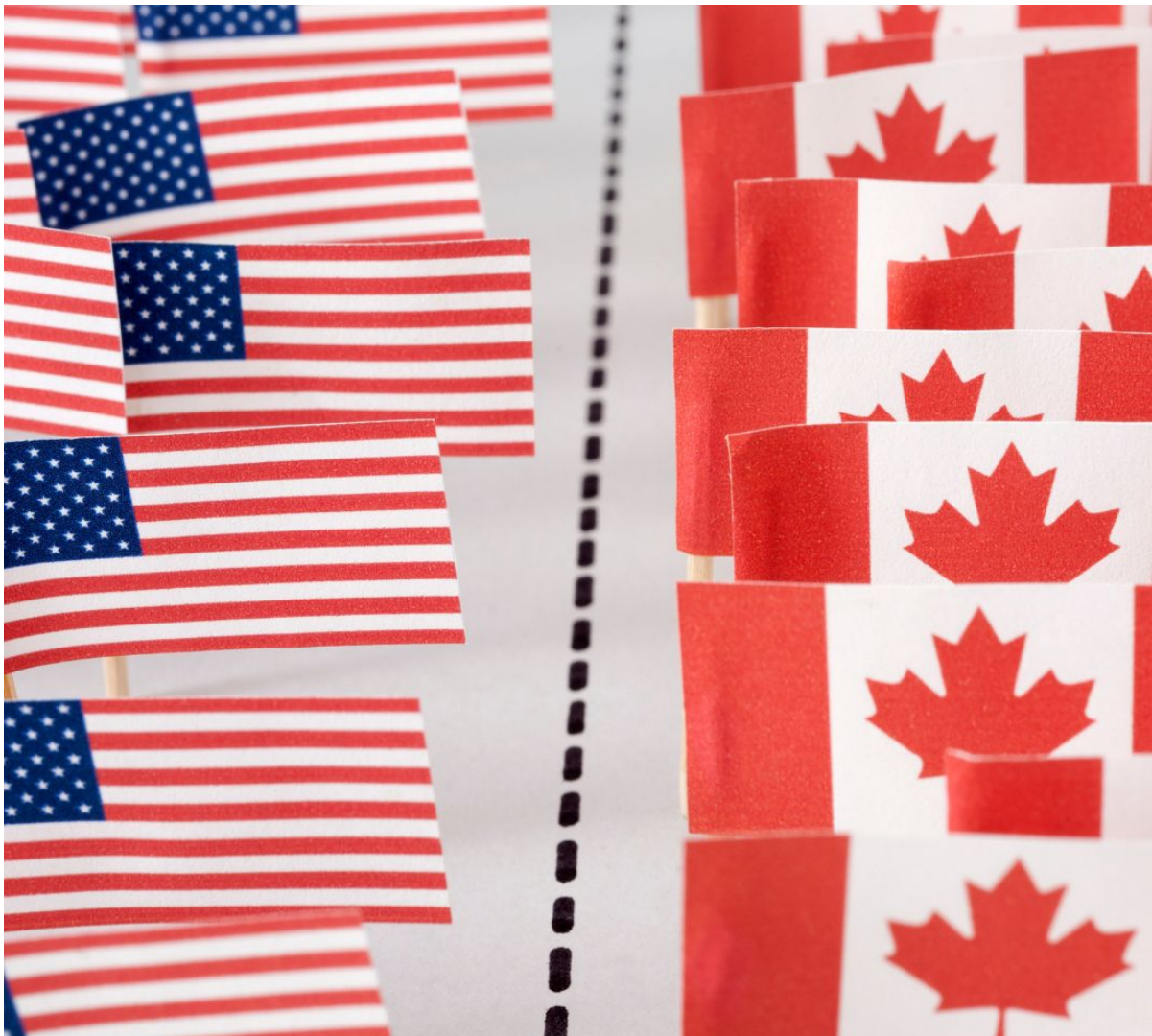


# Cross-Border Workplaces: Canada vs US Employment Law

June 22, 2023  
10:30-11:30am EST



# Presented by

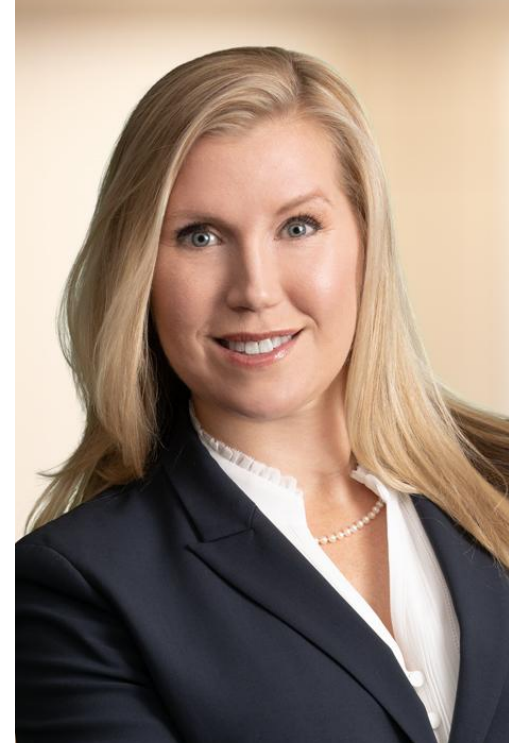
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The logo for Spring Law, featuring the word "spring" in a blue, lowercase sans-serif font with a green arc above the "i", and the word "LAW" in a green, uppercase sans-serif font.

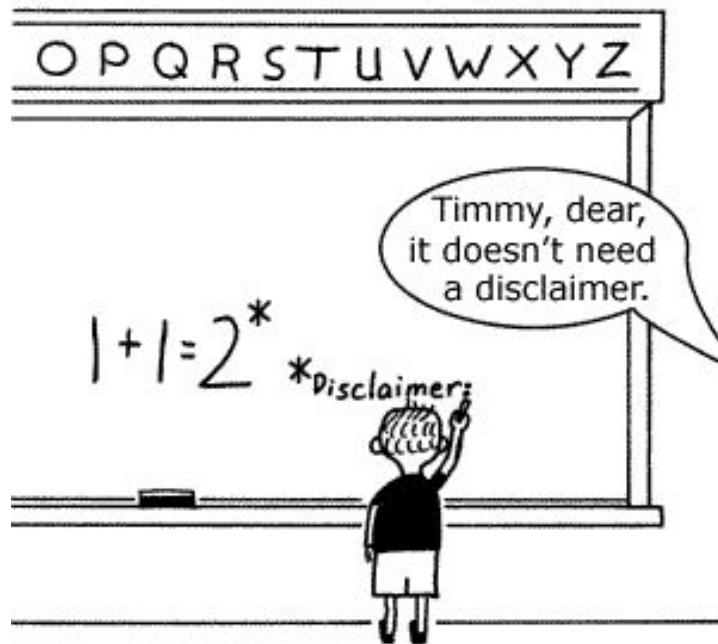
The logo for Barnes & Thornburg LLP, featuring a grid of five colored squares (green, yellow, red, blue, orange) to the left of the text "BARNES & THORNBURG LLP" in a black, uppercase sans-serif font.

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Timmy  
doesn't need  
a disclaimer  
but we do...



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# Presentation Roadmap

- Terminations in Canada vs US Workplaces
- Canada v US Nuances
- Questions?!

# Terminations in Canada vs US Workplaces

## TERMINATION OF EMPLOYMENT

To: John Smith

We regret to  
to

# Terminations in Canada v US

Canada	US
<ul style="list-style-type: none"><li>● 90% of employment governed by provincial or territory law, not federal</li></ul>	<ul style="list-style-type: none"><li>● Federal, state, AND local laws govern employment law</li></ul>
<ul style="list-style-type: none"><li>● Must sign contract BEFORE starting job to be enforceable</li></ul>	<ul style="list-style-type: none"><li>● Continued employment is usually sufficient consideration</li></ul>
<ul style="list-style-type: none"><li>● Employee is the vulnerable party</li></ul>	<ul style="list-style-type: none"><li>● Employers have rights</li></ul>



# Terminations in Canada v US

Canada	US
<ul style="list-style-type: none"><li data-bbox="247 380 683 410">• No At-Will Contracts</li></ul>	<ul style="list-style-type: none"><li data-bbox="1012 380 1698 410">• At-Will employment in most States</li></ul>
<ul style="list-style-type: none"><li data-bbox="247 463 904 537">• Everything is a contract, whether express or implied</li></ul>	<ul style="list-style-type: none"><li data-bbox="1012 463 1669 537">• Must expressly include terms in a contract</li></ul>
<ul style="list-style-type: none"><li data-bbox="247 590 877 719">• Default - Employer must always provide sufficient notice of termination unless “just cause”</li></ul>	<ul style="list-style-type: none"><li data-bbox="1012 590 1682 675">• Default - Employer can fire at-will, subject to human rights law</li></ul>

# Terminations in Canada v US

Canada	US
<ul style="list-style-type: none"><li>● Is fine to give positive references; you want to help employee mitigate</li></ul>	<ul style="list-style-type: none"><li>● Most employers merely provide dates of employment and title to avoid getting sued for misrepresentation</li></ul>
<ul style="list-style-type: none"><li>● Termination packages must make the employee “whole”</li></ul>	<ul style="list-style-type: none"><li>● Termination packages are discretionary and creature of negotiation</li></ul>
<ul style="list-style-type: none"><li>● Benefits don't drive most terminations (public health care)</li></ul>	<ul style="list-style-type: none"><li>● Benefits can play an important role in negotiations (private insurers)</li></ul>
<ul style="list-style-type: none"><li>● No jury trials for employment law cases</li></ul>	<ul style="list-style-type: none"><li>● Jury trials common for employment law cases but many employers require arbitration</li></ul>

# Canada v US Nuances

PARENTAL LEAVES

EXEMPT/NON-EXEMPT

PUBLIC HEALTHCARE

PRIVACY RIGHTS

OVERTIME



# 1) Exempt / Non-Exempt

- Is a different distinction in Canada v US
- Hourly or salaried usually irrelevant in Canada; can trigger employment law rights in US
- Look at specific job, not payroll structure in Canada; US salary basis test and duties test

## 2) Overtime

- Salary/hourly doesn't matter in Canada, but does have impact in US
  - Every employee entitled unless in a certain role in Canada
- Must pay, unless the overtime work was prohibited ahead of time (in US must pay regardless, but can discipline)
- Class actions both sides of the border

### 3) Parental Leaves

- US - Federal Unpaid Leave under FULA up to 12 weeks and a few states provide paid leave
- Canada - up to 69 weeks to be share between parents:
  - Must continue benefits
  - See provincial acts for other rights
  - Federal Employment Insurance maternity & parental pay: 55% of earnings, up to \$650/wk

# 4) Privacy Rights

- Privacy Rights in Canadian Workplaces
  - Canadian Supreme Court of Canada law: Can minimize but not eliminate employee expectation of privacy in workplace
  - Makes drug testing, background checks & workplace recording often illegal
  - Caselaw in favour of protecting employee privacy
- Privacy Rights in US Workplaces:
  - 5 new “rights-based” data privacy laws became or will become enforceable in the US at the state level: California , Virginia, Colorado, Connecticut, Utah

# Role of Public Healthcare

- Free public health care across Canada
- Impacts weight of benefits in contract & termination negotiations
- Mandatory statutory deductions:
  - Income Tax
  - Canada Pension Plan
  - Employment Insurance
  - Worker's Compensation
  - Ontario Health Tax (payroll tax)



# Questions?

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