

HR Compliance



Your Plain Language Guide to
Hiring, Firing, Human Rights, Benefits & Privacy

INSIDER

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FEATURES

-  **PENSIONS** 1
Who Gets the Money When a Plan Member Dies?
-  **HIRING** 9
The 5 Colossal Mistakes Hiring Managers Make

REGULARS

-  **HR Month in Review** 4
New legislation, regulations, government announcements, court cases and arbitration rulings
LAW OF THE MONTH: Ontario Explains When It's OK Not to Pay Interns
-  **Brief Your CEO** 8
The Legal Risks of Not Establishing Internal Controls over Payroll
-  **Salary** 10
Uneven Economic Growth Impacts Projections
-  **Accommodation** 11
When it Comes to Older Workers on the Job, The Game Has Changed
-  **Study** 12
Worker Reallocation in Canada Has Changed Little from '70's
-  **HR Management** 12
Got Good Morale?

TALK TO US

The *Insider's* goal is to help HR professionals do their jobs better and more easily. So tell us what you need! For example, are you unsure what the HR laws require you to do for a certain violation in your Company Code of Conduct? Share your pressing HR compliance problems with us by calling 800.667.9300 or emailing rickt@bongarde.com

Rick Tobin
Senior Product Manager

PENSIONS: WHO GETS THE MONEY WHEN A PLAN MEMBER DIES?

When former or current employees pass away, their survivors, including spouses, ex-spouses, children, other family members and third party creditors might assert competing claims to their pension benefits. Distributing survivor benefits is tricky business, even where—and, in fact, especially where—the plan member has designated a beneficiary. Here's what you need to understand to make the appropriate distributions.

Defining Our Terms

The rules governing distribution of pension assets among survivors vary depending on the circumstances. For example, survivors of plan members who die before retiring don't have the same rights as survivors of members who retired before passing away. And the amount that a survivor can get depends on the extent to which the deceased member's interest in the plan was "vested"—or considered non-forfeitable—at the time of his death.

Another wrinkle: There may be a court order in effect mandating how plan benefits must be distributed, especially if the member was in serious debt. The analysis in this article addresses the common situation of a member of a pension plan:

- Who had retired before dying;
- Whose rights had vested; and
- Whose benefits aren't subject to any distribution order by a court or other tribunal.

What the Laws Require

Pension plans let their members designate a beneficiary to receive benefits in case the member dies. But the designated beneficiary isn't always the person who's entitled to survivor benefits under pension laws, which are based not just on the member's preference but an "order of succession" for survivor benefits. Each jurisdiction follows the same basic approach for determining the priority of beneficiaries:

First Priority: Married Spouses

If the plan member is married when plan benefits become due (usually at the time of retirement), the spouse is entitled to the benefits upon the member's death. This is true even if the plan member designates a different beneficiary—for example, his children or 22-year-old girlfriend.

Example: A sales manager for a piping supply company is in the middle of a nasty divorce. It looks like his wife will walk away with the lion's share of his assets. So he designates his son as the beneficiary of his pension benefits. The manager dies before the divorce becomes final. So, his son will never see a penny of the survivor benefits. Since the divorce isn't finalized, the manager's wife remains the beneficiary.

Exceptions. There are 2 exceptions to the first priority status of a married spouse:

- **Waiver.** If the spouse waives his or her automatic right to benefits,

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the member can designate another beneficiary.

- **Non-cohabitation.** If the spouse no longer lives with the plan member and the plan member lives with someone else at the time benefits become due, most jurisdictions (including Fed, AB, BC, MB, NL, ON and QC—but not PEI, NS or SK) will give the new partner priority over survivor benefits. Generally, the new partner must have been together with the member for a certain amount of time before the married spouse loses his or her right to benefits. The typical limit: 2 to 3 years.

Example: A city worker separates from his wife after 10 years of marriage. But they never divorce. The worker designates as the beneficiary the woman he's been living with for the past 25 years. The latter is considered the worker's common-law spouse. The court orders the pension plan to pay benefits to her [*Linder v. Regina*, [2006] S.J. No. 75, Feb. 14, 2006].

Second Priority: Common-Law Spouses

The plan member's common-law spouse gets survivor benefits regardless of any other beneficiary designation. What is a common-law spouse? The definition varies in each jurisdiction. But in most provinces, it includes couples who haven't gone through a formal wedding ceremony but who live together for a set period of time (usually 2 or 3 years or less if they have a child together) and hold themselves out as being married. Although generally not as strong as the rights of actual spouses, common-law spouses have claims on survivor benefits in every part of Canada.

Example: A secretary has lived with her boyfriend for five years. Despite her proclaimed undying love for him, she has named her sister as the beneficiary of her pension plan survivor benefits. The plan administrator contacts the sister for distributions since she's the named beneficiary. But when the boyfriend gets wind of it, he decides to fight back, arguing that he's entitled to the money since he was the secretary's "common-law" spouse. He's right. The plan must pay survivor benefits to him rather than the member's sister.

Exception: Like actual spouses, common law spouses can waive their rights to survivor benefits and allow the member to designate another beneficiary.

Third Priority: Designated Beneficiaries

If the plan member doesn't have a spouse, the designated beneficiary becomes the person who's first in line for survivor benefits. The twist: Members who designate a non-spouse as their beneficiary may actually have a spouse—actual or common law—that they're not telling you about. The plan administrator needs to determine if there is in fact a spouse in the picture. Only after you confirm that the member doesn't have a spouse can you follow his wishes and distribute the survivor benefits to the person he's named as his beneficiary.

Fourth Priority: The Member's Estate

If the plan member doesn't have a spouse (common-law or actual) and hasn't designated a beneficiary, the plan must distribute survivor benefits to the member's estate. Some employers think that the member's next-of-kin or creditors are automatically entitled to the money. But that's not the case. If there's no valid beneficiary, the plan must pay the benefits, if any, into the member's estate. This means

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the survivor benefits will ultimately be distributed according to the terms of the plan member's will, regardless of kinship or creditor-rights, as long as there isn't a court-order that requires distribution to a particular person or company.

Applying the Rules

As we mentioned earlier, there's only one way for a plan member to get around the first and second priority "spouse" beneficiaries (aside from a court order): The spouse must sign a form waiving his or her right to survivor benefits. But most members don't know that the term "spouse" includes more than just the person they're married to—it can also include the person the member has been living with. If the member isn't aware of that, he won't get his common-law spouse to sign a waiver form, in which case the designation of any beneficiary other than his spouse won't be effective.

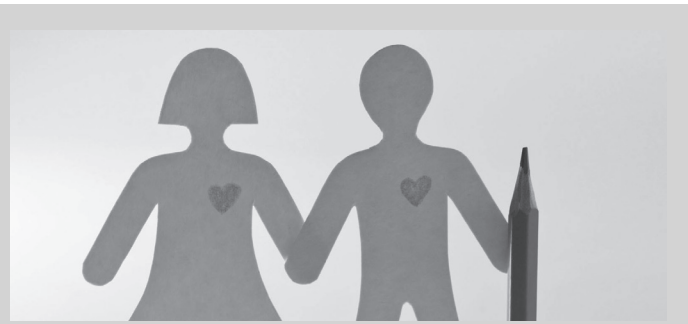
Plan administrators must know about your plan member's relationships so you can be sure you're distributing survivor benefits properly at the time of the plan member's death.

Example: A parking meter technician divorced his wife of 27 years after finding out that she was having an affair. As part of the separation agreement, the ex-wife agreed to give up her rights to survivor benefits. Unfortunately, the technician died not too long after retiring. Relying on the separation agreement, the plan administrator distributed the technician's survivor benefits to the technician's girlfriend, who was named beneficiary. When the ex-wife found out, she sued everyone, including the plan administrator. The court dismissed the lawsuit against the plan administrator, reasoning that it did everything right and was entitled to rely on the waiver in the separation agreement [*Robinson v. Robinson*, [2006] B.C.J. 663, April 27, 2006].

Tool on HRInsider.ca

Related Tool on HRInsider: [Model Spousal Waiver of Survivor Pension Benefits.](#)

One of the practical problems administrators encounter is the unwillingness of certain members to share personal information on intimate matters like co-habitation arrangements and marital history with their employers. The solution: Give every plan member a spouse waiver form with a general explanation of when to use it and what will happen if they don't. By doing that, you'll tell your plan members what they need to know and get critical information about their relationships without putting them on the spot. ❖



WHO'S A "SPOUSE"?

Here's how pension laws define "spouse" with respect to general industry private pension plans only. (The definition may vary under public service plans or industry-specific plans.)

FEDERAL: "Spouse" is a person who: (a) Has been living with the plan member in a conjugal relationship for at least one year; or, (b) If no such person exists, is married to the plan member or is party to a void marriage with the plan member (*Pension Benefits Division Act*, Section 2).

ALBERTA: "Spouse" is a person of the opposite sex who: (a) Is married to the plan member and has not been living apart from the plan member for more than 3 consecutive years; or, (b) If no such person exists, has been living with the plan member in a conjugal relationship (i) for the last 3 years, or (ii) of some permanence, if there is a child of the relationship by birth or adoption (*Employment Pension Plans Act*, Section 1(1)).

BRITISH COLUMBIA: "Spouse" is a person who: (a) Is married to the plan member and has not been living separate and apart from the plan member for the preceding 2 years; or (b) Is not married to the plan member but has been living with the plan member as husband and wife for the preceding 2 years; or (c) Is the same gender as, and has been living with, the plan member in a marriage-like relationship for the preceding 2 years (*Pension Benefits Standards Act*, Section 1).

ONTARIO: "Spouse" is the person who: (a) Is married and living with the plan member; or (b) Is not married to but has been living with the plan member (i) in a conjugal relationship continuously for at least 3 years, or (ii) in a conjugal relationship of some permanence if they are both natural or adoptive parents of a child (*Pension Benefits Act*, Section 1(1)).

QUÉBEC: "Spouse" is the person who: (a) Is married to or in a civil union with the plan member; (b) Is not married to the plan member but has been living in a conjugal relationship with the plan member for (i) not less than 3 years, or (ii) not less than one year if at least one child is or is to be born of the union or both parties have jointly adopted a child or either party has adopted at least one child of the other; however a spouse who is legally separated from bed and board loses his or her entitlement to a death benefit (*Supplemental Pension Plans Act*, Section 85).

[Go to HRInsider.ca and search for "Know the Laws of Your Province—Who's a "Spouse"?" to find out how pension laws define a "spouse" in all jurisdictions.](#) ❖



HR MONTH IN REVIEW

A roundup of new legislation, regulations, government announcements, court cases and arbitration rulings

LAW OF THE MONTH: ONTARIO EXPLAINS WHEN IT'S OK NOT TO PAY INTERNS

LAWS & ANNOUNCEMENTS

They may not get compensation but unpaid interns do get “valuable experience.” Although a bit self-serving, the old saying is one many employers sincerely believe. At the same time, there’s also legitimate concern that “valuable experience” isn’t enough to deprive interns of the right to be paid for their services enjoyed by any employee under employment standards law. The key legal issue: Are unpaid interns actually “employees” under the ESA? Over the years, provincial governments have issued safe harbour rules excluding interns from “employee” status so that employers can offer unpaid internships without violating ESA laws. The new guidelines issued by the Ontario Ministry of Labour (MOL) are a fairly clear explanation of how unpaid intern rules work—at least in Ontario. And for the non-Ontario employers among you, there’s a summary of the internship rules in the other provinces.

THE GUIDANCE

When They Were Issued: The new guidance which came out in March 2013 is actually a revision of the guidance the MOL issued in June 2011.

Bottom Line: It’s not what you call the individual but how the arrangement actually works that determines whether an unpaid intern is an “intern” or an “employee” under the ESA.

The Training Factor: The guidance then goes into what does determine whether a person who works for free is an intern or an employee, starting with training:

General Rule: An individual is considered an employee rather than an intern if he/she receives training in the skills that the employer’s other employees use.

Exception: The person who receives this training is an intern if all 6 of the following conditions are met:

- ♣ The training is similar to the training or instruction the intern would get in a vocational school;
- ♣ The training is for the intern’s benefit, e.g., it provides new knowledge or skills;
- ♣ The employer derives little to no benefit from the intern’s activity while training is taking place;
- ♣ The intern doesn’t displace or take the job of another of



the employer’s employees;

- ♣ The intern isn’t promised a job or given the right to become an employee at the end of the training; and
- ♣ The intern is advised that he/she won’t be paid for the time spent in training.

The College/University Factor: The ESA doesn’t apply, the guidance continues, to individuals who perform work under a program approved by a college of applied arts and technology, or a university. This rule is necessary, the MOL explains, to encourage employers to provide students enrolled in a college or university program with practical training to complement their classroom learning.

UNPAID INTERNSHIPS IN OTHER PROVINCES

If you’re in Ontario, the MOL guidance should enable you to keep your unpaid internship arrangements out of ESA harm’s way. Unfortunately, not all jurisdictions have been as clear about how their ESA laws apply to unpaid interns. In BC and Québec, the rules are fairly clear. But in the other jurisdictions, the government hasn’t done a good job of whether interns are “employees” entitled to receive wages for their work.

[Go to HRInsider.ca and search for “Unpaid Internships & ESA Laws” to find out about the rules governing unpaid internships in the other provinces \(and federally\).](#) ❖

Laws & Announcements



FEDERAL

SIN Cards - Mar. 1: The wallet-sized SIN card will soon be an artifact. The feds announced that they will stop producing and issuing the physical card in an effort to save money, streamline service and prevent identity theft. Impact on employers: You'll have to ask new employees for their SIN number rather than their card and accept their SIN without actually seeing a card.

Pensions - Mar. 1: The first wave of changes to gradually increase the age of eligibility for the OAS pension and GIS by 2023 took effect:

- Age of eligibility for OAS pension and GIS pushed back from age 65 to 67
- Age of eligibility for OAS and GIS allowances pushed back from age 60 to age 62
- Phase one of automatic enrollment for OAS pension, i.e., listing of data government needs to waive requirement for pension application for individuals age 65.

Workplace Safety - Mar. 18: Public comments are due on the federal government's proposed amendments to the TDGA (Transportation of Dangerous Goods Act) Regulations. Highlights:

- Complete revision of Schedule 1, Dangerous Goods list and Schedule 2, Special Provisions
- Introduce concept of Exempted Quantities
- Updated standard for transport of explosives
- Exempt foreign cylinders in transport for purpose of refilling or requalification
- Updated rules and shipping names for transport of lithium batteries.

CASES

OK to Fire Foreman for Repeated Safety Infractions - A foreman was progressively disciplined and, when he didn't clean up his act, ultimately fired for a series of safety violations—including failing to wear a hardhat, safety goggles and fall protection equipment. The arbitrator upheld the termination. Repeated safety violations are bad; but when they're committed by a foreman in a safety-sensitive position who's responsible for ensuring compliance with safety rules, they constitute just cause for termination [*Oberle v. Schindler Abroyd Inc.*, [2013] C.L.A.D. No. 32, Jan. 30, 2013].

Firing Manager for Sex Affair Is Wrongful but Reinstating Him Is Out of the Question - A married bank manager became romantically involved with his equally married female subordinate. When the affair went sour, the subordinate accused the manager of stalking her. The manager, who had been previously disciplined for abusive treatment of female staffers, at first denied the affair. But when the investigation confirmed it, he was fired. The arbitrator found the manager's behaviour "foolish and reckless" but not serious enough to warrant termination. So it ordered the bank to reinstate him after a 4-month suspension. The appeals court agreed that termination was wrongful; but given all that had happened, reinstating the manager was simply not an option, it ruled [*Payne v. Bank of Montreal*, 2013 FCA 33, Feb. 8, 2013].

LAWS & ANNOUNCEMENTS



BRITISH COLUMBIA

Pensions - Feb. 28: BC tabled Bill 16, which would make BC one of the first provinces to implement pooled registered pension plans (PRPPs), i.e., newfangled deferred income plans for employees whose employers don't offer pensions. Highlights:

- Employer participation in PRPP would be optional
- Employers that offer PRPP can but don't have to contribute on employees' behalf
- If employer does contribute, the employee's RRSP and PRPP deductions limited to lesser of the employee's RRSP and PRPP contributions and amount by which his/her RRSP deduction limit exceeds the employer's contributions to his/her PRPP
- Employees enrolled in PRPP automatically unless they opt out.

Medical Services Plan - Feb. 15: British Columbians can now replace their CareCard with the newer, more secure BC Services Card. You can use the card to enroll or re-enroll in MSP when renewing your driver's licence and opt for the combined card that includes both a driver's licence and BC Services Card. People who don't drive can still enrol at the nearest location where driver's licences are issued.

Healthcare - Feb. 25: BC announced that it recruited a record 268 physicians to the province last year, 50 more than in 2011. Perhaps the best news of all is that 102 of these physicians, including 69 family doctors were recruited to underserved rural/remote communities where they're needed the most.

CASES

Employer Must Pay \$110,000 for Bad Faith Termination - A mining start-up fired its communication director after only 7 months on the job. The company claimed the director had exaggerated his qualifications, bad mouthed the firm and was insubordinate. The director denied the charges and argued he was fired for objecting to stock manipulation and other legal shortcuts by company officials. Finding the director more credible and sympathetic, the court found that the company acted in bad faith and awarded him not just termination notice of \$10,000 but \$100,000 in punitive damages. The company didn't just fire the director, but threatened to bankrupt and blackball him so he couldn't work again [*Kelly v. Norsemont Mining Inc.*, 2013 BCSC 147 (CanLII), Jan. 31, 2013].

No Firing Foreman for Setting Worker on Fire - Just what does a person gotta do to deserve being fired? Just ask the company that fired a foreman for flicking a lighter at a worker causing his safety vest to catch fire. Although the fire was put out quickly, the worker suffered burns to his hand. The foreman was joking around and meant no harm but his actions constituted dangerous horseplay banned by the safety policy he was supposed to enforce. Still, the union claimed termination was excessive for a 32-year employee with a clean record, noting that the foreman did apologize immediately. The arbitrator agreed. The foreman's actions were "stupid," rather than malicious, he reasoned, and knocked the penalty down to a lengthy suspension [*Dryco Drywall Supplies Ltd. v. Teamsters Local Union No. 213 (Sobieski Grievance)*, [2013] B.C.C.A.A. No. 18, Feb. 19, 2013].

LAWS & ANNOUNCEMENTS



ALBERTA

Government Services - Mar.: On a related note, a new landing page on the Alberta government website is supposed to help businesses find [information about regulations and services](#) that affect them, including: The Business Link (free and low-cost business seminars for startups and entrepreneurs), Productivity Alberta, Rural Alberta Business Centres, BizPal. (online permit and licence service), Alberta Innovates Connector (free, personalized services connecting innovators and entrepreneurs to resources).

Salaries & Wages - Apr. 1: A 3-year freeze on the salaries of public sector managers takes effect. Alberta also plans to cut the number of managers 10% over the same period. The moves come in response to dismal results for the third quarter and the fact that resource revenues for the first 9 months of 2012 are \$2.4 billion below expected levels.

Pensions - Mar. 7: The 2013 Alberta budget provides for review of 4 major public sector pension plans: Local Authorities Pension Plan, Public Service Pension Plan, Management Employees Pension Plan, Special Forces Pension Plan.

CASES

Oil Worker's Hearing Loss Caused by His Job, Not His Age - Workers' comp denied an oil and gas worker's claim because it said his hearing loss was the result of age, not work. The Appeals Commission disagreed, noting that in his more than 45 years of employment, the worker was repeatedly exposed to 40 to 60 hours per week of excessive noise from machinery and equipment—all without wearing hearing protection. And the fact that he had no family history of deafness or ear disease undermined the contention that his hearing loss was age-related [*Decision No: 2013-0034*, [2013] CanLII 9024 (AB WCAC), Feb. 19, 2013].

SK

LAWS & ANNOUNCEMENTS

Jobs - Mar. 8: Saskatchewan, already boasting the lowest unemployment rate in Canada (3.8%), added another 24,600 jobs in Feb. And Feb. has traditionally been a slow month for jobs in the province!

Labour Laws - Mar. 7: In May 2012, the government proposed a plan to modernize and consolidate 12 different employment and labour laws into a single piece of legislation called the *Saskatchewan Employment Act*. So far, more than 4,000 Saskatchewaners have submitted comments on the proposal. The bill is expected to pass before the end of 2013.

Workplace Violence - Mar.: A couple of significant workplace violence developments occurred last month:

- A registered nurse and former security officer developed a new program on preventing workplace violence in healthcare for the Saskatoon Health Region (Feb. 20)
- The Sask. Human Rights Commission and groups representing native peoples called on the federal government to create an action plan to prevent violence against Aboriginal women and girls (Mar. 7).

MB

LAWS & ANNOUNCEMENTS

Job Training - Feb. 27: Although the 2013 budget isn't due until mid-April, the government announced that it would provide \$500,000 to high schools to buy new equipment for vocational training including for items like lathe engines and virtual welders.

ONTARIO

LAWS & ANNOUNCEMENTS

Jobs - Mar. 8: The employment picture is picking up as Ontario added an impressive 35,300 jobs in Feb. 2013, nearly 70% of all jobs created in Canada for the month. Overall, the province has netted a gain of 380,600 since the recessionary low of June 2009.

Employment Standards - Mar. 5: Following the lead of the federal government (and Manitoba), Ontario has proposed changing its ESA to provide unpaid leave for employees to care for loved ones or deal with a lost child, including:

- Up to 8 weeks of family caregiver leave to care for family members with serious medical conditions
- Up to 37 weeks to care for a critically ill child
- Up to 52 weeks to deal with a missing child
- Up to 104 weeks if a child dies as a result of a crime.

Pensions - Feb. 21: FSCO posted for public consultation a draft regulation that would allow members, former members and retired members of public sector pension plans affected by the recent government restructurings to consolidate their pension benefits. Comments are due by April 15, 2013.

Safety Training - Mar. 4: The Ontario Prevention Office is developing standards that vendors will have to meet to deliver OHS safety training in the province. Accreditation of third party training providers is one of the elements of OHS reform recommended by the Dean Commission in its 2011 report.

Workplace Safety - Mar. 7: Results of the Oct. 1 to Nov. 2012, MOL blitz on manufacturing workplaces:

- 1,116 workplaces inspected
- 5,392 orders, including 170 stop work orders
- Most frequently issued orders involved maintenance of machinery (16%), supervision of workers (16%), workplace violence and harassment (13%) and machine guarding (13%).

CASES

Driver Fired in Reprisal for Safety Complaint Wins 24 Weeks' Pay - A probationary truck driver complained that his truck was kicking and slipping in third and seventh gear; he also claimed the steering was loose steering,

Pharmacare - Apr. 1: Sask. has set the prices on the following 6 generic drugs at 18% of brand name price:

- Atorvastatin for high cholesterol
- Ramipril for blood pressure
- Venlafaxine for depression
- Amlodipine for high blood pressure and angina
- Omeprazole and Rabepazole for gastrointestinal diseases.

CASES

The Month in LSA Violations - *Labour Standards Act* violations cases reported in Feb. and March:

- Drywall contractor fined \$400 after pleading guilty to failing to deliver payroll records and keep proper payroll records [*R & D Drywall Inc.*, Govt. News Release, March 5, 2013]
- Construction contractor fined \$3,500 for failing to pay final wages to an employee within 14 days of termination [*101050049 Sask. Ltd.*, Govt. News Release, Feb. 14, 2013].

Healthcare - Feb. 20: A new law gives nurse practitioners authority to order MRI tests for patients, something only doctors could do under previous law.

the mirrors were cracked and part of the dashboard was missing. When his complaints fell on deaf ears, he refused to drive the truck. He was then fired. The OLRB ruled that the firing was a reprisal, noting that the driver reasonably believed the truck was unsafe and even had photos to prove it. So it ordered the employer to pay him 20 weeks' back pay plus 4 weeks' additional pay in damages [*Barber v. LP Services*, [2013] CanLII 9952 (ON LRB), Feb. 26, 2013].

24/7 Monitoring of Employee Use of Company Trucks ≠ Privacy Violation - An elevator company installed telematics devices in its trucks to monitor where, when and how employees drove them. The union filed a privacy grievance since the devices allowed for monitoring after work hours but the OLRB said no. The company installed the devices for the legitimate purposes of improving service and efficiency, the OLRB reasoned. The employer was liable for the vehicles 24/7, the Board continued; so it should be allowed to monitor the vehicles 24/7, particularly since there was no contractual or other reason barring such monitoring [*Int'l Union of Elevator Constructors Local 50 v. Otis Canada Inc.*, 2013 CanLII 3574 (OLRB), Jan. 21, 2013].

Construction Worker Fired for Safety Infractions, Not Getting Hurt - A union claimed an employer laid off a construction worker because he'd gotten injured. The OLRB disagreed and upheld the termination. When the worker was able to return to work, the employer took him back and restored him to full duties in his prior position. So disability discrimination wasn't an issue. What was clear is that the worker was involved in no fewer than 3 separate safety incidents in the 2 weeks after his return. These safety violations and not the prior injury were the reason the worker got fired, the OLRB concluded [*Universal Workers Union v. McNally Construction Inc.*, [2013] CanLII 7580 (ON LRB), Feb. 11, 2013].

Employer Violates Workplace Violence & Harassment Laws - A union claimed that the agent of an employer assaulted a worker on a construction site and later threatened another worker with physical violence and death. The OLRB found the employer failed to prepare, review and post workplace violence and harassment policies or programs or provide information and instruction to workers on workplace harassment as required by erstwhile Bill 168. The Board is still deciding whether to award the victims money damages [*Labourers' International Union of North America, Local 506 v. Pro-Cut Concrete Cutting Ltd.*, [2013] CanLII 1240 (ON LRB), Jan. 11, 2013].

QC

LAWS & ANNOUNCEMENTS

Minimum Wage - May 1: The Québec minimum wage will increase 25¢ to \$10.15 per hour. Minimum wages of workers earning tips will go from \$8.55 to \$8.75 and fruit pickers will get a raise from \$0.77 to \$0.79 per kg for strawberries and \$2.91 to \$2.98 per kg for raspberries.

Pensions—Finances - Feb. 27: Highlights of the Régie's report on the finances of Québec-regulated pension funds in 2012:

- Value of regulated pension assets: \$38.6 billion
- Return on funds: 10.5% (6.4% when actuarially adjusted)—above the annual average of 8.5% in past 37 years.

QC

Pensions—Withdrawals - Feb. 20: The Régie set out its position with regard to taxation of annual minimum withdrawals from individual pension plans. Bottom line: Pension plans in Québec *don't* have to and should not submit amendments to the Régie bringing the plan into compliance with 2011 tax changes affecting

maximum withdrawals. The 2011 federal tax changes don't comply with the Québec Supplemental Pension Plans Act ban on supplemental pension plans varying the amount of a pension paid periodically. So any amendments to the contrary will be rejected.



NL

LAWS & ANNOUNCEMENTS

Employment Insurance - Mar. 1: Employment assistance services for EI-eligible clients that are currently run by third-party service providers will be delivered through the Department of Advanced Education and Skills starting June 1, 2013, the government announced. In addition to responding to the large number of complaints about third party providers, the change will enable Newfoundland to re-invest approximately \$14 million annually for programs and services to help people secure long-term employment.

Dental Insurance - Mar. 6: Newfoundland made some changes to its just over one-year-old Adult Dental Program:

- Government to operate prior approval process for dental treatment plans
- Prior approval not required for eligible exams and x-rays

- All denture work currently in progress as of March 6, 2013 to be honoured without prior approval to conclude services
- Annual per person caps of \$150 for basic dental services and \$750 for dentures.

CASES

Company, Supervisor Charged in Construction Camp Worker's Death - A construction camp worker doing maintenance on the water system was killed when a water tank ruptured. The company was charged with five OHS violations for, among other things, failing to provide sufficient instruction and training and ensure that equipment was used and maintained according to manufacturer's instructions. A supervisor was also charged with failing to ensure the health and safety of all workers under his supervision and to provide proper written or oral instructions [*Johnson's Construction Ltd.*, Govt. News Release, Feb. 27, 2013].



NS

LAWS & ANNOUNCEMENTS

Jobs & Women - Mar. 8: The good news is that over the past 5 years, females studying technology, trades and science-related fields at Nova Scotia Community College have been able to apply for \$1,000 bursaries via the Bread and Roses bursary fund; the not so good news is that this funding has to be approved each year. But funding will no longer be year-to-year thanks to the new \$100,000 endowment fund the government has established to ensure long-term funding for the bursary program.

Tourism - Mar. 7: Tourism increased 2% with over 1,933,300 people visiting Nova Scotia in 2012. But the news isn't all good. Of these visitors: 88% came from

another part of Canada (up 3%), 8% came from the U.S. (down 4%), and 3% came from overseas (down 4%).

CASES

OHS Charges after 12-Year-Old Boy Killed by Boom Truck - A construction company was renovating an inn when a 12-year-old boy riding a bike nearby was struck and killed by a boom truck. The company pleaded guilty to an OHS violation and will be sentenced on May 9. The driver of the truck went to trial and the case is still pending. We'll let you know when the verdict comes down [*5823 NWT Ltd.*, Feb. 25, 2013].



PEI

LAWS & ANNOUNCEMENTS

Payday Loans - Feb. 7: PEI approved new payday lending regulations. Highlights:

- Fees capped at \$25 per \$100 borrowed
- Lenders must fully disclose terms of loan
- Lenders can't engage in unfair collection practices.

Pharmacare - Feb. 14: PEI added a pair of new stroke and systemic embolism prevention drugs to its Pharmacare formulary: Pradaxa and Xarelto. Pharmacare

already covers a drug called Warfarin that provides similar benefits. The drugs will be available to patients with abnormal heart rhythms who can't take Warfarin.

Drugs & Alcohol - Mar.: You might want to remind any of your employees who are inclined to drink and drive that a new law took effect that requires drivers convicted of impaired driving in PEI to install an ignition interlock device on their vehicle. Drivers breathe into the device which then does a quick breathalyzer-like test to determine whether to release the ignition and let the driver start the vehicle.



NB

LAWS & ANNOUNCEMENTS

Medicare - Feb. 28: New Brunswick has formed a committee to advise the government on implementing a new prescription drug plan for the uninsured. The insurance plan, when it's proposed, is expected to follow the recommendations of the report issued by the Advisory Committee on Health Benefits, which is chaired by Dr. Dennis Furlong, in December 2012.

Medicare - Mar. 11: The government posted a new public health [e-questionnaire](#) to help New Brunswickers evaluate their risks for pre-diabetes or Type 2 diabetes. Developed by the Public Health All answers will be kept confidential, the government assures us.

Workplace Safety - Mar. 8: WorkSafeNB redid its [website](#) to make it easier to use and navigate. Earlier this month, it also released a pair of new safety training

videos on supervision in healthcare: [Control of Hazards and Correction of Unsafe Work Practices](#).

CASES

Getting Email Porn at Work ≠ Just Cause to Terminate - A multinational wireless communications giant fired 2 employees for receiving sexually inappropriate emails from a friend at their work email addresses. The trial court found that the company had overreacted. Simply receiving the emails wasn't just cause for termination, especially insofar as the friend sent the materials as a joke and the company's code of conduct and computer use policy didn't clearly explain what constituted "pornographic" materials that employees weren't allowed to receive on their work emails. The appeals court found the ruling reasonable and refused to reverse it [*Asurion Canada Inc. v. Brown*, 2013 NBCA 13, Feb. 14, 2013].



NU & NWT

LAWS & ANNOUNCEMENTS

2013 NU Budget - Feb. 27: Highlights of the newly tabled Nunavut [2013-14 budget](#): Projected surplus of \$21.9 million, no corporate or personal tax rate changes, no new taxes proposed.

2013 NWT Budget - Feb. 7: Highlights of the newly proposed 2013 Northwest Territories budget:

- Projected operating surplus of \$113 million (revenues of \$1.61 billion - expenditures of \$1.5 billion)
- No new personal income taxes or tax rate changes
- Property tax mill rates and govt fees adjusted for inflation in April 2013.

YT

LAWS & ANNOUNCEMENTS

Public Health - Feb. 19: The government plans to spend \$250,000 in the coming year to support active living programs for individuals, schools and workplaces across the territory. The public campaign to get Yukoners more physically involved which will be handing out this money is called the [Renewed Yukon Active Living Strategy](#).

BRIEF YOUR CEO: THE LEGAL RISKS OF NOT ESTABLISHING INTERNAL CONTROLS OVER PAYROLL

The owners of a small bracelet business hired a personnel agency to find them an administrative assistant. The assistant the agency placed there defrauded the company of \$263,000. The company later discovered that the personnel agency didn't do a background check on the assistant. Even though the contract didn't mention background checks, the attached fee schedule assured the company that the agency would provide the "highest caliber of professional screening, evaluating and reference checking of all candidates." The company sued the agency for breach of contract and negligence. The agency denied responsibility and blamed the fraud on the company's negligence. If the company had implemented better internal financial controls over the assistant, it wouldn't have wound up in this predicament, the agency contended. The court agreed, finding that the company's lack of supervision was partly to blame for its losses; so it cut the company's damage award by 50% [*Treaty Group Inc. (c.o.b. Leather Treaty) v. Drake International Inc.*, [2005] O.J. No. 5232, December 5, 2005, affirmed [2007] O.J. No. 2468, June 25, 2007].

The Problem

Although doing background checks is a must for all positions, it's especially imperative for payroll and other sensitive financial positions. One of the nice things about using a personnel agency is that you can count on it to conduct a thorough background check. The knowledge that the employee has passed the agency's rigorous screening means that you can entrust the person to conduct payroll operations for your organization. Or at least that's what many companies assume. But, as the employer in *Drake* case found, out, that assumption can prove disastrously wrong.

The Explanation

Personnel agencies have expertise in background checking. But some personnel agencies overstate their expertise; others cut corners; and even top agencies can make mistakes. Many personnel agencies give warranties or accept legal responsibility for the integrity of the employees they place. Although that can help if the employee later commits fraud or malfeasance, relying on contractual guarantees from a placement agency isn't an effective way to manage risks. There may be disputes about the meaning of the language in the contract.

More importantly, as the *Drake* case plainly shows, even if the placement agency is contractually liable for a placed employee's wrongdoing, companies may also be assigned a share of the blame for failing to exercise controls over the employee. Result: The company will be able to recover only pennies on the dollars it loses.



The Solution

Don't have blind faith in the integrity and competence of payroll staff because they come from personnel agencies. Establish effective controls over internal financial operations and the people who perform them—no matter where those people come from and how honest you think they are. What kinds of controls do you need? Take a lesson from the *Drake* case:

- Instead of requiring only one signature on a cheque, the owner should have signed all the cheques himself or at least required two signatures on each cheque which would have required the bookkeeper to explain each cheque to the owner.
- The company shouldn't have let the same person who prepared the cheques and paid the invoices also review cancelled cheques and bank reconciliations. A better solution would have been to have an outside bookkeeper prepare the financial statements and bank reconciliations if the owner couldn't do so himself.
- The company shouldn't have given the assistant signed blank cheques. Even if the signor will be away when payment is required, the signed cheque should always be made out to the payee so that only the amount is left blank. The company should also require that the resulting invoice verifying the amount is stapled to the accounting copy of the payment.
- The company should have provided more direct supervision over the assistant even if it had to use an outside bookkeeping or accounting firm to do so. ❖

HIRING: THE 5 COLOSSAL MISTAKES HIRING MANAGERS MAKE

In hospitality, having the right team will make or break your business. So how do you hire the right staff? Here are five common errors hiring managers make and how to avoid them. If you can recruit employees with an innate passion for hospitality and a strong sense of team, it will improve the guest experience, reduce employee turnover, improve morale and increase the bottom line. Conversely, poor hires can hurt your business and cause good employees to leave. Here are five mistakes, all of which I have been guilty of at some point in my career, that result in a bad hiring decision.

Mistake #1: Relying too much on experience

One of my first hires was a prep guy who had 30 years experience being a prep cook. I was so impressed I didn't realize the potential for the candidate growing tired and bitter over time.

- **Avoid:** Hiring someone only because they have a huge amount of experience in the position you need filled. Remember, they might have so much experience in that job because they were never capable of doing another role. You are always better off evaluating candidates and hiring for personality and potential versus past experience.
- **A better approach:** Look for career growth before experience. Evaluate the candidate's ability to learn, grow, and work with others, not just how many years of experience they have.

Mistake #2: Relying too much on education

We have all seen resumes of people with multiple advanced degrees and diplomas. Education alone is not an indicator of future success. It only demonstrates that the candidate is capable of getting an education.

- **Avoid:** Choosing between candidates simply because one has more education. It doesn't mean the highly educated candidate is better than all the other candidates that don't have all those impressive letters beside their name.
- **A better approach:** Get the candidates to talk about examples of what they have accomplished and how they have interacted with customers, peers and done the kind of tasks you need for the position.
- **A better approach:** Give the candidate scenarios of situations likely to arise in your business and ask them to give examples of how they personally would respond.

Mistake #3: Being dazzled by the "halo effect"

Sometimes we just click with a candidate and build instant rapport during an interview. Be very careful to

differentiate between someone you "like" or "admire" versus someone who is a good fit for the role.

- **Avoid:** Making your hiring decision based on gut feel. That halo may make you forget to focus on some basic competency areas.
- **A better approach:** Use a consistent template to rate all of the required skills for the position so as not to be swayed by your personal biases.

Mistake #4: Fall for someone with the gift of the gab

Especially in the hospitality business, keep in mind these candidates are experts in building rapport and selling. In the case of servers and bartenders, their livelihood depends on it.

- **Avoid:** Getting so enamored by a great pitch that you think the person is a star before doing your due diligence.
- **A better approach:** Ask for examples and evidence examples of their success. Look for proof such as awards or customer letters, and explore their ability to think on their feet through scenarios.
- **A better approach:** Look for humility and the ability to learn from mistakes. Ask the candidate to describe a mistake they have made or a complaint they have received. A truly great candidate will always be confident enough to share a lesson they have learned or a mistake they made. A big talker will always resist showing character flaws.

Mistake #5: Failure to do a background check

This seems so 1980, but references are critically important. I have seen so many managers get too busy, or need to move too fast to check references. Past performance almost always repeats itself, good and bad.

- **Avoid:** Skipping reference checks. Furthermore, know who the references are – roommates and friends do not count!!
- **A better approach:** Always check references and wherever possible full background checks are even better. Criminal record checks and education verification often reveal surprises references alone would not catch.

We all know the great candidates get hired quickly, but having a disciplined hiring process in place will not slow you down. It will help save you time, money and grey hair down the road. Don't be dazzled by snake charmers. Sometimes you have to dig a little deeper to reveal the real gems. ❖

SALARY: UNEVEN ECONOMIC GROWTH IMPACTS PROJECTIONS



Across Canada, non-union salary increases in 2013 are projected to average 3 percent. However, The Conference Board of Canada finds notable geographical differences, which it attributes to uneven economic growth, and has, accordingly, revised its annual salary projections by region.

Salary growth projections have been revised upwards in Saskatchewan (4 percent) and Alberta (3.9 percent), while projections for Quebec (2.7 percent), Ontario (2.5 percent), and British Columbia (2.5 percent) have been revised downward and remain below the national average of 3 percent.

In reviewing salary gains, The Conference Board of Canada also finds the oil and gas industry, the industry with Canada's highest average salary increases, outpacing

earlier projections. The oil and gas sector now projects increases at 4.5 percent, up from 4.2 percent last fall.

Tool on HRInsider.ca

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"Salaries in oil and gas this year are rising slightly faster than we projected, and labour markets in western Canada are tightening. We have heard from natural resources firms that virtually all of them are having trouble finding the skilled workers they need," said Ian Cullwick, Vice-President, Leadership and Human Resources Research for The Conference Board of Canada, when releasing the new data. ❖

ACCOMMODATION: WHEN IT COMES TO OLDER WORKERS ON THE JOB, THE GAME HAS CHANGED

The workforce is getting older. People are retiring later in life than ever before. This trend has been a major concern for those in the health and safety field because the common knowledge has been that older workers are more prone to suffer very expensive injuries.

However, new research from the National Council on Compensation Insurance (NCCI) has cast doubt on this conventional wisdom, or at the very least potentially changed the definition of “older workers”.

NCCI studied different age groups and the rate at which they get injured. They found younger workers (under 35) had substantially more cuts on their fingers and older workers (over 35) suffer more cases of carpal tunnel and more cervical injuries, although the numbers are startlingly similar.

So, that quiets the argument about the aging workforce causing more injuries, but what about cost? The research shows that there is a substantial cost difference between younger and older workers, but the split isn't necessarily where you might expect it.

Workers between the ages of 20-24 create much lower costs (and fewer days out), but once workers reach 35, the costs of their injuries are very similar to older workers.

What does this all mean? To start with, it now largely redefines an “older worker” as someone who grew up listening to disco instead of Elvis. This means that someone over 35, not just someone belonging to the traditional “over 65” group, is now being classified as an “older worker.” It should also prompt businesses to strongly focus on the things that can reduce injury costs for everyone.

Injury prevention for employees should begin before they even become employees- during the hiring process. Start with a written functional description for the position that is open. Once that is complete, it is critical that the candidate you select be given a conditional offer of employment. This document is a bona fide job offer with the caveat that you can withdraw the offer if they are physically or mentally unable to do the job with reasonable accommodation. Once this is complete, have the candidate go to the doctor and complete a post-offer, pre-placement medical questionnaire. Having this completed allows a physician to ask questions relevant to the job and to let the employer know whether or not the candidate is fit for the job. If they are, it's time to get started. If not, you'll have to find another suitable candidate.

Once an employee is on the job, it is critical that they are always mindful of how they are doing their job. Far more injuries are caused by unsafe acts by employees than any unsafe conditions in their workplace. Employees that feel rushed are more likely to set safety aside in the name of meeting a deadline and those decisions result in accidents that could have been prevented.

When you take all these steps and have a workforce that is fit for work and doing their job safely, then the focus turns

to what happens when an accident does happen and an employee is injured.

Employees must know before they get hurt who they should talk to when they suffer an injury. Immediate injury reporting is a key to keeping injury costs as low as possible. Studies have shown that the costs of an injury go up when there is a delay in reporting. Make it your policy that any employee injury is reported before the end of the shift.

Once the injury is reported, getting the proper treatment is key.

Your business should have a relationship with an occupational medical provider in your area. You can find board certified occupational doctors on the web at acoem.org. Even if there isn't an occupational medicine specialist in your town, you can develop a relationship with a physician and send your injured employees to that doctor.

The goal of having a relationship with a WorkComp specialist medical provider is to ensure that the doctor knows your business and the physical demands that your employees are under. They should also have a good knowledge of the transitional work that you have available. When a doctor knows that you will accept an employee back to work on transitional duty, they are far more likely to send them back to work rather than send them home to sit on the couch and watch infomercials for attorneys at 1-800-SUE-THEM.

When an employee is at work, they are less likely to hire an attorney and more likely to work hard to get back to their full duty position. This process not only gets employees back to work more quickly, it also reduces the amount of money that the insurance company spends on your employee injuries, reducing your experience mod and therefore your workers' compensation insurance costs.

Tool on HRInsider.ca

Related Tool on HRInsider: **Best Practices in Diversity: Follow the Examples of These Leaders.**

The workforce is getting older and we need to be mindful of accommodations that older workers may need today that they didn't need before. However, this new research from NCCI should sharpen employer's focus on what can drive down injury rates and costs, like hiring the right people, training them to do their jobs safely and when accidents do happen, make sure they are reported immediately and treated by a skilled physician who will send them back to work, rather than send them home.

If employers follow those steps, having older, experienced workers on the payroll can be a great asset rather than a potential liability. ❖

Contributed by Kevin Ring, the Director of Community Growth for the Institute of WorkComp Professionals, which trains insurance agents to help employers reduce Workers' Compensation expenses.

STUDY: WORKER REALLOCATION IN CANADA HAS CHANGED LITTLE FROM '70's

Despite numerous changes in the Canadian labour market over the last three decades, Canadian workers on average were no more likely to separate from their employers through quits, layoffs, or other reasons in the 2000s than they were in the late 1970s.

Between 1979 and 1981, about 24% of workers aged 15 to 64 left their employers as a result of quits, layoffs or separations for other reasons each year.

For the period from 2000 to 2008, this proportion was roughly 22% annually, while between 2009 and 2011, it averaged less than 20%.

Separation rates (the percentage of workers leaving firms through quits, layoffs or other reasons) tended to increase when labour market conditions improved. This was because expanding labour demand raised the propensity of workers to leave firms (as a result of quits or separations for other reasons) to a greater extent than it reduced layoff rates.

Nevertheless, separation rates exhibited no upward trend during the last three decades.

Along with separation rates, hiring rates (the percentage of workers starting jobs with new employers in a given year) increased during expansionary periods. However, they as well showed no upward trend during the last three decades.

About 26% of workers started a job each year during the late 1970s, while the hiring rate was slightly lower, at about 23% to 24%, during the expansionary period of the mid-2000s.

As a result, worker reallocation rates (the sum of workers' hiring rates and separation rates) were no higher during the 2000s than during the late 1970s.

In the aggregate, annual worker reallocation rates during the 2000s amounted to about 45% of paid employment, a proportion similar to that in the United States and the United Kingdom.

In contrast, worker reallocation rates averaged roughly 50% between 1979 and 1981.

During the 2000s, worker reallocation varied substantially across industries and firm sizes. Small firms and lower-wage industries exhibited both relatively high hiring rates and high separation rates.

Worker reallocation also varied markedly across age groups, as younger workers were hired and separated from employers much more frequently than their older counterparts.

The pace of worker reallocation varied to a lesser extent across provinces and education levels. ❖

HR MANAGEMENT: GOT GOOD MORALE?

Mention "employee morale" and the word attitude often comes to mind. But employee morale actually encompasses so much more, including outlook, approach, and satisfaction.

Morale is essentially the gas that drives the engine – and the gas either causes the engine to sputter, stall out, and negatively impacts timely arrival at the desired destination or it allows for optimum performance.

Do you know how your employee engine is performing? Have you got good morale?

Assessing morale should be every manager's responsibility. However, in order to get a more accurate, unfiltered view of employee morale, experts recommend that HR regularly conduct employee surveys. Corrugated box manufacturer Great Little Box Company (GLBC), named one of the Financial Post's Ten Best Companies to Work For in 2012, surveys its employees annually.

When conducting employee surveys, it's important

to recognize that factors like time of year may affect results. The winter doldrums, for example, take a toll on a lot of people, so you're apt to get different results in February or March than you will in June. Similarly, assessing morale right after performance appraisal season, especially if salary increases have been minimal or non-existent, will probably not give you an accurate picture.

What kinds of questions should you ask? This customizable Employee Morale & Work Performance Survey from QuestionPro, a leading provider of survey software, provides insight and can serve as a starting point.

Thanks to online tools like these, conducting surveys and analyzing results is relatively easy and allows you to quickly get a read on employee morale at your organization.

There's also another reason to survey employees about their morale. Experts find the survey process itself boosts morale. ❖