# Manitoba Employment Law Guide



Lex Mundi Global Practice Guides offer essential practice and industry information that legal and business professionals require as they embark on creating effective global strategies.

This complimentary question and answer guide written by TDS lawyers, Melissa Beaumont and Keira Hasenack is designed to provide in-house counsel and Lex Mundi member firm lawyers with an overview of relevant areas of employment law across multiple jurisdictions around the world.

### 1. What are the different categories of employment status (for example, employee, worker, self-employed individuals, etc.)

The different categories of worker-employer relationships are employees, dependent contractors, and independent contractors. Independent contractors are not considered to be employees. Accordingly, there are different nuances to that relationship. Dependent contractors are not employees *per se* but are often treated like employees due to the similar nature of their relationship with the employer.

**2. Are there different types of employment contracts? (for example, fixed-term, indefinite)**

Yes, we have fixed-term employment contracts and indefinite terms employment contracts. An employee who is employed under successive fixed-term employment contracts may be deemed to be an indefinite term employee after a substantial period of time.

### 3. What requirements need to be met in order for an employment contract to be valid?

Certain clauses may be invalid and unenforceable if they do not meet the minimum statutory requirements of *The Employment Standards Code,* as an employee cannot agree to receive less than their minimum entitlements guaranteed by *The Employment Standards Code*. An employment contract may also become invalid if signed under duress, is unconscionable or if there was a lack of consideration at the time of signing (i.e. something of value flowing from the employer to the employee). This is a particular risk if the contract is signed after employment has already commenced.

## 4. Are part-time employees afforded the same rights as full-time employees?

Yes, part-time employees are afforded the same rights as full-time employees. However, because certain wages (such as vacation pay and general holiday pay) are based on a percentage of total earnings, the wages paid to employees will be affected by the number of hours they work.

**5. Can employment contracts be assigned?**

Contracts can only be assigned with the consent of all parties. A contractual term allowing the employer to assign an employee's employment to another entity may be agreed to in an employment agreement.

**6. What rights do employees have (to object, to severance) if any, when the company they work for is transferred as a going concern?**

Under the *Employment Standard Code,* there is an exemption to notice or wage in lieu of notice if the employer's business or the part of the business in which the employee is employed or sold or transferred, and the employee is immediately re-employed in the same business on terms and conditions that are equivalent or better to the previous terms prior to the transfer.

In a share sale, the employees remain employed by the same corporation (albeit under different ownership) and there is no break in employment.

In an asset sale, the employees must consent to the transfer of employment to the new company. The new company is not obligated to offer employment to existing employees. If the new company does not offer employment to existing employees, those employees would become entitled to notice or pay in lieu of notice of termination.

## 7. Do you have statutory rights for employees on change of control of an employer? If so, please give the statue.

Under *The Employment Standards Code,* when the business of an employer or part of the business is sold, leased, transferred, merged or otherwise disposed of whereby the control, direction or management of the business is given to another person, or the business continues to operate under a receiver, the employment of an employee is deemed to be continuous and uninterrupted.

If the employees of the seller are unionized, the purchaser acquires the rights, privileges and obligations of the predecessor employer under *The Labour Relations Act,* is bound by any collective agreement applicable to the employees, and any union which is the bargaining agent for the employees continues to be the bargaining agent for those employees.

## 8. In what circumstances can employers unilaterally change the terms of employment, and what remedies (if any) are afforded to an employee?

If an employer makes a unilateral change to a fundamental term of the employment contract, in a manner that is detrimental to the employee, then the employee may either accept the change or leave employment and sue for constructive dismissal. If the unilateral change is not a fundamental term of the employment, the same considerations would not apply.

For unionized employees, the terms of a collective agreement may not be changed outside of collective bargaining without the union's agreement.

## 9. Is your jurisdiction an employment-at-will jurisdiction? What are the employer's termination rights?

No, we are not an employment-at-will jurisdiction. If an employer wishes to terminate an employee without cause, the employer must provide notice or pay in lieu of notice. The amount of notice or pay in lieu of notice will depend on:

- The minimum statutory notice obligations under *The Employment Standards Code;*
- The contract of employment (if any); and
- If no contract of employment (or there is a contract but it does not speak to termination without cause), the common law (i.e. the amount of notice that a court would consider to be reasonable in the circumstances). There are a number of different factors that we look at to determine what may be reasonable in the circumstances.

## 10. Are there remedies for dismissal without cause or wrongful termination?

Yes, an employee who is terminated without cause may sue for wrongful dismissal to obtain damages. Unionized employees may seek reinstatement by utilizing the grievance process articulated in the collective agreement that applies to them.

## 11. Are there protections for whistleblowers?

Under the *Public Interest Disclosure (Whistleblower Protection) Act* ("*PIDA*") employees of government departments, Crown corporations, and a number of other government agencies, authorities and boards are protected. All organizations that fall under the jurisdiction of *PIDA* are set out in the legislation and in the Public Interest Disclosure (Whistleblower Protection) Regulation.

All employees in Manitoba are protected from reprisal for raising a complaint or participating in an investigation under *The Employment Standards Code, The Human Rights Code* and *The Workplace Safety and Health Act.*

## 12. Do employees have a right to privacy? If so, what are the remedies for a breach?

Public sector employees have a right to privacy under *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. Public sector employees who believe that their private information has been collected, used or disclosed contrary to those acts may file a complaint with the Manitoba Ombudsman.

There is no privacy legislation specific to private sector employers other than *The Privacy Act,* which establishes that it is a tort to commit an invasion of a person's privacy. Employers should also be aware of certain requirements under *The Personal Investigations Act* when conducting reference checks.

## 13. Are employees afforded any anti-discrimination protection?

Yes, *The Human Rights* Code prohibits discrimination in employment on numerous grounds, including but not limited to race, religion, disability, gender and gender identity, sexual orientation, age and family/marital status. The Accessible Employment Regulation under *The Accessibility for Manitobans Act* also requires employers to remove barriers and provide an accessible workplace to employees with disabilities.

## 14. Are there statutory rights to vacation, medical leave and parental leave? Have there been any changes to leave benefits in the past 12 months? Is there any proposed legislation that employers should be aware of that will impact leave benefits?

Yes, there are statutory rights to vacation, unpaid medical leave, unpaid maternity leave, and unpaid parental leave under *The Employment Standards Code*. There are also statutory rights to unpaid family leave, unpaid bereavement leave, unpaid leave for reservists, unpaid leave for organ donation, unpaid leave for citizenship ceremony, unpaid leave related to critical illness, unpaid leave related to death or disappearance of child, long-term unpaid leave for serious injury or illness, interpersonal violence leave (with paid and unpaid components), unpaid public health emergency leave (for leaves related to Covid-19), and paid Covid-19 vaccination leave. We are not aware of any proposed legislation at this time that will impact leave benefits.

## 15. Are restrictive covenants recognized and, if so, what are reasonable restrictions as to geography, duration, and scope of activity?

Yes, restrictive covenants are recognized. Our courts will enforce restrictive covenants dealing with confidential information and properly drafted non-solicitation clauses. Non-competition clauses are much more difficult to enforce, though they may be enforceable in certain situations, particularly with respect to high-level or "key" employees and/or in the context of a commercial transaction (e.g. sale of a business).

## 16. Can employees be terminated for refusing to sign a restrictive covenant? What serves as consideration for a restrictive covenant?

A refusal to sign a restrictive covenant would generally not be cause for termination, and so any termination in this situation would be without cause and would require notice or pay in lieu of notice.

Consideration for signing a restrictive covenant can be anything of value flowing from the employer to the employee.

## 17. Does your jurisdiction require contributions to a pension or retirement scheme?

Yes, contributions to the Canada Pension Plan and Employment Insurance are required. Contributions to a private pension or retirement scheme are not required, although many employers do provide them.

## 18. Are certain benefits mandated by your jurisdiction?

No, insurance benefits for employees (for example, health/dental benefits, short and long term disability, life insurance, etc.) are not mandated by our jurisdiction, although many employers do provide them.

However, it is mandatory for most employers to obtain workers' compensation insurance, except employers in certain limited industries which may be exempt.

## 19. Is it permitted to have a mandatory retirement age in your jurisdiction?

No, it is not permitted to have a mandatory retirement age in Manitoba as there is no

age cap within *The Human Rights Code*.

### 20. Is it possible to cease pension or insured benefits (income continuance/disability insurance, healthcare, life assurance, ect) when work continues beyond retirement age?

Generally no; however, certain benefits plans (for example, long term disability) cease at a given age as set by the benefits provider (typically, age 65).

### 21. Can an employer make the COVID-19 vaccine mandatory for its employees? Are there exceptions that an employer must make? If an employee simply does not want to get the vaccine (without another reason like disability or religious reason), can an employer terminate the employee's employment?

Yes, an employer can make the COVID-19 vaccine mandatory.

However, there is no legislation which requires employees to get a COVID-19 vaccination and so employers must tread carefully when choosing to make the vaccine mandatory as this could lead to human rights complaints or suing for constructive dismissal. The nature of the workplace, its employees, and those it serves will determine whether a mandatory Covid-19 vaccination requirement is reasonable in the circumstances.

If mandatory vaccination is required and an employee does not want to get the vaccine an employer may be justified in terminating the employee's employment. Context will determine if the termination can be with or without cause or if placing the employee on an administrative leave of absence is the appropriate course of action.

An employee may need to be reasonably accommodated if there is a medical or other reason protected by human rights law that the employee is not able to get the vaccine.

### 22. Can an employer require that employees return to work in the office (absent government order to shut down)? If an employee refuses to return to the office, can the employer terminate the employee's employment?

*The Workplace Safety and Health Act* provides employees with reasonable protection in the event an employee refuses to return to work due to a legitimate safety concern. However, in cases where an employer has met all the safety guidelines as set out by the Province of Manitoba, the employer may require that employees return to the office. Then, if an employee refuses to return to work they may be deemed to have resigned from their employment position.

An employee may need to be reasonably accommodated if there is a human rights protected reason why they are not able to return to the workplace (for example, due to a disability or due to family status).

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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