

## **How Employment Law Affects You**

### **PReP Course 11 - Lesson 2**

I'm a Professor at Seneca College in the School of International Business and Leadership. I teach human resources students about the legal aspects of employment; I teach business students about the fundamentals of Canadian business law; and in practice I was a lawyer focused on immigration and refugee law so I've dealt with internationally-trained professionals in my career as a lawyer as well.

The Canadian legal system is interesting. There are two levels of government primarily that make all of the laws in Canada. Which government makes the law determines who has to obey that law. So if it's a law made by the Canadian government then everyone in Canada has to have the same law applicable to them. A provincial law only is applicable to the people who are in that particular province. So since we are in Ontario the Ontario government makes laws in certain areas; and one of them is employment. So every employer, every employee in Ontario is bound by the government-made laws which we call statutes or legislation, and in addition we have judges' decisions which set down precedents or rules that have to be followed as well by employers and employees. It's a little complicated; the important thing to remember is that it's provincial, so that if you move to another province there will be employment laws but they may be a little bit different than the ones we are going to talk about today.

The dilemma is that you have to be an employee in order for these laws to apply. And sometimes employers will say, "I'm going to hire you, and you're going to work for me. I will pay you for the work that you do, but you're an independent contractor, not an employee." Employers sometimes do that because they think that they will avoid all of the obligations under employment law if they call someone who works for them an independent contractor. In fact they don't get to decide. If there is an issue that comes up and if it looks like someone should have been given certain rights or certain payments because they were employees, the courts will say and decide whether or not the employee - the person that did that work - was an independent contractor or not.

Now this is important because if you're not an employee, nothing that we're going to talk about today applies to you. So if in fact you're self-employed, or an independent contractor that works for more than one employer, and you make all of your own remittances for income taxes and employment insurance to the government, employment law does not apply to you.

There's another area of law that applies called contract law, and that's where you make the agreement with the person that you're working for, and that agreement covers all of the rights and obligations between you.

In Ontario there are four government laws that you need to be aware of, as well as the fact that we have common law jurisdiction in Ontario which means we use the British system of precedents to make sure that judges make decisions that are fair based on earlier cases. The four government laws are called the Employment Standards Act, which sets out all of the minimums and maximums and rules in the workplace; the Ontario Human Rights Code, which governs what employers can and cannot do when they are hiring, when they are supervising, and when they are terminating employees, because they are not allowed to make those decisions on any one of the prohibited grounds of discrimination. In other words an employer has to make decisions based on your competency, your honesty, and not on your place of origin, race, or marital status, for example. The third statute is the Occupational Health and Safety Act. That one refers to safety in the workplace, and an employer is responsible - after you are starting to work - to make sure that the workplace is safe for you. And finally the Workplace Safety and Insurance Act in Ontario - it's different from other provinces - has a system of insurance where the employers pay in to an insurance fund, and if you are injured at work, you may be entitled to make a claim to that fund to get compensation while you are not able to work.

There are many other laws as well but these are the four that we're going to focus on.