

MANAGEMENT COUNSEL

Employment and Labour Law Update

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Planning to serve bubbly (or any legal intoxicant) at your holiday bash? You may be liable if an employee comes to harm.



Hosting a Holiday Party? Make a List of Legal Duties and Best Practices (and check it twice!)

The holiday season is fast approaching, making it the perfect time to review legal duties and best practices when hosting an employer-sponsored holiday event. Let's focus on four key areas: host liability, workers' compensation, workplace harassment, and inclusivity and accessibility.

Host Liability

Planning to serve bubbly (or any legal intoxicant) at your holiday bash? You may be liable if an employee comes to harm.

In *Hunt v Sutton Group Incentive Realty Inc.*,¹ the court found an employer owed a duty of care to an employee injured in a car accident when driving home intoxicated from the employer's holiday party which had an unsupervised open bar. The employee left the party and met friends at a pub where she consumed more alcohol. The court ruled the employer was negligent in failing to ensure the employee did not become so intoxicated so as to interfere with her ability to safely drive home. It also found the "intervening act" of drinking at the pub did not absolve the employer of partial liability.

Best practice

- Have a drug and alcohol use policy for the workplace. The policy should set out expectations regarding responsible and professional conduct and the consequences of a violation. Consider reminding employees of the policy before each relevant event.



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- Set the tone. Prohibit drinking games/contests or other behaviour that can lead to overindulging.
- Consider a drink ticket system instead of an open bar and retain the services of a professional bartender who is Smart Serve certified.
- Provide non-alcoholic alternatives.
- Provide food if you plan to serve alcohol.
- Arrange for safe transportation home (e.g., ride share, taxi, designated driver, etc.).
- Do not allow an impaired employee to drive from the event. If they insist, contact the police.

Workers' Compensation

A worker injured at an employer-sponsored event may be entitled to claim workers' compensation benefits which, in turn, may trigger an employer's reporting obligations, and impact premiums. Although entitlement to workers' compensation benefits must arise *out of and in the course of employment*, injury at an employer-sponsored event likely meets this requirement.

In *Decision No. 551/91*,² the Workplace Safety and Insurance Appeals Tribunal ("WSIAT") held a worker was entitled to workers' compensation benefits when she suffered an ankle injury during a "balloon stomp" game at a workplace holiday party, held offsite, after hours. The party was organized by a social committee of workers and funded through a modest deduction from wages (i.e., \$2.00 from each pay cheque). The WSIAT found the injury was related to the worker's employment because funding came from worker pay cheques, the purpose of the party (as with many workplace parties) was to improve workplace morale, thank workers for their service, and allow workers from different departments to mingle.

Best practice

- Choose an event or activity with a low risk of injury.
- Know your reporting obligations should an injury occur.
- Avoid events that combine physical activity and legal intoxicants.

Duty to Provide a Harassment-Free Environment

Across Canada, every employer has a duty³ to protect employees from workplace harassment. Violent or harassing behaviour, including sexual harassment, can be more likely at an event where alcohol or other intoxicants are consumed and workplace norms are perceived to be "relaxed." Employees may also be more likely to publish unprofessional content, potentially violating the privacy of others, and damaging the reputation of the employer.

Best practice

- Every employer is required to have a workplace harassment policy. If your workplace does not, now is the time to address this.
- Consider having a social media policy that sets out what employee behaviour will and will not be tolerated.
- Review your workplace harassment and social media policies with employees prior to any relevant event to reinforce expectations of respectful and professional conduct.
- Designate team leaders who will stay sober and look out for intoxication or misconduct.

Inclusivity and Accessibility

The holiday season is a time for celebration! However, if an event is exclusive to one religion or culture, or focuses on consumption of alcohol, this can inadvertently exclude some colleagues from the celebration.

Best practice

- Name the event a "holiday party" or "end-of-year celebration" rather than referencing a holiday that may not be celebrated by everyone.
- Choose a date and time that doesn't conflict with other major religious holidays or holy days.
- Choose a venue that is accessible for persons with disabilities.
- Be respectful of those who opt out.

Let Sherrard Kuzz LLP help you prepare for a fun, safe and inclusive holiday season!

To learn more or for assistance, contact your Sherrard Kuzz LLP lawyer or info@sherrardkuzz.com.

¹ 2001 CanLII 28027 (ON SC). This decision was reversed on other grounds. For more details, see our [briefing note](#).

² 2019 ONWSIAT 1167.

³ Arising from both human rights and workplace health and safety legislation.

DID YOU KNOW?

Social media issues are increasingly becoming workplace issues. An employee's online activity – even outside work – can make its way into the workplace. A clear, enforceable, and up-to-date social media policy can help set expectations and protect business interests. Contact your Sherrard Kuzz LLP lawyers or info@sherrardkuzz.com.



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Employment Agreement Saves Employer from Unlawful Lay-off

Courts have been scrupulous in holding employers to a high standard with respect to employment contracts, leading to several rulings in which a termination provision was declared void and unenforceable because it might, in certain circumstances, conflict with employment standards

legislation. Courts have established a rule that even a valid part of a termination provision will be declared void if there is a defect elsewhere in the provision.

In welcome news for employers, the Ontario Superior Court of Justice recently limited the scope of this strict approach in *Taylor v. Salytics Inc.*¹ In that decision, the court confirmed that while a temporary lay-off can constitute constructive dismissal triggering notice and other entitlements, this will not be the case if the lay-off is permitted under the employment agreement. This is because, in Ontario, an employment agreement must include an express or implied right to temporarily lay off an employee, failing which a

A lay-off is a termination when there is no clause in the agreement permitting the employer to lay-off the employee. When there is such a clause, the lay-off is not a constructive dismissal, and therefore not a termination.

lay-off may amount to a without cause termination.² The court's ruling saved this employer liability for six months' pay in lieu of reasonable notice or \$58,650.

What happened?

Barry Taylor was employed with Salytics for approximately eleven years when he was temporarily laid off. Six months into the lay-off Salytics recalled Taylor.

Prior to commencing employment with Salytics, Taylor had executed an employment agreement which included a termination provision and a lay-off provision, both under the heading "Termination." The lay-off provision read: "In the event a temporary lay-off is ever required, it may be implemented in accordance with the requirements of the *Employment Standards Act, 2000*." The lay-off provision, standing alone, was valid. However, the termination provision was void.

Taylor filed a lawsuit alleging his temporary lay-off was a constructive dismissal and claiming entitlement to six months' pay in lieu of reasonable notice. He argued the temporary lay-off provision, even if enforceable as a standalone, was void by virtue of its association with the void termination provision. If Taylor was correct, Salytics had no legal authority to lay him off.

Salytics took the position there was no constructive dismissal for two key reasons: first, a temporary lay-off was contractually permitted; and second, the lay-off provision was not a *termination* provision; it was separate and distinct from the void termination provision. As such, while the termination provision may have been void, the lay-off provision was enforceable.

An employment agreement remains one of the best returns on investment for an employer. Not only is a valid and enforceable termination provision an important tool to limit potential liability, but an enforceable lay-off provision can permit an employer to place an employee on a temporary lay-off under the Employment Standards Act (Ontario), providing greater flexibility to manage a workforce in uncertain times.

Court decides a lay-off provision is not a termination provision

In dismissing Taylor's claim, the court made two key findings: first, the placement of the lay-off provision under the "Termination" heading did not determine its legal character; the substance of the provision was more important; and second, the termination provision and the lay-off provision were distinct provisions from each other, such that the invalid termination provision did not invalidate the lay-off provision:

*The fact that a unilateral lay-off by an employer constitutes constructive dismissal at common law, does not make a lay-off provision in an employment contract a termination provision. A lay-off is a termination when there is no clause in the agreement permitting the employer to lay-off the employee. When there is such a clause, the lay-off is not a constructive dismissal, and therefore not a termination.*³

Lessons for employers

An employment agreement remains one of the best returns on investment for an employer. Not only is a valid and enforceable termination provision an important tool to limit potential liability, but an enforceable lay-off provision can permit an employer to place an employee on a temporary lay-off under the *Employment Standards Act* (Ontario), providing greater flexibility to manage a workforce in uncertain times.

Of course, drafting an enforceable employment agreement is not as easy as it may look (or as the internet may suggest). The rash of termination provisions struck down by the courts – even ones prepared by counsel – should make this clear. Retain an experienced employment lawyer to draft an employment contract or update existing contracts. A modest investment today has the potential to save you thousands of dollars tomorrow.

To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer, or info@sherrardkuzz.com.

¹ 2025 ONSC 3461.

² Even when an employer is permitted to temporarily lay off an employee, that lay-off is deemed to be a termination once a certain period passes; and that period varies from province to province. Discuss with your Sherrard Kuzz LLP lawyer before taking steps, particularly if a change impacts a group of employees when potential liability can be considerable.

³ *Supra*, note 1 at para 49.

HReview Seminar Series

Please join us at our next HReview Seminar:

2025 Year in Review and What to Expect in 2026 ...

Employment and labour law never stand still, and this year is no exception. From legislative changes to a complex global environment (tariffs, etc.), Canadian employers have faced a steady stream of new compliance challenges.

Join us for our annual year in review webinar, where we'll discuss what's been keeping employers up at night, what's on the horizon for 2026, and best practices going into the new year. Topics include:

1. What's keeping employers up at night?

- **Termination provisions:** Is there such a thing as an enforceable one? *We think so (and the courts might finally agree)!*
- **U.S. tariffs:** Managing workforce adjustments and the work-sharing program.
- **AI in the workplace:** Opportunities and risk.
- **Return-to-office mandates:** Employer rights.

2. Heading into 2026

- **Pay transparency and job posting rules** in Ontario's Working for Workers acts and beyond.
- Cross-Canada increases in **minimum wage** and **statutory leave entitlements**.
- New **limits on sick notes** in multiple provinces.
- Increased **fines and administrative penalties**.
- Inter-provincial **labour mobility legislation**.
- **Digital platform worker legislation** now in force in Ontario and British Columbia.

DATE: Wednesday, December 3, 2025; 9:00 a.m. – 10:30 a.m.

WEBINAR: Via Zoom (registrants will receive a Zoom link the day before the webinar)

COST: Complimentary

REGISTER: By Wednesday, November 26, 2025 [here](#)

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