

36th ANNUAL EMPLOYERS' CONFERENCE AGENDA *November 3, 2022*

9:00 - 9:05 **INTRODUCTORY REMARKS** (*Each session time below includes Q&A*)

9:05 – 9:45 **THE LATEST ON TERMINATION CLAUSES**



Allison Taylor

Termination clauses in employment contracts continue to be a hot topic of litigation. Recent Court cases considering clauses that provide for no notice in the event of “just cause” make clear that employers must continue to be careful in how they draft termination clauses. Recent caselaw has also shown the hazard to employers in connecting employee duties to termination entitlements.

Learn:

- The implications for “just cause” termination clauses arising from the Court of Appeal’s recent *Rahman* decision and other cases;
- The potential risks of tying termination entitlements to employee duties; and
- Current best practices for entering into and drafting termination clauses.

9:45 - 10:30 **SKY HIGH FINES, MORE DELAYS AND OMINOUS NEW OHSА SENTENCING FACTORS**



Ryan Conlin

The Ontario government has amended the OHSА to ramp up enforcement in the post Covid era. The potential consequences of non-compliance with the OHSА have increased.

Learn:

- The new sky high fines for supervisors, officers and directors

- Justice delayed: The impact of the increase to the OHSA limitation period
- How the new sentencing factors alter the legal landscape
- How the new naloxone kit requirements impact your workplace
- The apparent trend towards charging individuals for OHSA offences

10:30 - 10:50 **BREAK**

10:50-11:30 “QUIET QUITTING”: WHAT CAN EMPLOYERS DO ABOUT IT?



Landon Young

There is another epidemic raging: “quiet quitting.” Employers with employees who have “quiet quit” on them can still face the possibility of significant legal liabilities if they terminate. There can also be potential privacy and human rights issues to consider in responding to it. But employers can still address this frustrating situation while reducing the potential legal liabilities.

Learn:

- When “quiet quitting” may amount to an actual quitting or job abandonment under the law so that no notice or severance is owing;
- How to implement a performance improvement process that can lead up to a termination without liability for notice and severance;
- Recognizing possible mental health factors that could trigger human rights obligations; and
- Practical strategies for address “quiet quitting situations such as monitoring of performance and offering voluntary separation of employment.

11:30 - 12:15 **THE EMPLOYMENT STANDARDS ACT, 2000: OVERVIEW OF KEY DEVELOPMENTS**



Jeff Murray

Recent amendments to the Employment Standards Act, 2000 brought in by the dual Working for Workers Acts have new rules and duties for employers. Meanwhile, there have been significant caselaw developments regarding the interpretation and application of the Act.

Learn:

- What new policies are required by the Working for Workers Acts;
- How the new prohibition on non-competition covenants will be applied;
- The latest caselaw on Infectious Disease Emergency Leave (IDEL) and constructive dismissal claims; and
- How payroll is to be calculated for determining employers' obligation to pay severance pay under the ESA.

12:15 - 1:15 **LUNCH BREAK**

1:15 - 2:00 **UPDATE ON THE ENFORCEABILITY OF COVID VACCINATION POLICIES**



Jeremy Schwartz

Although most of the caselaw has been favourable to employers who impose mandatory vaccination policies, there have been surprises, and decisions are trending unfavourably for mandatory termination and other disciplinary outcomes for non-compliance. Find out what has been happening and what lessons employers can learn for the future.

Learn:

- What recent cases have said about the enforceability of mandatory vaccination policies;
- What the future may hold for employer vaccination policies given the current trends and status of the pandemic; and
- How to prepare a vaccination policy that is suitable for your workplace and that is likely to be enforceable.

2:00 - 2:40 IMPLEMENTING WORKPLACE CHANGE AND THE LAW OF CONSTRUCTIVE DISMISSAL



Haadi Malik

With employers facing the risk of an imminent recession, the ability to adapt and change will be vital to continued success. However, changing the terms and conditions of employees' employment can result in costly liabilities. This session will cover what employers need to know and best practices when making changes in their workplace.

Learn:

- When a change to the terms of employment will trigger a constructive dismissal;
- How the “duty to mitigate” can apply to constructive dismissal scenarios;
- When has an employee acquiesced to the change in terms of employment?
- Practical strategies for implementing workplace change to minimize the risk of costly constructive dismissal claims.

2:40 - 3:00 **BREAK**

3:00 - 4:00 **LEGAL ROUNDUP**

In this session, we provide concise summaries of some of the most significant legal developments affecting employers from the past year.

Topics:

- The status of the constitutional challenge to Ontario's 1 per cent public sector wage increase cap and the potential implications of this case;
- The subtle, but oh so important, distinctions between “just cause” and “wilful misconduct” in employee terminations: *Render v. ThyssenKrupp Elevator (Canada) Limited*;
- The scope of health and safety risk to employers and owners and update on hearing of the *Ontario v. Sudbury* case before the Supreme Court of Canada; and
- The latest on privacy law.

4:00 **CONFERENCE ENDS**
