

How Employment Law Affects You and Your Business

WIN Course 6, Part 2 - 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; 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.

So the names of laws made by governments in Canada usually end with the word Act or Code. It doesn't matter which one it is, but you'll recognize that it's a government-made law when it ends with one of those two words. In Ontario we have Employment Standards Act, Occupational Health and Safety Act, Workplace Safety and Insurance Act, and the Ontario Human Rights Code. All four are government laws that apply to every employer and employee in Ontario. In most cases the employers in the health sector will be covered by employment laws of the provincial government. That's because although health is a shared jurisdiction in some ways, we are talking about employment law here.

And that means we stick to the question of whether or not you as an employer are hiring an employee, or are you having someone do work for you and pay them as an independent contractor. That question determines - or the answer to that question determines - whether or not you are going to be dealing with employment law or contract law. Now if an employer hires

someone and says, "You're an independent contractor but you're going to work only for me, and here are the hours that you will work, and here is the job that you will do" the courts could decide that that person doing the work is actually an employee, and if they're an employee, all the protections of employment law apply to them, and all the obligations of employment law apply to the employer. So you have to be careful, as an employer, not to pretend that someone is not an employee because you want to avoid paying income tax, remitting it to the government, paying employment insurance premiums. Someone who works for you is an employee if you control the work that they do, even if you call them an independent contractor.