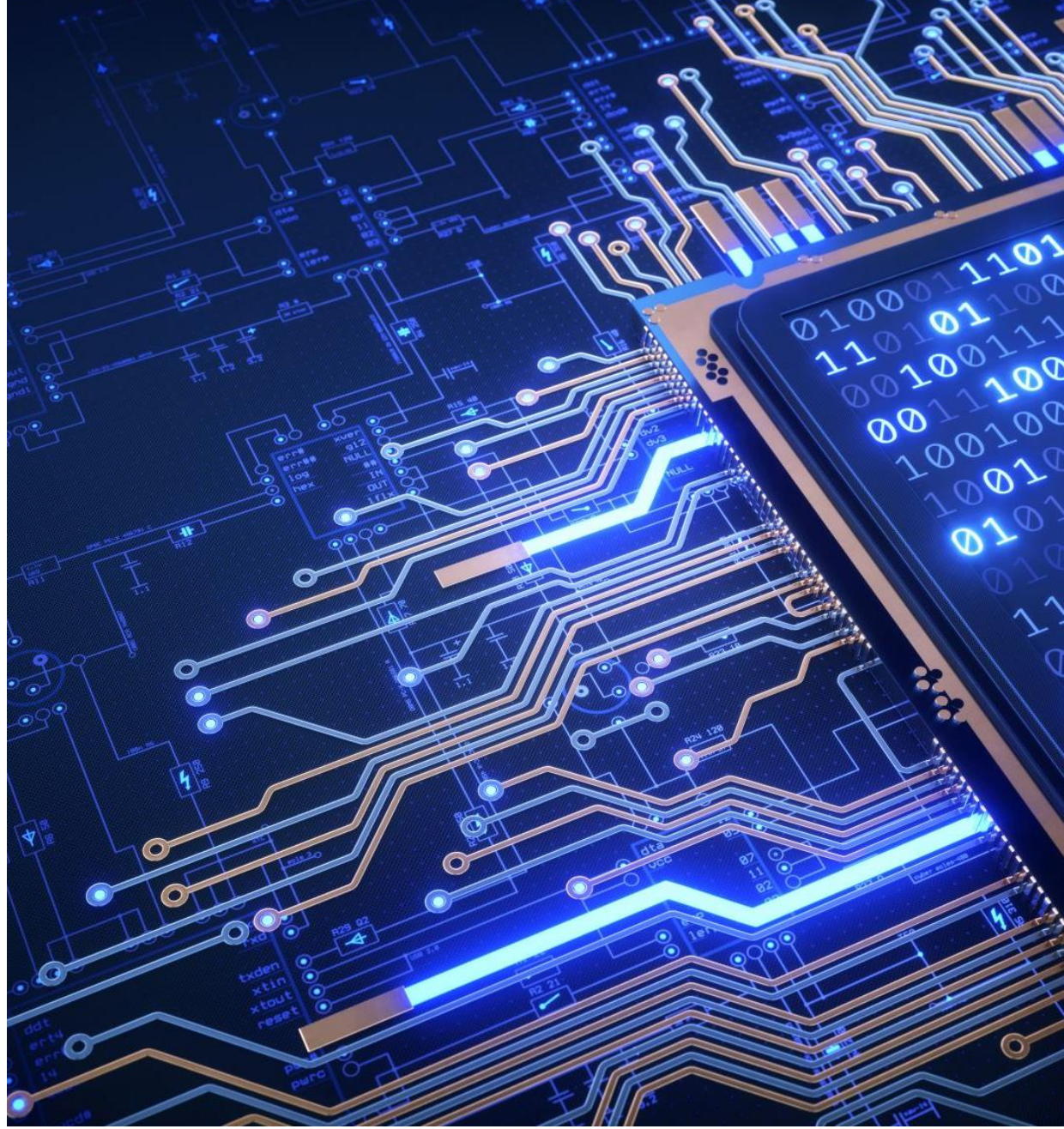
USING SOFTWARE TO TRACK EMPLOYEE PRODUCTIVITY



CASL

Prohibits installation of software by employer to a person's computer device without express consent

Clear communication and appropriate documentation – specific requirements



PRODUCTIVITY TRACKING SOFTWARE

E.G. KEYSTROKE LOGGING AND RECORDING SOFTWARE

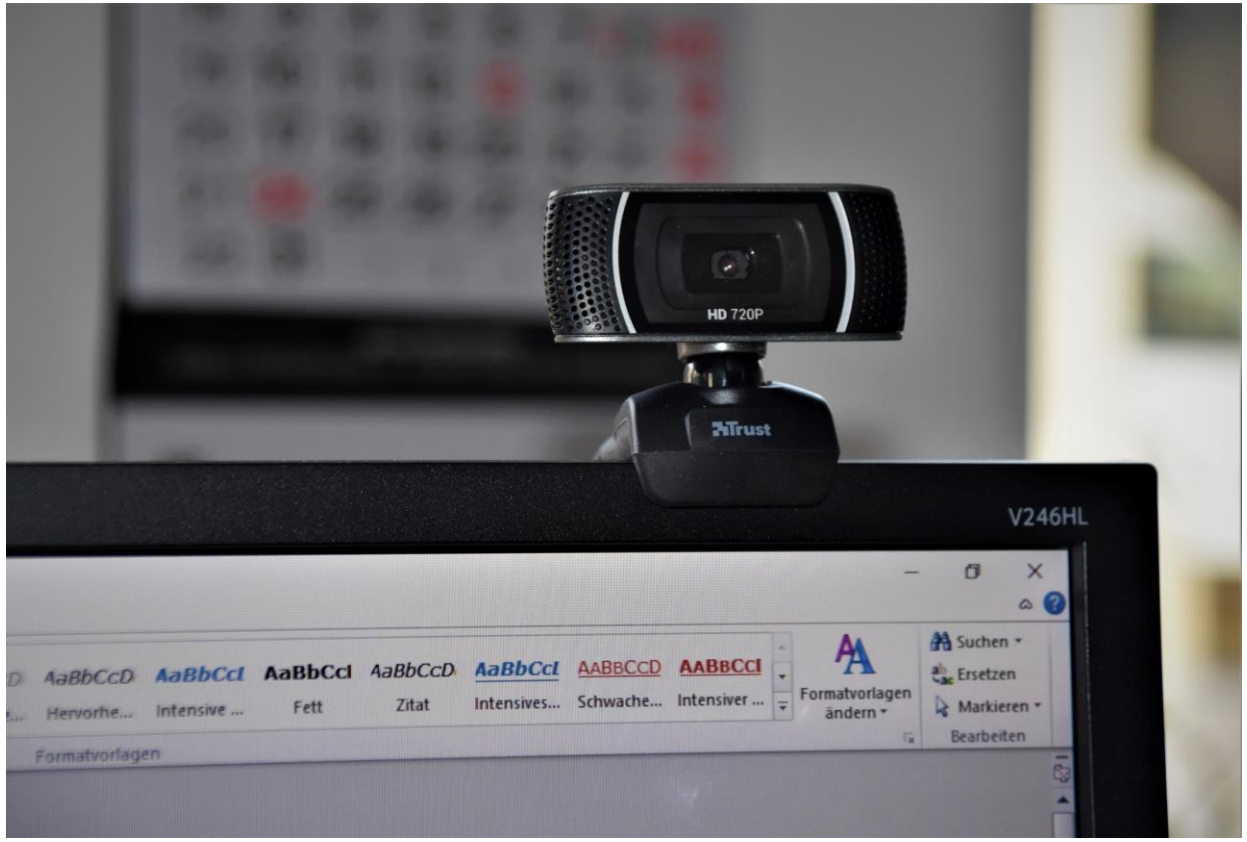
AVOIDING LEGAL PITFALLS

EMPLOYEE SURVEILLANCE DURING REMOTE WORK

GOING BEYOND PRODUCTIVITY MONITORING

Examples:

- using computer webcams to record or take photos of employees while they work from home
- recording video and audio in a delivery driver's vehicle
- Using GPS to monitor where remote employees are, or when they are entering or leaving a jobsite



EMPLOYEE SURVEILLANCE DURING REMOTE WORK: CASE STUDIES

SURVEILLANCE CAMERAS IN THE WORKPLACE

PIPEDA Case Summary #2003-114

- An employee of a railway complained to the Privacy Commissioner about digital recording cameras that were recently installed and could collect personal information about employees
- Cameras were positioned around various locations in the yard
- Taped footage in 48-hour periods
- Employer stated cameras meant to combat vandalism, theft, etc.
- Cameras initially positioned in manner that captured footage in private employee areas but rectified this when they became aware

SURVEILLANCE CAMERAS IN THE WORKPLACE

Privacy Commissioner applied section 5(3) of PIPEDA:

5(3) an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

While the stated purpose (reducing vandalism, theft, etc.), appears appropriate on the face, the entire context must be considered.

SURVEILLANCE CAMERAS IN THE WORKPLACE

Is the measure demonstrably necessary to meet a specific need?

- NO – The cameras had been installed preemptively – rather than in response to a demonstrated need.

Is it likely to be effective in meeting that need?

- NO – There was no evidence that the cameras were achieving their objective.

Is the loss of privacy proportional to the benefit gained?

- NO – The mere presence of the cameras could cause the employees to perceive (rightly or wrongly) that they were being watched at all times.

Is there a less privacy-invasive way of achieving the same end?

- YES – the Commissioner found that the employer had not considered any less privacy-invasive alternatives.

A reasonable person would not consider the collection of personal information to be appropriate in the circumstances.

USE OF EMPLOYEE SURVEILLANCE IN AN INVESTIGATION

Investigation Report 090-2017

- Bus driver complained that his privacy interests were breached after the City used video surveillance from a bus during an investigation
- City used and disclosed still photographs for the purpose of the grievance

USE OF EMPLOYEE INFORMATION IN AN INVESTIGATION

- The City had authority under *LAFOIP* to:
  - Collect the Complainant's information (section 24)
  - Use the information for the investigation and the grievance (section 27)
  - Disclose the personal information (section 28)
- The Complainant was well-aware of the cameras on the buses
- SK OIPC reasoned that the surveillance was a method to maintain the safety and security of drivers and passengers

SURVEILLANCE FOR SECURITY IN THE WORKPLACE

***Retail, Wholesale and Department Store Union Local 558 v Coca-Cola Refreshments Canada* (2016), unreported**

- Employer installed 22 surveillance cameras inside and outside of a Saskatoon warehouse distribution centre
- Union argued that this violated the CBA, *The Saskatchewan Human Rights Code* and *The Privacy Act*
- Arbitrator Vancise assessed:
  - Was the installation of the video surveillance system reasonable in the circumstances?
  - Was the manner in which the surveillance was conducted reasonable?
- Cameras constituted a legitimate business interest and were being used reasonably

RECORDING AUDIO INSIDE TRANSPORT TRUCK

PIPEDA Findings # 2022-006

- Complainant claimed the organization installed a dash camera into his vehicle that continuously recorded audio and video without his consent
- Was the collection and use of the driver's personal information via the system appropriate in the circumstances?

RECORDING AUDIO INSIDE TRANSPORT TRUCK

Whether the organization's purpose represents a legitimate need / *bona fide* business interest	• Legitimate interest in ensuring public safety, protecting assets, and supervising and managing employees
Whether the collection, use and disclosure would be effective in meeting the organization's need	• Yes - 62.5% coaching effectiveness score
Whether there are less privacy invasive means of achieving the same ends at comparable cost and with comparable benefits	• System more intrusive than necessary
Whether the loss of privacy is proportional to the benefits	• Impact on drivers' privacy was disproportionate to the benefits the company hoped to gain

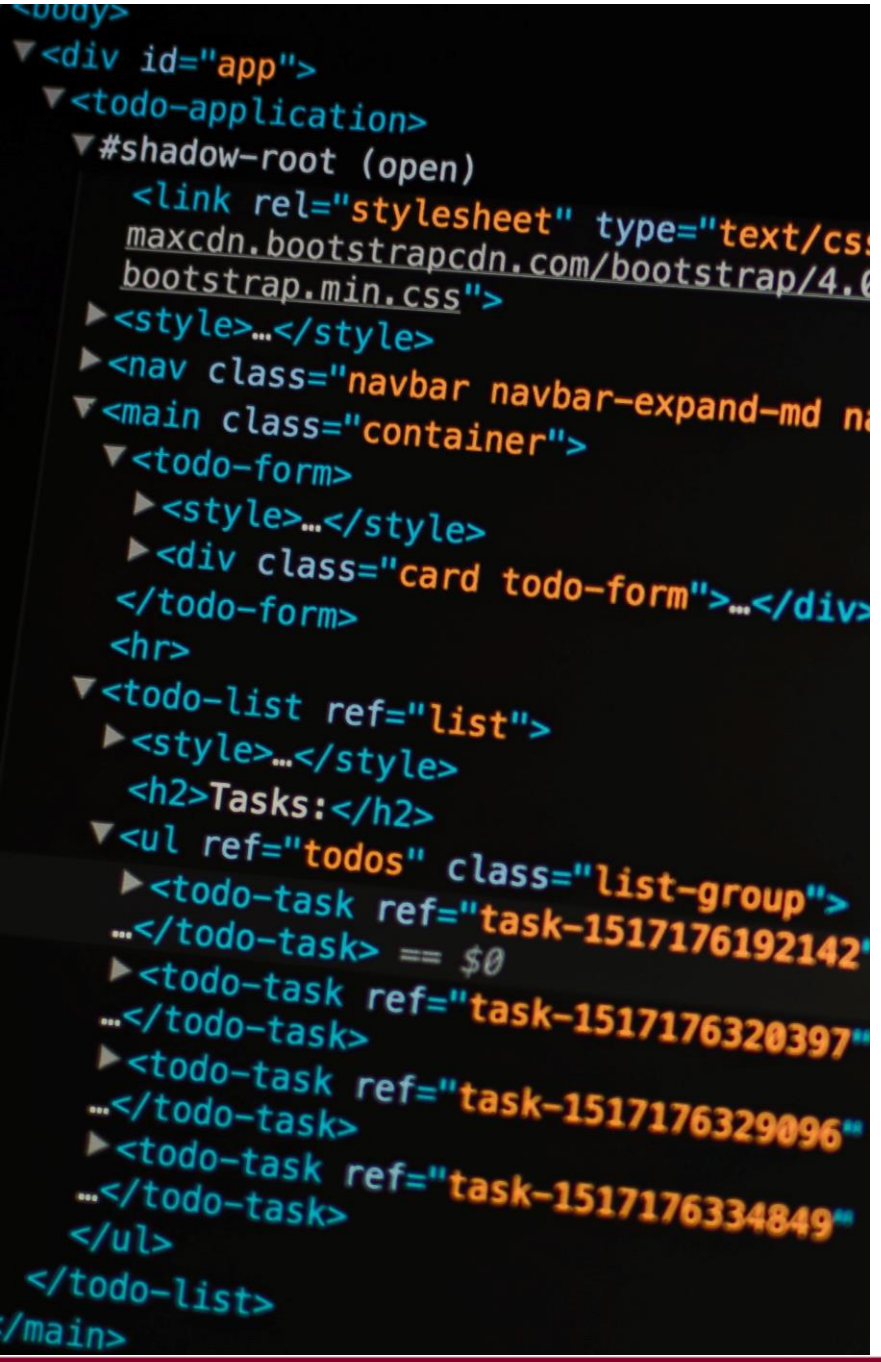
RECORDING AUDIO INSIDE TRANSPORT TRUCK

Employee Exception to Consent

- Trimac was not transparent about the disciplinary purposes of the system

Recommendations

- Trimac limit the audio functionality capabilities of the System to be active only when a driver is on-duty and/or driving; and
- Trimac technologically limit access to the personal information captured by the System to only those employees who “need to know” for Trimac’s purposes



SPYWARE ON PERSONAL ELECTRONIC DEVICES

SPYWARE DECISION – *PIPEDA* FINDINGS #2013-016

- Privacy Commissioner learned several rent-to-own tech companies in Canada were using spyware to covertly locate stolen laptops
- Initiated a complaint against one of these companies in order to investigate
- Software installed on leased laptops that allowed company to lock down computer if lessee was in breach of agreement
- Spyware used that recorded keystroked of laptop user, took photos through the webcam, put up a fake operating system notification to prompt user to input personal information

COVERT COLLECTION

- Recording keystrokes of users collected lots of highly sensitive information such as banking info and passwords
- Covert webcam photos captured not only the user, but their children and family, and recorded personal conversations
- The indiscriminate and deceptive collection of information through spyware was contrary to the principles of *PIPEDA*

DECEPTIVE COLLECTION CONTRARY TO *PIPEDA*

• Demonstrably necessary need to collect personal information to do so?	No
• Effective for recovering stolen laptops?	Yes
• Loss of privacy proportional to benefit gained?	No
• Least privacy invasive method to collect laptops?	No

EMPLOYEE TIME THEFT

Besse v Reach, 2023 BCCRT 27

- Claim for wrongful dismissal
- February 21, 2021: TimeCamp installed on employee's computer
- March 2022: 50.76 hours tracked for non-related work tasks
- March 29, 2022: meeting with employee to discuss discrepancy

EMPLOYEE TIME THEFT

Besse CONT'D

Employee argued:

- Could not get TimeCamp to differentiate work
- Spent her time working on hard copies of files

CRT found an irreparable breakdown in employment relationship

- Time theft = serious form of misconduct
- Trust and honesty are essential (especially for remote work)

KEY TAKEAWAYS

Best practices for employers

FIRST ASK: IS IT “PERSONAL INFORMATION?”

Is the policy going to result in the collection of “information about an identifiable individual”?

Where what is monitored is a work product, is the information potentially going to be used to train or discipline employees?

If the information is about property (location, use, etc.), does it have a personal dimension? What is the purpose of collection? Will the information tell you anything about an individual using the property?

KEY CONSIDERATIONS FOR EMPLOYERS

First step: Privacy Impact Assessment ("PIA")

- Consider all privacy principles including in particular:
  - Relevant consent
  - Communication requirements
  - Safeguards
- Document clear policies and procedures

Is collection reasonable?

- Whether the organization's purpose represents a legitimate need or bona fide business interest
- Whether the collection, use and disclosure would be effective in meeting the organization's need
- Whether there are less privacy invasive means of achieving the same ends at comparable cost and with comparable benefits
- Whether the loss of privacy is proportional to the benefits

CONSIDER THE IMPACT ON EMPLOYEES

Reasonable notice or consent

Employee objections

Scope and duration of collection

Collection by supervisor vs. computer software

BE UPFRONT ABOUT PRIVACY

Be upfront about the collection and use of personal information from their employees

Covert or deceptive collection of personal information runs contrary to the principles of privacy law and will often result in a legal violation

By crafting well thought out policies, employers can use productivity monitoring software in a way that balances their legitimate economic interests with employee rights to autonomy, dignity, and privacy.

RESPONDING TO REQUESTS FOR EMPLOYEE PERSONAL INFORMATION

When employees make requests under privacy legislation

PRIVACY LEGISLATION

- Employees have a right to requestion any “personal information” their employer has on them

RECEIVING A REQUEST

- Request must be in writing
- Employers may an obligation to assist
- Note date request is received

ANALYZING THE REQUEST

Analyze the request to ensure they understand what is being sought

Identify any sources or records that may contain the information

Retrieve the information and confirm it contains what is being requested

ADMINISTRATIVE FEES

- If an administrative fee is being considered, it generally must be agreed to by the requester in advance
- Public bodies or local authorities must create a fee estimate if the fee will be over $100
- Fees must be reasonable and should not be a source of profit
- Fees may be waived under *FOIP* or *LAFOIP*

EXEMPTIONS

Does an exemption apply?

Should information be severed?

Explanation required where information not provided

EXEMPTIONS

- Personal information about someone else
- Information protected by a legal privilege
- Confidential commercial information
- Expected to threaten the life or security of another individual
- Collected for an investigation or legal proceeding
- Collected in the course of a formal dispute resolution
- Created for the purpose of disclosure under the whistleblower law

COMMON-SENSE MEASURES

- If providing photocopies, make sure they are legible
- Make sure the meaning of any acronym, abbreviation, or code is clear
- Where a request results in a large number of relevant documents, it may make sense to invite the requester to view the information and then provide copies of what they need, rather than just providing copies of everything at once.

TIME LIMITS TO RESPOND

- 30 Days: *PIPEDA,* the *Privacy* Act, *LAFOIP* and *FOIP*
- Time limit to make a meaningful response – not to simply acknowledge receipt of the request
- This time limit can be extended is select circumstances:
    - Responding to the request would interfere with the corporation's activities to an unreasonable degree
    - Where extensive consultations must be undertaken in order to respond
    - If the information must be converted to a different format and such conversion will take significant time

PRIVACY AND SECURITY INCIDENTS

PRIVACY AND SECURITY INCIDENTS

Risk of:

- Financial loss
- Reputational harm
- Loss of sensitive information
- Privacy breaches
- Cybersecurity incidents

Employers:

- Are required to have appropriate safeguards
- Should conduct a Privacy Impact and Security Assessment

CONCLUSION

Don’t navigate this on your own!

WE ARE HERE TO HELP

- Having a trusted legal adviser to navigate this changing legal landscape can be an efficient way for employers to develop and maintain their policies

Q&A

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THANK YOU

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TIPS ON HIRING AND EMPLOYING FOREIGN NATIONALS

Scott Bell

MAIN TOPICS

- Foreign national recruitment regulations
- Verification of status to work
- Pre-employment discrimination
- Anti-abuse policy requirements
- New workers rights disclosures
- Foreign national terminations

WHY IS THIS IMPORTANT?

- Strong federal and provincial investigation and enforcement powers
- One in four employers are to be reviewed each year
- Post COVID-19 inspections and audits on the rise

BUT WE ARE NOT RECRUITING TEMPORARY FOREIGN WORKERS

- Open advertising is likely to attract foreign candidates
- May hire foreign workers without even knowing
- Open work permit holders
  - Post Graduate Work Permit
  - Accompanying Dependents
  - International Experience Class
  - CUAET Ukrainians

FOREIGN NATIONAL RECRUITMENT REGULATIONS

PROVINCIAL RULES ON RECRUITMENT

- *The Foreign Worker Recruitment and Immigration Services Act* ("**FWRISA**") in Saskatchewan
- Regulates who can legally perform recruitment services for positions that are primarily in Saskatchewan
- Applies to anyone providing recruitment services, regardless of location

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FWRISA DEFINITION OF RECRUITMENT

- "**Recruitment services**" means services that assist a foreign national or an employer to secure employment for a foreign national in Saskatchewan
- This could include:
  - Posting job advertisements
  - Reviewing resumes
  - Conducting interviews
  - Employing recruitment companies
  - Applying for an LMIA

FWRISA REGULATES RECRUITMENT

- Offence to recruit a foreign worker, provide third-party recruitment services or provide immigration services without having a license
- Exemption from the licensing for employers seeking to undertake their own recruitment

REGISTRATION REQUIREMENT FOR EMPLOYERS

- Employers have a licensing exemption for recruitment but must register with the Ministry before recruiting
- Employers who register will receive a Certificate of Registration

REGISTRATION REQUIREMENT FOR EMPLOYERS

- The Certificate of Registration can be amended, suspended or revoked for non-compliance
- Employers generally cannot recruit a foreign worker or use a third-party without a Certificate of Registration, so compliance is critical

REGISTRATION EXEMPTIONS FOR CERTAIN RECRUITMENT

- Exemptions From Certificate of Registration
  - Students working on work permit exemption
  - Co-op work permits
  - Open work permits will generally be exempt
  - Closed work permits not supported by a Free Trade Agreement
- Certificate of Registration Required
  - Closed work permit supported by a Free Trade Agreement
  - Closed work permit supported by a Labour Market Impact Assessment

FEDERAL RULES ON RECRUITMENT

- *Immigration and Refugee Protection Act* (“**IRPA**”)
- *Immigration and Refugee Protection Regulations* (“**IRPR**”)

IRPA AND THIRD-PARTY RECRUITERS

- Prohibiting employers from charging or recovering fees for the provisions of services in relation to Labour Market Impact Assessment, Employer Compliance Fee, and Recruitment Fees
- Employers must ensure third-parties do not charge or recover these same fees

THIRD-PARTY RECRUITERS

- Cannot transfer responsibility to the third-party
- Employers need to know what the third-party is doing on their behalf
- Ensure you are provided full review of submissions and a full record of documents

VERIFICATION OF LEGAL STATUS TO WORK

WORK PERMIT REQUIRED

- Under IRPR R196 a foreign national must not work in Canada unless authorized to do so by a work permit or otherwise by IRPR

WHAT IS WORK?

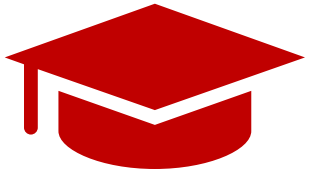
- Under IRPR, “work” is defined as an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market

WORK PERMIT REQUIRED

- Closed Employer Specific Work Permit
  - Labour Market Impact Assessment
  - Intra-company transfer
  - Free Trade Agreement Professional
- Open Work Permit
  - Accompanying Spouse
  - Bridging Open Work Permit
  - International Experience Canada
  - CUAET Work Permit

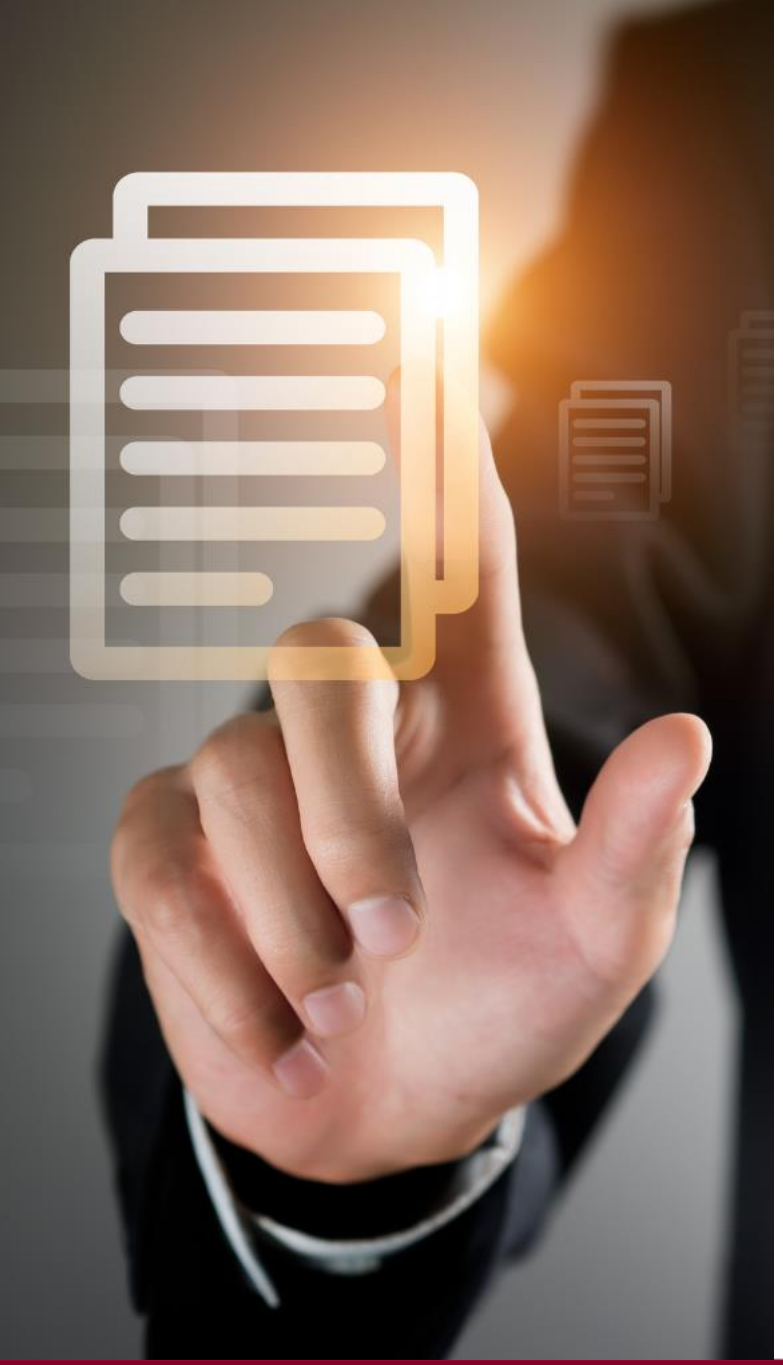
WORK WITHOUT A WORK PERMIT

- Under IRPR R186 and R187 a foreign national may work in Canada without a work permit in limited scenarios
- Post-Graduate workers, international business, students, religious workers, etc…



OBLIGATION TO VERIFY STATUS UNDER IRPA

- There is a positive legal obligation on employers to ensure its temporary foreign workers are authorized to work
- Only defence available to the offence is that all reasonable steps were taken to verify status



VERIFICATION BEFORE WORK

- Verification of proper legal status must be done before the foreign national is on site or conducts any work for the employer
- Applies to closed and open work permit holder
- Failure to do so will create potential for non-compliance
- Need for upfront document collection policy

VERIFICATION OF STATUS AND PRE-EMPLOYMENT DISCRIMINATION

PRE-EMPLOYMENT DISCRIMINATION

- Need to avoid asking questions regarding protected grounds when recruiting
- Simple “Yes” or “No” question during recruitment
- See *Haseeb v. Imperial Oil Limited*

PRE-EMPLOYMENT DISCRIMINATION

- Document collection at the point of a Conditional Employment Offer
- Require proof of satisfactory legal authorization to work in Canada as a condition of the employment offer
- Proof could be a number of different documents depending on legal status held

PRE-EMPLOYMENT DISCRIMINATION

- Should consider adding proof of status conditions to all employment offers
- Reduces chances of discrimination claim and ensures foreign national verification is not missed

TREATMENT OF FOREIGN WORKERS AS A VULNERABLE EMPLOYMENT GROUP

PROVINCIAL LABOUR STANDARDS APPLY

- Foreign workers are treated the same as Canadians and Permanent Residents under provincial labour standards
- Employers must follow provincial labour standards including:
  - Hours of work
  - Overtime rates
  - Statutory holiday pay
  - Payroll statements

EXTRA CONSIDERATION REQUIRED

- Case law has found temporary foreign workers are seen as a vulnerable group
- More sensitive position the result of fear, uncertainty, and financial hardship
- See *Tadena v. Dawat Restaurant Ltd.*

EXTRA CONSIDERATION REQUIRED

- Untenable temporary status in Canada with restricted labour mobility in some instances creates increased reluctance to “make waves”
- Direct threats may not be required, and subjective threats can arise from conversations and workplace culture
- See *Lee v. ScotiaCare Homecare & Caregivers Inc.*

EXTRA CONSIDERATION REQUIRED

- Inequality of bargaining position has been recognized by courts and tribunals in relation to termination and costs ordered
- More caution required with foreign worker interactions as their vulnerability may result in a different subject belief of a threat.
    - Clear communication with a confirmation of what is and is not required
    - Additional communication in writing setting out
    - Casual conversations around working condition changes should be avoid

FEDERAL & PROVINCIAL ANTI-ABUSE REGULATIONS

ANTI-ABUSE AT THE FOREFRONT

- Vulnerable position of foreign national workers has resulted in specific anti-abuse regulations
- Increased focus on anti-abuse obligations federally and provincially

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ENHANCED FEDERAL OBLIGATIONS

- Employer must make “reasonable efforts” to provide a workplace that is free of abuse
- Abuse is broadly defined under IRPR as:
  - (a) physical abuse, including assault and forcible confinement
  - (b) sexual abuse, including sexual contact without consent
  - (c) psychological abuse, including threats and intimidation
  - (d) financial abuse, including fraud and extortion
  - (e) reprisals

ENHANCED FEDERAL OBLIGATIONS

- Reprisal was newly added in late 2022
- Consists of any measure that is taken by or on behalf of an employer against a foreign national and that adversely affects the foreign national's employment or working conditions – because the foreign national has reported that the conditions owed by the employer have not been complied with or has in good faith cooperated with an inspection

FOCUS IN FEDERAL INSPECTIONS

- Regulator now targets this as an area of inspection
- Employers must provide anti-abuse policies or other similar polices (i.e., harassment or discrimination policies)
- Must show that training has occurred and will continue

FOCUS IN FEDERAL INSPECTIONS

- Mechanisms to address and resolve abuse, which may include:
  - Complaints polices & protocols
  - Dispute resolution
  - Anonymous reporting hotlines
  - Key contacts
  - Investigations protocols

PROHIBITED PRACTICES PROVINCIALLY

- The Saskatchewan FWRISA prohibits the following practices:
  a) producing or distributing false or misleading information
  b) taking possession of or retaining official documents or property
  c) misrepresenting employment opportunities
  d) threatening deportation or other action for which there is no lawful cause
  e) taking action against or threatening to take action against a person for participating in an investigation or for making a complaint
  f) taking unfair advantage of a foreign national's trust or exploiting a foreign national's fear or lack of experience or knowledge

NEED FOR SPECIFIC POLICIES

- Existing policies should be reviewed to ensure these additional considerations are addressed
- Employers with significant foreign worker numbers should ensure specific policies are developed that directly address these rules
- Must ensure policies are actually enforced with mechanisms to address and resolve abuse

WORKERS' RIGHTS DISCLOSURE REQUIREMENTS

GET TO KNOW YOUR RIGHTS

- Employers are now required to provide “Get to Know Your Rights” information to temporary foreign workers
- Information must be provided on or before first day of work
- Information must be made available during the “period of employment”
- Must be in English and French

GET TO KNOW YOUR RIGHTS

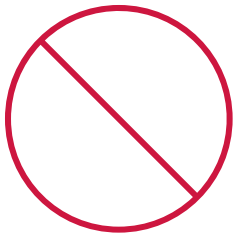
- Government has created a prescribed form in both official languages:
  - https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/know-your-rights-worker-international-mobility-program.html
- Printable PDF is also provided

EMPLOYER MUST

- Give you information about your rights
- Pay you for your work as stated in your employment agreement
- Provide you with a workplace free of abuse, such as reprisals
- Follow the employment and recruitment standards of the province or territory where you work
- Help you access health care services if you are hurt or become sick at work

EMPLOYER CAN'T

- Force you to do unsafe work or work that's not in your employment agreement
- Force you to work if you are sick or hurt
- Force you to work overtime if it's not in your employment agreement
- Punish you for reporting mistreatment or unsafe work, or for cooperating with an inspection by the government
- Take your passport or work permit away from you
- Deport you from Canada or change your immigration status
- Make you pay back recruitment fees



GET TO KNOW YOUR RIGHTS

- Employers need to keep a record of providing the information
- Send an email with the link and PDF before start date
- Post on public boards or intranet and keep recorded evidence

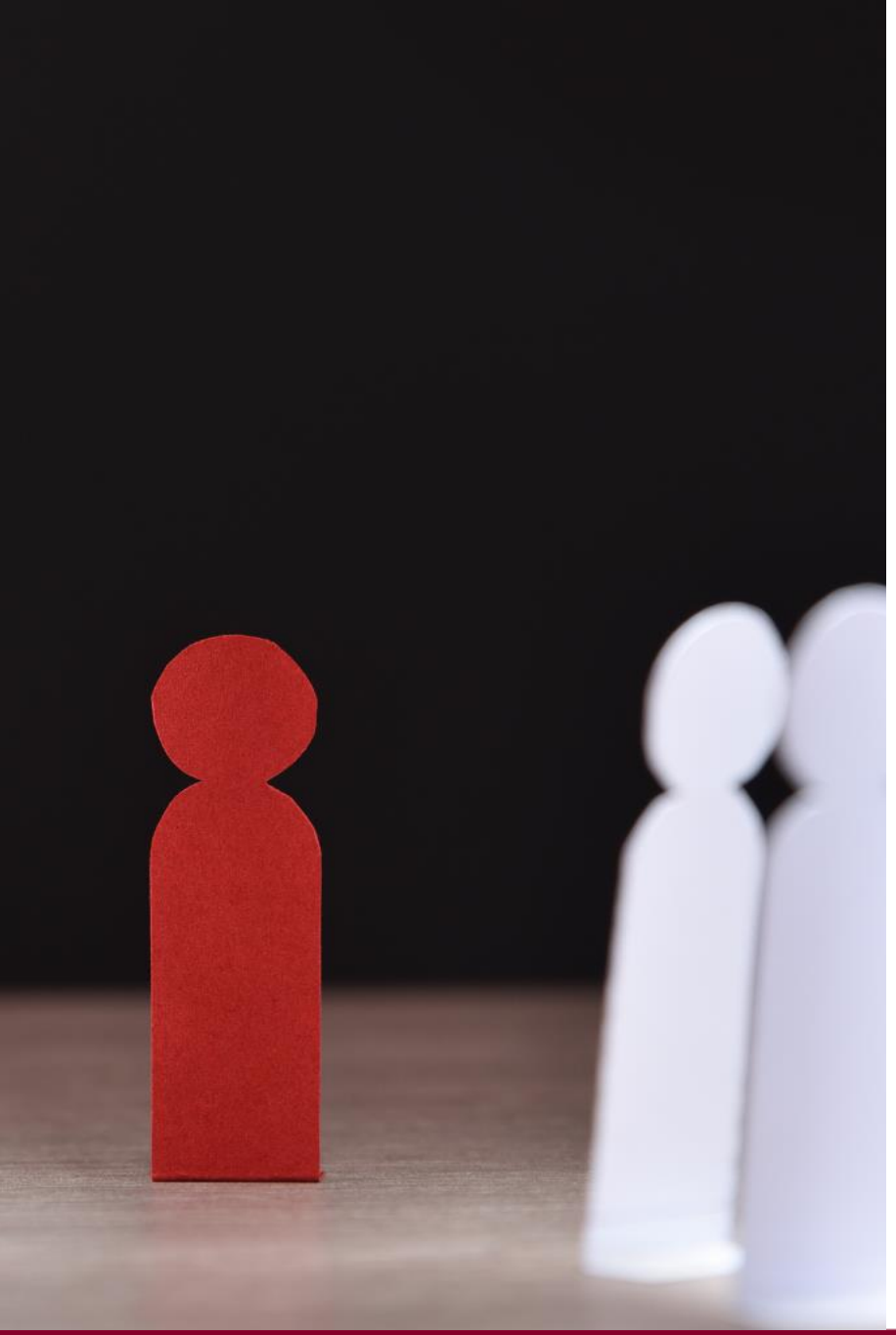
FOREIGN WORKER TERMINATIONS

TERMINATION IS POSSIBLE

- Employers can terminate for cause or without cause
- Support of an LMIA, LMIA Exempt Online Offer of Employment, or SINP Job Approval does not negate the ability to terminate
- Same labour standards apply, but there are additional considerations

MAY NEED TO NOTIFY REGULATOR

- Depending on status type, the employer may need to notify a regulator of the termination
- LMIA based work permits require the employer to notify Employment and Social Development Canada
- SINP based work permits require the employer to notify the provincial regulator
- Other LMIA Exempt Online Offer of Employment based work permits do not require notification



WATCH FOR DISCRIMINATION CLAIMS

- Employers need to exercise extra caution when terminating foreign nationals
- Inherently touch several protected grounds, increasing possibility of a discrimination claim
- Nationality, place of origin, race, ancestry, colour, religion may all be live issues
- More incentive to secure a release where possible

POSSIBLE INCREASE IN COMMON LAW NOTICE

- Case law to suggest certain temporary foreign workers are entitled to increased common law notice
  - See *Nishina v. Azuma Foods (Canada) Co. Ltd.*
- Equivalent to working in a “one employer town”
- Important to have termination provisions that limit to statutory notice to reduce risk

WHAT ABOUT A LOSS OF STATUS

- Foreign nationals can be placed on Leave of Absences
- Loss of status can result in Frustration of Contract
- Loss of status may be treated different in the union context

BEST PRACTICE RECOMMENDATIONS

BEST PRACTICES

- **Ensure Rules Regarding Foreign Worker Recruitment are Followed**
  - This includes Registrations and dealing with third-parties
- **Avoid Pre-Employment Discrimination**
  - Do not favour Canadians and avoid citizenship as a criteria or question
  - Still need to check status to work prior to start date
- **Use Conditional Employment Agreements**
  - Should be considered as a standard conditional term
- **Provide Workers Rights Information**
  - Easier to provide it to all foreign nationals on temporary status
- **Review and Update Anti-Abuse Polices**
  - This should address legislation specific to foreign national employment
- **Be Mindful of Foreign Worker Considerations**
  - Provincial labour standards apply, but extra attention required

Q&A

THANK YOU

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BREAK

OPEN FORUM

Kevin Wilson, K.C.

Amy Gibson

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Robert Frost-Hinz

CLOSING REMARKS