Employment and Labour Law in Canada

Michael Sherrard
Partner
Sherrard Kuzz LLP
+1 416 603 0700
msherrard@sherrardkuzz.com
www.sherrardkuzz.com

In Canada, the law that regulates the employment relationship is divided between what is referred to as 'labour law' and 'employment law'.

Broadly speaking, 'labour law' refers to the law governing workplaces where employees are represented by a trade union and have with their employer a collective contract of employment (known as a "collective agreement"). 'Labour law' therefore addresses, for example, the process of forming a union, administrating a collective agreement and enforcing reciprocal rights the parties (the employer and the union) have under the agreement.

Canadian labour law follows the model of labour relations developed in the United States. The key feature of this model is the 'majoritarian exclusivity' principle. That is, employees are entitled to form a collective association (i.e., unionise) for the purposes of negotiating the terms and conditions of employment, so long as the majority of employees in the workplace desire such an outcome. The particular methods of determining majority support vary among jurisdictions, but once it is determined that a sufficient complement of employees have chosen unionisation, the union selected gains the exclusive right to represent all employees in matters of labour relations.

'Employment law' refers to the law governing the relationship between an employer and individual employee not represented by a trade union. This includes the formation and fulfillment of an individual employment agreement, and related litigation including litigation which may arise out of the breakdown of the employment relationship.

Canadian employment law generally follows the model developed in Commonwealth countries. The key feature of this model is the 'common law' whereby judges apply precedent and legal doctrine to interpret the entitlements of employees and employers under individual contracts of employment. Lawmakers participate to the extent statutes set out legislated minimum terms and conditions of employment. However, beyond statutory minimums the regulation of individual employment contracts is left to the auspices of the Canadian judicial system.

Some aspects of the employment relationship - human rights, occupational health and safety, and privacy, for example - cross over into both 'labour' and 'employment law'.

For the majority of employers doing business in Canada, employment and labour law is regulated at the provincial level. Canada is comprised of ten provinces and three territories, each of which is responsible for its own labour and employment legislation. The Government of Canada is also responsible for passing laws relating to labour and employment in respect of particular industries regulated at the national level. These include telecom, inter-provincial transport, air travel and rail.

As such, a foreign business planning to develop operations in Canada should appreciate that employment and labour law may, and often does, differ among the various Canadian jurisdictions, adding an additional level of complexity for businesses seeking to operate across the country.

Foreign employers seeking to initiate operations in Canada are often surprised to learn that Canada's employment law landscape varies greatly from their home jurisdiction. For example, employers used to the American regulatory framework (national in scope) often find Canadian courts to be more 'employee-friendly' than their American counterparts. Conversely, employers used to the European regulatory framework often find the Canadian system of labour relations more 'employer-friendly' because the process to forming a union can be more arduous than under European law.

To learn more about Canadian employment and labour law, how it may impact foreign employers seeking to operate in Canada, and how it differs within each Canadian jurisdiction, contact a member of Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, representing employers.