

## Free Webinar

2023 Employment Law  
Wrap-Up and review the  
past year's big cases and  
legal developments.

Wednesday, Dec 20, 2023  
10:30 a.m. E.S.T.



**2023**



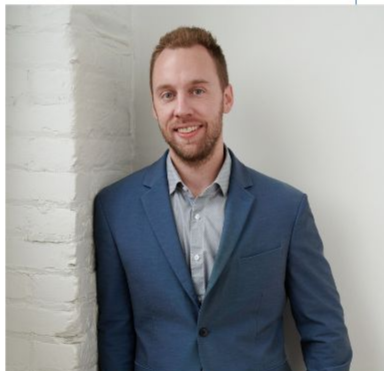
**2024**

## Meet the Presenters



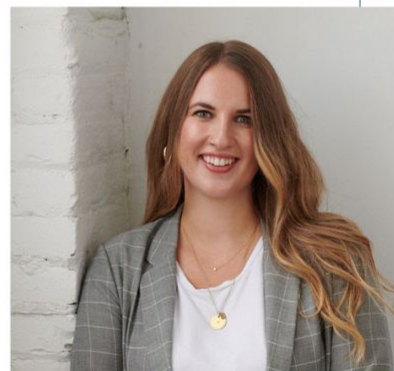
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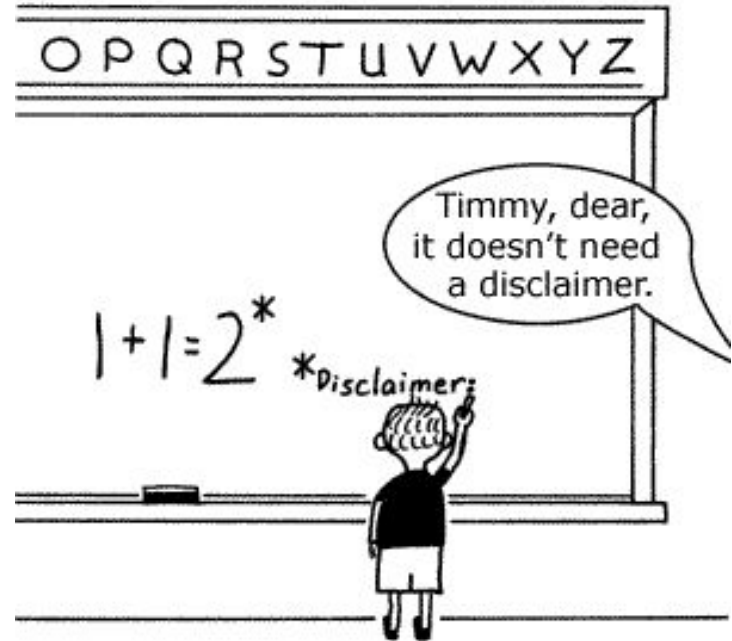
Employment, Labour  
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Timmy  
doesn't need  
a disclaimer  
but we do...



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# Presentation Roadmap

- 1) Legislation Update
  - *Working for Workers Act*
  - *Pay Transparency Act(s)*
  
- 2) Caselaw Developments
  - Notice Periods of 24+ months
  - Substratum Doctrine (what is it, why it matters)
  
- 3) HR Trends
  - Work from home accommodations
  - AI in the Workplace
  - Exiting very long service employees
  - Managing Mobile Workers

# Legislation Update

LEGISLATION



# Ontario's Working for Workers Act, 2023: Key Changes Affecting Employers

## Mass Terminations

- Remote workers now included in definition of “establishment”
- Entitled to increased notice when there is a mass termination
- Protections for remote workers– remote work is here to stay



# Ontario's Working for Workers Act, 2023: Key Changes Affecting Employers

## Other Changes

- Expanded reservist leave
- Enhanced licensing requirements for recruiters
- Protection of foreign nationals
- Increased OHSА fines

# Pay Transparency in British Columbia

- *Pay Transparency Act* passed November 1, 2023
- Employer must post the expected salary or wage for a “publicly advertised job opportunity”
- Cannot ask employees about pay history in previous roles

# Pay Transparency in British Columbia

- No reprisal against employees
- Detailed reporting obligations in the Pay Transparency Regulation with deadlines based on the size of employer

# Pay Transparency in Ontario

- November 14, 2023: Ontario Government introduced the *Working for Workers Four Act, 2023*, which addresses pay transparency.
- If passed, it will require employers who advertise a “publicly advertised job posting” to include information about the expected compensation or the range of expected compensation for the position.

# Pay Transparency in Ontario

- Regulations to follow, which are expected to define “publicly advertised job posting”, the appropriate range for compensation, any exceptions to the requirement, and potentially further information.
- Existing requirements may also change as the Bill progresses.

# Caselaw Development

2023 TRENDS



# Notice Periods of 24 months +

Case	Age	Length of Service	Exceptional Circumstances	Notice Period
<i>Milwid v. IBM Canada Ltd.</i> , 2023 ONCA 702	62	38 years	His only employer in Canada  COVID-19	27 months
<i>Lynch v. Avaya Canada Corporation</i> , 2023 ONCA 696	64	38.5 years	Unique and specialized skills	30 months
<i>Currie v. Nylene Canada Inc.</i> , 2022 ONCA 209	58	40 years	Non-transferable skills  Working with same employer since she was 18	26 months

# What are the “exceptional circumstances”?

- Long service
- Older
- Specialized/ difficult to transfer skills



# The Substratum Doctrine

- Where an employment contract is entered into and the employee's responsibilities and status then change significantly over time (e.g. promotions), the notice of termination provisions could be unenforceable
- *Celestini v. Shoplogix Inc.*, 2023 ONCA 131
- Requires careful drafting of employment agreements to avoid this result

# HR TRends



# Work From Home Accommodation Requests

- Often based on disability/family status
- Employers obligated to accommodate needs, not preferences
- Employers can ask for reasonable proof- and employees need to cooperate
- Employers only need to provide an accommodation when:
  - A protected ground is engaged
  - The accommodation would not cause undue hardship

# Work From Home Accommodation Requests

- How can employers be prepared?
- Document everything!
- Remote work/accommodation policies
- Good faith

# AI in the Workplace

- Is already transforming workplaces
- Basic use cases so far:
  - Recruitment
  - Marketing
  - Process & admin work automation
- 2024 Trends
  - Reskilling employees
  - Augmented Work
  - Building out AI governance – IP, confidentiality, ethics

# Exiting Very Long Service Employees

- Succession Planning – the trapped employer
- How to exit the older worker:
  - Deal with legitimate performance issues
  - Check-in on old-school stereotypes
  - Discuss career goals (not cottage & grandkid goals)
  - Explore long working notice options

# Managing Mobile Workers

## Mobile Workers – Employers of Record (EOR)

- Where the company is located in one country (e.g. USA) and has workers in another (e.g. Canada), rather than setting up an entity in Canada it may engage a company that provides Employer of Record (EOR) services.
- The EOR becomes the legal employer of the Canadian employees and handles day-to-day issues such as payroll, human resources and compliance with local employment laws.

# Managing Mobile Workers

## Mobile Workers – Employers of Record

- More of an uptake of EORs in recent years, so not well tested yet in reported decisions.
- The terms of the commercial agreement between the company and the EOR are key in terms of responsibilities and liability.



# Managing Mobile Workers

## Mobile Workers – Professional Employers Organizations (PEO)

- Similar to an EOR arrangement, but the Professional Employers Organization (PEO) becomes a co-employer with the US company rather than the sole legal employer.
- Again, terms of the commercial agreement are key.

# Managing Mobile Workers

## Mobile Workers – Which Province’s Employment Standards Applies?

- Generally, the employment standards legislation of the province in which the employee resides and performs work will govern.
- *Brushett v. Sun Life Assurance Company of Canada*, 2017 NSLB 154 (CanLII).
  - Applies Supreme Court of Canada “sufficient connection” test.

# Managing Mobile Workers

## Mobile Workers – Which Province’s Employment Standards Applies?

- Ultimately, the decision of whether to allow employees to work outside of the province in which the employer operates will likely turn on tax considerations, especially if the employee will work internationally.
- Consult a tax lawyer.

# 6) Key Takeaways



# Key Takeaways

- Cases & legislation continue to develop in employee-friendly ways
- WFH is here to stay and increasingly embedded into our laws
- Contracts are the foundation that must evolve with the employee's role(s)
- AI & tech will continue to transform the workplace, requiring updated policies and skills
- Managing your older workers & mobile workers will keep all of us busy in 2024

# Questions?

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[springlaw.ca/team/](https://springlaw.ca/team/)

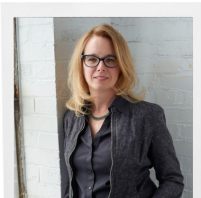
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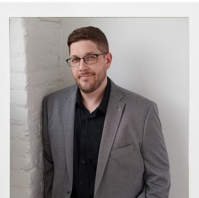
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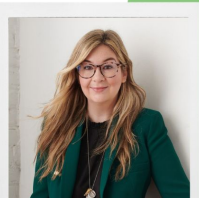
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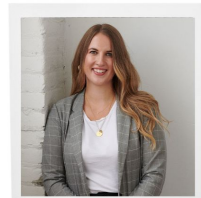
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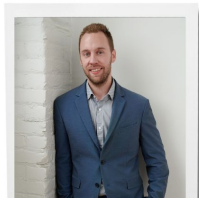
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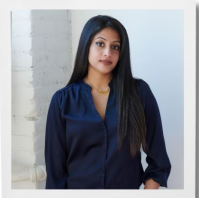
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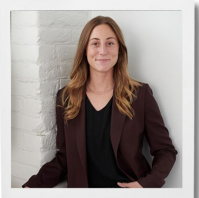
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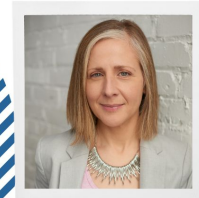
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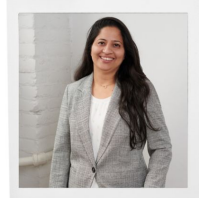
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