Vancouver employment law seminar 2025:
Navigating compliance and managing workplace claims

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Speakers:

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Agenda

Topic	Speakers
Navigating multi-forum disputes: How to handle claims across WorkSafeBC, the Employment Standards Branch, the Human Rights Tribunal and the courts	**Jeff Bastien,** Counsel **Victoria Merritt,** Senior Associate
Pensions issues in wrongful dismissal cases	**Salim Visram,** Senior Associate
Focus on employment standards: Common wage calculation mistakes and tips for coming into compliance	**Rachel Akinyemi,** Associate
Managing immigration issues in the hiring process: What you need to know about a candidate's "authorization to work in Canada."	**Eleni Kassaris,** Partner **Denise Alba,** Senior Associate

Navigating multi-forum disputes: How to handle claims across WorkSafeBC, the Employment Standards Branch, the Human Rights Tribunal and the courts

Outline

- Introduction
- Legal principles to deal with duplication
- Overview of forums
  - Civil court proceedings
  - WorkSafeBC
  - Employment standards
  - BC Human Rights Tribunal
  - Labour
- Practical strategies for employers

Introduction: Key principles

- General rule – cannot relitigate a claim that has already been adjudicated (unfortunately, difficult to apply in employment context)
- Policy rationale:
  - Judgments are final (or should be)
  - Conserve judicial resources
  - Risk of inconsistent decisions on the same facts
  - Principle against double recovery

Introduction: Key principles

Res Judicata (“a matter judged”)

- Multiple legal principles that can be used to address those concerns:
  - Cause of action estoppel and issue estoppel
  - Abuse of process
  - Lack of jurisdiction or more convenient forum
  - No windfall
  - But: will not be applied where unfair to do so (discretionary)

Civil court proceedings

- Jurisdiction (wrongful dismissal claims, contract-based claims, very broad causes of action)
  - Some overlapping jurisdiction
  - What does the court NOT have jurisdiction to deal with? Stay tuned…
  - Injunctions

- Limitation period under the *Limitation Act*: generally 2 years

- Available damages:
  - Civil Resolution Tribunal vs. Small claims vs. Supreme Court of British Columbia
  - Common law principles of damages
  - Cannot order reinstatement

Civil court proceedings

- Striking pleadings
  - Plain and obvious that pleadings disclose no reasonable cause of action (e.g., claim is within the jurisdiction of another tribunal or adjudicator)
  - Abuse of process of the court

- Stay of proceedings. Test:
  i. Serious question to be tried?
  ii. Irreparable harm if stay is refused?
  iii. Balance of convenience?

WorkSafeBC

- OHS matters
  - Bullying and harassment (limited scope)
  - Other prevention matters (IRs and orders)
  - Mental disorder claims & return to work/accommodation obligations

- Compensation claims (exclusive jurisdiction)
    - S. 127 of the *Workers Compensation Act*: no civil action lies in respect of injury or disablement arising out of and in the course of employment.
    - “Part of the “grand bargain” that permitted for comprehensive workers compensation over a century ago.”

WorkSafeBC

- Prohibited action complaints – OHS ‘whistleblower’ protections:
  - Limitation period: 1-year from date of prohibited action
  - Must choose: PAC or grievance
  - Damages/Remedies: reinstatement, lost wages, expenses – no pain & suffering/equivalent
  - Mechanisms?

Employment Standards Act

- Common claims:
  - Wage-related (unpaid wages, overtime pay, vacation pay)
  - Pay in lieu of notice of termination
  - Statutory leaves

- Limitation period: 6 months
- Damages: wages payable during 12 months before termination or complaint
- A determination can result in director and officer liability.
- Self-rep friendly

Employment Standards Act claims

- *Employment Standards Act:*
  - Right to sue generally preserved (section 118), but no other proceedings for wages once determination made (section 82).
  - Director may stop or postpone reviewing or investigating a complaint if a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator, or a court, tribunal or arbitrator has made a decision or award (section 76(3)).

- Exclusive jurisdiction: claims for breach of statutory rights conferred by the ESA are to be enforced by the exclusive jurisdiction of the Director of Employment Standards, not the courts.

Employment Standards Act claims

Res Judicata

- Employment Standards just cause determinations resulting in issue estoppel and res judicata?

- *Beach Place Ventures Ltd. v. Employment Standards Tribunal*, 2022 BCCA 147: dealt with res judicata on the issue of whether an individual was an "employee" for the purposes of the *Employment Insurance Act* versus the *Employment Standards Act*. Supports the position that a decision under the EI Act is not binding on other decision-makers (i.e. the Employment Standards Branch).

BC Human Rights Tribunal

- Jurisdiction: Discrimination complaints
- Limitation period: 1-year (note: delays in service)
- Damages
  - Injury to dignity, feelings and self-respect
  - Wage loss (not notice period)
  - Orders relating to policies

BC Human Rights Tribunal

- Mechanisms
  - Application to dismiss
    - Complaint not within Tribunal's jurisdiction
    - Substance of complaint has been dealt with in another proceeding
    - Other options: abuse of process (filed for improper motives/in bad faith) and proceeding with complaint would not benefit complainant or further purposes of Code.
  - Application to defer
    - Tribunal has discretion to defer its process where "another proceeding is capable of appropriately dealing with the substance of a complaint".

Labour grievances / arbitration

- Labour arbitrator has exclusive jurisdiction with respect to disputes arising from the interpretation, application, administration or violation of a collective agreement
- Arbitrator has jurisdiction to interpret and apply the Human Rights Code (concurrent jurisdiction)
- ESA complaints regarding a provision of the ESA deemed to be incorporated into a collective agreement are also within the jurisdiction of the arbitrator
- Remedies are broad, including reinstatement with backpay
- Deal with the Union rather than the employee

Privacy complaints and other forums

- Access to information requests under PIPA
- Privacy complaints & related proceedings
- Remember: federally regulated employers
- EI claims

Practical strategies

Initial assessment

- Ensure you know what complaints/proceedings have been started or are possible
- Review pleadings/complaints carefully:
  - Consider if claims truly duplicative & can get them dismissed on that or other grounds (i.e., abuse of process, etc.).
  - Consider what mechanisms are available to delay complaint/proceeding (i.e., stays or deferral).
  - Consider strategic timing of above.
- Level of participation in other forums may be relevant to res judicata and issue estoppel, but depends on forum and facts (e.g. no active participation in EI determination vs. ESA complaint).

Practical strategies

Initial assessment

- Consider benefits/drawbacks of each forum's procedures, including:
  - Mandatory mediation or early settlement options
  - Availability of discovery
  - Scope of document disclosure required
  - Timelines/delay
  - Public decisions/reputational considerations
  - Better to deal with the union than a volatile employee?

- Consider reasonable settlement with **full release** at an early stage.

Practical strategies

Managing multiple claims

- Ensure communication within the business (HR, legal, management).
- Identify a single point of contact to ensure consistency
- Maintain ‘master list’ of key facts, witnesses, etc.
- Document disclosure:
  - Different rules in different forums
  - Limitations to how documents disclosed in one forum can be used in another
  - Consider overall strategy & disclosure concerns

Practical strategies

Before the legal proceedings

- Evidence retention and preservation of witness evidence.
- Minimize potential liabilities and make duplicity of claims less attractive to employees:
  - Employment agreements and termination clauses
  - Clear letters, settlement offers and releases
  - Arbitration clauses?

Pensions damages in wrongful dismissal litigation

Wrongful dismissal damages at common law

When employees sue for wrongful dismissal, they are claiming damages for income, benefits, and bonuses that they would have received had the employer not breached the implied term to provide reasonable notice.

Pension Benefits Standards Act

SBC 2012, c. 30

32 (1) If a member's termination of active membership in a pension plan occurs while the member is employed in British Columbia in employment other than federally regulated employment, there immediately vests in the member, despite any other enactment or any provision of the plan documents, an entitlement to receive a pension in respect of the entire period during which the member was an active member of the plan, whether or not the member was employed in British Columbia during all of that period.

Taggart v. Canada Life Assurance Co., 2005 CarswellOnt 491

When is an employee entitled to damages for loss of their pension?

Facts:

- Plaintiff was a 28-year employee terminated following a corporate restructuring. He was offered a 24-month package, but it only included 8 weeks of continued pension accrual and no further damages for loss of his pension.
- If he had received credit for the remaining 22 months, he would have become entitled to an unreduced pension.

Taggart v. Canada Life Assurance Co., 2005 CarswellOnt 491

When is an employee entitled to damages for loss of their pension?

16.01 — Employment Rights

- The establishment and implementation of the Plan shall not constitute an enlargement of any rights which a Member may have as an Employee.
- If the service of the Member is terminated before the Member’s Normal Retirement Date, such Member has only such rights as are provided for under the Plan.
- The benefits conferred herein shall not be used to increase damages in respect of the dismissal or termination of employment of any Member.

Taggart v. Canada Life Assurance Co., 2005 CarswellOnt 491

When is an employee entitled to damages for loss of their pension?

Two step analysis:

<u>Step 1</u>: But for the termination, what amounts would the employee have received during the reasonable notice period; and

<u>Step 2</u>: Is there anything that unambiguously alters or removes the employee’s common law entitlement?

See also: *Matthews v Ocean Nutrition Canada Ltd.*, 2020 SCC 26; and *Lin v Ontario Teachers’ Pension Plan Board,* 2016 ONCA 619

Calculating damages

Defined contribution pension plans

- Plaintiff must first establish that they would have continued to contribute to the plan during the notice period.
- Damages are typically equal to the employer's contributions. If the employer was only required to match employee contributions, the employee's portion may be deducted from their damages.

See also: *Waterman v Mining Assn. of British Columbia*, 2016 BCSC 921; *Corey v Kruger Products L.P.*, 2018 BCSC 1510.

Calculating damages

Defined benefit pension plan; Commuted value method

Peet v Babcock & Wilcox Industries Ltd., 2001 CarswellOnt 954 (ON CA)

- Employee was entitled to an 18-month notice period. Evidence established that had he received working notice, his pension would have paid him an additional $122.88 per month upon retirement.
- However, because he did not work this period (and therefore received 18 more payments of the lower amount) the total value of his pension was $25,294.00 **greater** on his termination date than it would have been had he worked for his notice period.
- **Issue:** What are the damages for loss of his pension?

Calculating damages

Defined benefit pension plan; Commuted value method

Peet v Babcock & Wilcox Industries Ltd., 2001 CarswellOnt 954 (ON CA)

- Court of Appeal endorsed the “**commuted value**” methodology to calculate damages for loss of a defined benefit pension.
- The commuted value method determines the net present value of the difference between the value of the pension at the time of termination, and the value at the time when the employee could have been lawfully terminated.
- If the Plaintiff receives pension payments during their notice period, the effect of paying those amounts on the net present value is considered by the court.

Calculating damages

Defined benefit pension plan; Other principles

- If the commuted value of a DB pension is greater on the termination date than it is at the end of the notice period, employers are not entitled to an offset of the difference against any other damages owed to the Plaintiff.
- Mandatory employee contributions may be deducted from their damages.

See also: *Lewis v Lehigh Northwest Cement Ltd.*, 2009 BCCA 424; *Dussault v Imperial Oil Limited*, 2018 ONSC 4345, Arnone v. Best Theratronics Limited, 2014 ONSC 4216

Calculating damages

Deductions of pension payments from wrongful dismissal damages

Waterman v IBM Canada Ltd., 2013 SCC 70

- Employee started drawing on his pension immediately following termination. Employee sued for wrongful dismissal, and was awarded 20 months of notice by the BC Supreme Court.
- Employer argued that his pension payments should be deducted from wrongful dismissal damages as failure to do so resulted in double recovery (i.e. he would not have received amount from his pension if he had been provided working notice).

Calculating damages

Deductions of pension payments from wrongful dismissal damages

Waterman v IBM Canada Ltd., 2013 SCC 70

- Pension payments are a type of benefit that should generally not reduce the damages otherwise payable for wrongful dismissal. Pension benefits are a form of deferred compensation for the employee's service, and constitute a type of retirement savings. They are not intended to be an indemnity for wage loss due to unemployment.

Key takeaways

1. Wrongfully dismissed employees may claim damages for loss of a pension at common law. Damages are payable unless a contractual term unambiguously restricts or removes this right.
2. Damages may be awarded in an amount equal to the employer’s contributions during the notice period, or the difference in the commuted value of the pension from the termination date until the end of the notice period.
3. Pension payments received after termination are not deducted from wrongful dismissal damages.

Focus on employment standards:
Common wage calculation mistakes and tips for coming into compliance

Overtime

- Overtime exemptions include:
  - “Managers” [**Note: title not determinative**] - a person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources, or a person employed in an executive capacity.
  - “High technology professionals” - an employee whose primary employment duties require them to apply specialized knowledge to design or engineer computer information systems. It is a narrowly construed exemption, and the employer must be able to demonstrate that the individual’s primary responsibilities are in respect of designing, engineering, or developing a computer technology. This requires showing that the individual is responsible for more than simple operational technical support. Other employees of a high technology company who are neither high-technology professionals nor otherwise exempt are entitled to full coverage under the British Columbia *Employment Standards Act* (the “Act”). They may enter into an averaging agreement with their employer.
  - “Commissioned salespersons” – [**Note: not a true exemption**] only if the total wages paid in a pay period are more than the salesperson would have been paid using the greater of their “base rate” or minimum wage plus any overtime or statutory holiday pay payable under the Act. A calculation must be made each pay period to determine whether the salesperson earned enough to be excluded from overtime pay and statutory holiday pay. Commission earnings are not included in the calculation of a base rate.

Overtime

- Salaried employees are not generally exempt (without more) - they must still fall within an exemption.
- Unless an exemption applies, employees are entitled to overtime pay (1.5x regular rate) for hours worked in excess of 8 in a day, or 40 in a week.
  - [Note: 2x regular rate for hours in excess of 12 in a day]
- Where an exemption does apply, consider whether straight time is nevertheless payable.
  - If your contract with a true manager says that they will work 40 hours a week, they might have a claim for straight time for hours worked above 40 hours; best to be specific that salary is for “all hours worked” where an exemption applies.

Overtime

Banking of overtime

- At the written request of an employee, an employer may establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee within the time required under the Act.
- Generally, the time off must be 90 minutes off for every 60 minutes worked, and if the time off is not taken by the time employment ends or within the time limit set out in the Act, it is converted to a cash payment/ must be paid out on the final paycheque.

Vacation pay

- Employees are entitled to vacation pay after completing 5 calendar days of employment, regardless of the number of hours worked during that period.
- Employees must receive at least 4% of their total wages for vacation pay until they have been employed for five consecutive years, at which time they must receive at least 6% vacation pay.
- Annual vacation pay is payable on all wages including banked overtime.
- The wages used for calculating vacation pay includes all money paid by an employer to an employee which meets the definition of “wages” under the Act such as salaries, commission, overtime, statutory holiday pay, sick pay, performance bonus and previously paid vacation pay. It also includes compensation for length of service and group termination pay.

Vacation pay

Continuous employment

- Any employee leave of absence, including temporary layoff, or any other employer authorized leave of absence is included when determining continuous employment for vacation entitlement.
- The leave of absence does not affect accrued vacation time; it just reduces the amount of vacation pay the employee will receive, as they are not earning wages while on leave.
- However, where the employment contract requires an employer to pay an employee vacation pay based on vacation time accrued, the vacation pay would not be reduced.
  - Common example – maternity leave employees typically earn their full vacation entitlement during the year (or longer) of unpaid leave where their vacation entitlement is “four weeks annually” as opposed to tied to work and earning vacation pay.

Statutory holiday pay

- An employee who has been employed by the employer for at least 30 calendar days before the statutory holiday and has

  (a) worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday, or

  (b) worked under an averaging agreement at any time within that 30-calendar day period, must be paid statutory holiday pay.
- An employee who is entitled to a statutory holiday must be paid at least an average day's pay.
- To calculate average day's pay, divide the amount paid or payable in the 30 calendar days before the statutory holiday by the number of days worked. (i.e. amount paid ÷ days worked)
- "Amount paid" includes regular wages, salary, commissions, statutory holiday pay, annual vacation pay, and paid sick days, but does not include overtime pay. Payments from benefit plans are not considered wages for the purposes of this calculation.
- "Days worked" includes any days when wages were earned. This would include days of paid annual vacation, paid sick days, or other paid statutory holidays that occur in the 30 calendar days prior to the statutory holiday.

Statutory holiday pay

- Eligible employees who work on a statutory holiday, are entitled to 1.5x their regular wage for the first 12 hours worked and double for any work over 12 hours, in addition to an average day's pay.

Substitution of another day for a statutory holiday

- An employer, with the agreement of an employee, or the majority of the employees, as the case may be, may substitute another day off for a statutory holiday. An agreement between an employer and one employee is also permissible.
- Such substituted day will be treated as the statutory holiday, and payments will be made as if it was a statutory holiday.
- Collective agreements are not permitted to substitute the National Day for Truth and Reconciliation.

On-call pay

- If an employee is on call and must remain at a specific location designated by the employer, except the employee’s residence, this constitutes work, and the employee must be paid wages.
- An employee is designated as being "on-call" when the employer provides the employee with a pager, cell phone or other form of electronic communication which allows the employee a range of mobility so the employee can be away from their residence and continue to be an on-call employee.
- If the employee is not at a place designated by the employer, the employee is not considered to be at work. The exception, however, would be when the employer places restrictions on the activities of the employee that were so severe to have the same effect as specifying a place.
- When that employee responds to a page, or a cellular call, the employee has in effect, "reported" to work and is generally, entitled to minimum daily pay.

Calculating statutory termination entitlements

- An employee’s termination entitlement is calculated by totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work, dividing the total by 8, and multiplying the result by the number of weeks' wages the employer is liable to pay.
- Only regular wages are included in the calculation. Overtime wages are excluded.
- The eight-week calculation period is limited to weeks in which the employee worked “normal” or “average” hours. Any week an employee did not work or when the only wages paid were a result of annual vacation or statutory holiday pay under the Act are excluded.
- All wages, including vacation pay and termination pay, is payable as follows:
  - within 48 hours after the employer terminates the employment;
  - within six days after the employee terminates the employment.

Travel time

- Travel time is the time spent by an employee who, while acting on instructions from the employer, is providing a service to the employer when travelling to and from a workplace.
- Employees will be paid for travel time only when it is directly related to their job and not merely commuting to work.
- Employees are paid for travel time if they are sent out of town for work.
- Employees are paid for the time spent going from one job site to another during their workday. Time spent getting to the first site is unpaid commuting time.
- However, if an employer instructs an employee to report directly to a workplace different from the normal one, whether the travel time is paid work depends on certain factors.
- If employees are required to meet at a location and take transportation to a remote worksite, the trip from the meeting location (marshalling point) to the worksite is paid travel time.
- Travel time that constitutes “work” must be considered in the calculation of overtime wages.

Part-time employees

- **Remember:** Part-time employees are entitled to the same rights and benefits under employment standards as full-time employees based on their specific regular wage, provided they meet the qualifying requirements.

Key takeaways

- Maintain accurate wage records – Employers should ensure detailed records of hours worked, overtime, vacation pay, statutory holiday pay, bonuses, commissions, leaves etc. are kept.
- Calculate vacation pay, statutory holiday pay, overtime pay, termination pay etc. correctly.
- Review payroll and HR practices regularly to identify and address compliance gaps.
- Pay statutory termination entitlements within the time stipulated by the Act.

Managing immigration issues in the hiring process:

What you need to know about a candidate's "authorization to work in Canada"

Immigration: Current landscape

- **Processing times**
  - Subject to change – important to check regularly
    - Maintained status
  - Inland work permit extension applications – 196 days
  - Work Permit applications made outside of Canada – processing times vary across visa offices
- **Increased scrutiny**
- **Recent changes**
  - Flag-poling
    - See here.
  - Post-Graduation Work Permits (“PGWP”)
    - See here.
  - Open Spousal Work Permits
    - See here.

Work authorization in Canada

- **Employers in Canada cannot employ a foreign national who does not hold proper work authorization**
  - Most foreign nationals engaging in “work” in Canada will need a work permit or work authorization
  - Various types of work permits
- **Immigration, Refugees and Citizenship Canada’s (“IRCC”) definition of “work”:**
  - Any activity for which:
    - An individual receives payment; or
    - An individual does not receive payment but the job is one that individuals would usually be paid for or would be “valuable work experience for a Canadian citizen or permanent resident”

- Need more information see **here.**

Co-op work permits

- **What is a Co-op work permit?**
  - A type of work permit issued by IRCC to allow international students enrolled at a Designated Learning Institution ("DLI") to take up employment as part of a co-op or internship program if the work is an essential part of the program of study.
  - **Eligibility criteria:**
    - Have a valid study permit
    - Be required to work in order to complete the program of study in Canada
    - Have a letter from the DLI confirming all students in the particular program need to complete work placements to obtain their degree
    - Co-op placement or internship totals 50% or less of their study program
  - **See DLI list here.**

Co-op work permits

- **Who can work on the basis of a co-op work permit?**

  Employers must ensure that:

  1. The individual holds a valid co-op work permit (and study permit) – 2 distinguishing factors
     - Named employer is the DLI
     - Contains a condition that states, “Employment/practicum cannot form more than 50% of the total program of study. Authorized to undertake employment which forms integral part of studies as certified by the institution“.
  2. The individual is in fact authorized to work as a co-op student/intern on the basis of the co-op work permit:
     - DLI must have approved the co-op placement
     - DLI must have confirmed that the proposed employment will meet the co-op requirements of the program
     - DLI must have confirmed the start and end dates of the co-op term/placement
- **As an employer, what documents should I ask for?**
  - Copy of valid study permit
  - Copy of valid co-op work permit
  - Copy of transcripts
  - Verification or confirmation letter from DLI

Work off-campus without a work permit

- **Who can work off-campus on the basis of a study Permit?**
  - International students who:
    - Hold a valid study permit with a condition stating that the student is allowed to accept off-campus employment;
    - Are full-time students at a DLI;
    - Are enrolled in a post-secondary academic, vocational or professional training program, or a secondary-level vocational training program (Quebec only);
    - Are enrolled in a study program that is at least 6 months long and leads to a degree, diploma or certificate; and
    - Have a valid Social Insurance Number.
- **Allowable hours**
  - Up to 24 hours per week during academic terms
  - Full-time during regularly scheduled breaks (i.e. summer or winter break, reading weeks, etc.)
  - Exceptions: part-time students and maintained status
- **As an employer, what documents should I ask for?**
  - Copy of valid study permit
  - Proof of status as current full-time student (i.e. letter from school, copy of transcripts, etc.)

Post-graduation work permits

- **What is a PGWP and who is eligible?**
  - A PGWP is an open work permit that allows students who have graduated from eligible DLIs to work full-time to gain Canadian work experience.
  - Generally speaking, to be eligible for a PGWP, an individual must:
    - Have completed a program of study at a PGWP-eligible DLI that was at least 8 months long (or 900 hours for Quebec programs);
    - Have maintained full-time status as a student in Canada during each semester of their study program (part-time during final semester permitted);
    - Apply for their PGWP within 180 days of receiving confirmation that they have completed their program of study; and
    - Have held a valid study permit during the 180 days after graduating and before submitting their PGWP application.

  There are special cases and certain situations where individuals may not be eligible for a PGWP: **See here.

  It is important to note that in addition to the above general eligibility criteria, there have been **recent changes and additions** to the PGWP eligibility requirements, including requirements based on study program, field of study requirements, language test requirements, etc.

  For further detail, please **see here.**
- **Certain individuals can work full-time while waiting for their PGWP applications to process**

Post-graduation work permits

- **As an employer, what documents can an individual provide to show they are able to work while waiting for their PGWP application to process?**

  - Proof of completion of study program
  - Copy of study permit with notation permitting on and off campus employment
  - Copy of PGWP application submission confirmation from IRCC
  - Copy of the IMM0127E Letter of WP-EXT for Post Grad WP Letter (both issued by IRCC)

Reviewing work permits – Key considerations

- Validity dates
- Employer
- Location
- Co-op work permits – location specified in “Conditions or remarks/observations” section

Employment law considerations

- Two common risk areas during hiring process:
  - Privacy
  - Human rights
- Balance between:
  - Protecting against privacy complaints or complaints of discrimination relating to the hiring process.
  - Getting the information needed to properly assess candidate's eligibility for the job and address practical concerns.
- Timing key consideration (i.e., interview versus conditional offer)

Employment law considerations

- The prohibited grounds of discrimination include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
- Some provinces (e.g. Ontario) include a specific ground of citizenship.

Imperial Oil Limited v Haseeb, 2023 ONCA 364

- The employer withdrew the job offer because the appellant was not a Canadian citizen or a permanent resident, as he had represented (but he was eligible to work in Canada for three years under the PGWP).
- Under the employer's policy only citizens and permanent residents were eligible for hire and work permit holders were no eligible.
- Court upheld tribunal decision that policy was discriminatory on the basis of citizenship (protected in Ontario) in that the tribunal found that the ability to live and work in Canada on a permanent basis is closely associated with Canadian citizenship you cannot exclude non-Canadian citizens who were eligible to work in Canada.

Employment law considerations

- Information being requested should be limited to what is legitimately required to meet the requirements of the position.
- Employment offer can be conditional on confirming eligibility to work in Canada (bona fide occupational requirement).
- In appropriate circumstances can require eligibility for at least a specific period of time.
  - Consider increased transparency in the role – advertise minimum length of time needed for the position.
  - Utilize contractual language that addresses clearly termination tied to status.
  - If you are screening between types of status, make sure you have checks and balances that make hiring objective to avoid breach of other grounds.

Thank you!

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We’d love your feedback!

Please take a moment to complete our short survey using the link or QR code below.

Thank you for joining us!