



# Law and the Contact Centre: Employment Law Part II

A Presentation to ORCAA

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# The five things you can do to reduce claims at the back-end of the employment relationship.



- Correctly define and describe the job
- Do employee background checks
- Deal with employee problems
- Use employment contracts or hiring letters that include termination provisions
- Create a workplace environment that respects human rights

## Correctly define and describe the job



### Misrepresentation – when is an exaggeration actionable?

- Queen v. Cognos
- Antodormi v. Blue Pumpkin Software

I'm not responsible if the firm I retained to hire my employees sold them a bill of goods ..... Am I?

# Do employee background checks



**Why Bother? Candidates *always* tell the truth.**

**“Although no one knows the exact proportion of job seekers who enhance their personal work histories, estimates range from 40 percent to 70 percent.”**

**Kent Marett, HRMagazine, May 1, 2004**

- **Protect your organization from:**
  - **a costly mistake (*Commission scolaire de Montréal*)**
  - **liability (*Downey v. 502377 Ontario Inc.*)**

# Do employee background checks



## Types of Checks

- **Criminal Record Check**
- **Police Record Check**
- **Credit Record Check**

# Do employee background checks



## References

- Who to ask
- What to ask
- Listen to more than the words
- Get consent

# Deal with employee problems



**Perception is Reality**

**Consequences: Someone else (a Union or a lawyer) will deal with it!**

**It will spread like an infection.**

**Creates a “Poisoned Work Environment”**

# Deal with employee problems



## Problem Employee Types

- **The moaner -- making numerous complaints of a trivial nature**
- **The liar -- being dishonest from reasons for lateness to theft**
- **The worrier -- complaining of being too stressed**
- **The bully -- threatening behaviour, harassment or discrimination**
- **The fashion victim -- breaking dress and appearance rules**

# Deal with employee problems



## Problem Employee Types

- **The personal hygiene sufferer -- body odour or other personal issues**
- **The addict -- alcohol and drug problems in the workplace**
- **The sex-site surfer -- viewing porn on the internet**
- **The sex pest -- office relationships and sexual harassment**
- **The thief -- stealing from the company or committing fraud**

# Use employment contracts or hiring letters that include termination provisions



Get it in writing, otherwise it's not worth the paper it's not written on!

- **Advantages**

- **Certainty**
- **Flexibility**

- **Disadvantages?**

# Use employment contracts or hiring letters that include termination provisions



## Fundamental Terms

### Term of Employment

- Fixed term
- Indefinite Term
- Employment for Life?

## Termination Clause

- Wording is critical
  - Entitlements
  - Cause

# Use employment contracts or hiring letters that include termination provisions



## General Terms and Conditions

- Duties and responsibilities
- Reports
- Days and Hours of Work
- Compensation and Benefits

**Use employment contracts or hiring letters that include termination provisions**



## **Common Attacks on Employment Agreements**

- **Not signed before started employment**
- **Obsolescence**
- **Statutory Standards**
- **Other Agreements/Promises/Cocktail Napkins etc. ...**

# Create a workplace environment that respects human rights



“Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.”

*Ontario Human Rights Code, Section 5*

# Create a workplace environment that respects human rights



Section 5 prohibitions apply to job advertisements, job applications and to interviews for employment.

Section 5 prohibitions also apply to employment agencies in screening and referring candidates for employment.

# Create a workplace environment that respects human rights



**Exception: Setting a qualification or asking a question concerning a prohibited ground is permissible where the discrimination is a bona fide occupational requirement.**

**Examples: gender (for personal care attendant), absence of criminal record (for workers with children and vulnerable persons)**

# Create a workplace environment that respects human rights



## Bona Fide Occupational Requirement

- **Adopted for a legitimate purpose rationally connected to the job to be performed**
- **Adopted in good faith**
- **It is reasonably necessary for the accomplishment of the legitimate purpose**

**Plus, the employer has a duty to accommodate to the point of undue hardship**

# Create a workplace environment that respects human rights



There are dangers when selecting or rejecting candidates based on subjective or “soft” considerations.

- “spark”, “style” and “enthusiasm”
- “over qualified for the job”

# Questions?



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