Here Are The Legislative Stocking Stuffers Coming For Employees And Employers

This is the time of year I take a look at what's coming down the legislative chimney this year for employers and employees. And from the looks of it, government-Claus is providing some goodies for employees, a sack of coal for employers and a few pairs of mandatory socks for everyone.

Employees' goodies Workers have been granted their wish for quick, cheap and significant relief under Ontario Employment Standards legislation. The standard $10,000 ceiling and six month-time frame has been scrapped in favour of limitless employee claims, for the full, if still minimum, legislative entitlements. The recovery period was extended to two years in line with the limitation period for civil claims.

That means that cases like the one I recently had – where a long-service employee made a wrongful dismissal claim under the employment standards act for termination and severance pay – will be a thing of the past. The damages in this case would have been in the six figures had it gone to court. But for quick severance without legal fees, the employee opted for ESA relief, believing it would still net him $66,000. Although he won his case, the legislation limited his award to $10,000.

The changes also allow employees to apply the Ministry of Labour's already friendly claims process to recover wages that may have gone unpaid, even due to payroll errors, for up to two years and to recover termination and severance pay, even if they get another job immediately, without resorting to the more onerous and costly civil court system. Employers should ensure their payroll is error free or risk being placed on the Ministry's now extended naughty list. That unpaid overtime claim now potentially spans two years, rather than six months.

They should also prepare for higher awards to employees whose costs of recovery, at least for their minimum entitlements, are greatly reduced. Ensure just cause dismissals are air tight before denying minimum notice or risk a speedy order from the Ministry, now potentially in the tens of thousands of dollars, plus a 10% surcharge for good measure.

Another lump of coal The Accessibility for Ontarians with Disabilities Act, 2005 is the gift that keeps on giving, with its gradual imposition of barrier-eliminating legislation for the next 10 years. The next lump of coal descends in the new year. Organizations with more than 50 employees must train everyone in the workshop

(whether elves, employees, volunteers or third-party service providers) on the new Integrated Accessibility Standards Regulation and Ontario Human Rights Code.

The act aims to increase accessibility for the disabled but entails increasingly arduous procedures for employers to navigate. For now, there are limited consequences for failure. The first four enforcement decisions from the License Appeal Tribunal fined the offending corporations only $2,000 each for not filing accessibility reports, likely less than the cost of preparing them. That too will probably change.

Reminder to be good The Human Rights Commission's new sexual harassment statement reminds employers they must put in place clear and comprehensive policies that ensure access to and awareness of policies and sexual harassment training for all managers. The commission focuses on the enhanced vulnerability of employees who fall under more than one protected code. For example, an aboriginal woman with a learning disability may be more susceptible to sexual harassment than if she was only aboriginal, female or possessed a learning disability.

New duties regarding traumatic mental stress A recent Ontario Ministry of Labour report recommends employers provide "psychological safety training" and update return to work procedures to include "prevention principles, supports and recovery practices." It is unclear what this will look like in practice and what changes in current workplace violence, harassment and discrimination policies will be mandated. But when bureaucracies – particularly cause oriented ones – must justify their existence, good sense generally disappears and expensive, and often nonsensical, obligations ensue.

Stress-related leaves pose a major challenge for Canadian employers. If not properly flagged and accommodated, mental illness has potentially dire consequences for employers. On the other hand, opportunistic complaints of stress from constructive criticism increasingly abound. Courts and tribunals are more often requiring employers to inquire about the prospect of a disability when an employee's behaviour becomes aberrant.

Discerning which accommodations are legitimate appears to be the next major workplace battle. But that is for another column.

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