

Workplace Law Bulletin

AIRD & BERLIS LLP
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You Asked, We Answered: Top Issues in Employment Law

By Michael Horvat

Following our webinar held on January 24, 2017, we had a number of questions, including many which focused on the process of accommodation in the workplace, workplace harassment and fixed-term contracts. We thought we might use this newsletter as an opportunity to respond to some of the most frequently-asked questions. We hope this is of interest.

Is an employer able to request evidence that an employee has attempted to self-accommodate in respect of their family obligations, such as daycare?

There is a legal obligation for employees to participate in the accommodation process. If such information is not volunteered or discussed when options are reviewed, the company can request a listing of what the employee has considered and documentation that supports their claim. For daycare, this likely includes a copy of the daycare application form, confirmation of being wait-listed, in-home services that have been contacted, and the availability of the other parent or other family members to provide care. If accommodation relates to the medical care of a family member (not the employee), the company is not entitled to receive confidential medical information pertaining to that person. But, the company is likely entitled to receive written confirmation from the treating doctor that the family member is receiving medical care and a description or nature of accommodation necessary, such as assistance by the employee in providing medicine or therapy, assistance in travel to the doctor's office or for therapy, confirmation of the frequency and timing of attendance for medical

support, and duration of the required support. Overall, the information required is that which is necessary to consider and review scheduling needs and options.

If an employee informs management/human resources that they are being bullied, but will not provide any names, what does the company have to do (or can do)?

First, the company should begin the investigation process and fully document the interview with the employee. All the allegations and facts from the employee should be obtained. The employee should be advised of the company's policy regarding harassment and its policy to investigate such matters. The employee should be assured that no act of reprisal will be tolerated because a complaint was filed. However, the employee should not be advised that the matter and the identity of any of the persons involved (including witnesses and the employee) will be kept confidential throughout the investigation process as disclosure will likely have to occur at some point. Should the employee not disclose the information necessary to conduct an investigation, he/she should be advised that the investigation and complaint process will have to be suspended pending further disclosure of necessary information.

How many times can a fixed-term contract be renewed without the relationship becoming similar to one of indefinite employment?

Under the Ontario *Employment Standards Act, 2000*, it is not the number of contractual renewals, but the duration

of employment, that is determinative. Statutory notice of termination under the ESA, regardless of the fixed-term expiry of the employment contract, must be provided if the total term of employment is longer than 12 months. At common law, there is no fixed number of renewals, but the risk of the employee being considered an indefinite employee will increase if the contract is greater than three years and/or upon the third renewal.

If you have questions regarding any aspect of workplace law, please contact any member of the Aird & Berlis LLP Workplace Law Group:

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