

Employment Law 101

Sport Law & Strategy Group



Providing strategic insight to the Canadian sport community through professional services in these areas:

- Legal Solutions and Policy Development
- Risk Management, Strategic Planning and Good Governance
- Communications, Facilitation and Integral Coaching™
- Event Management and Marketing
- Financial Planning and Human Resource Management

Our Team



Hiring



Position Description

1. Reporting Too
2. Purpose of the Position
3. Tasks and Responsibilities
 - Constructive Dismissal
 - Re-Organization (CSIO/No Legal Contract)
4. Location of Work
 - Ontario Cycling
5. Core Competencies/Education
6. Experience
7. Physical Demands
 - AODA/Human Rights Code

Interview

1. Ask structured interview questions
2. Assess behaviours and capabilities
3. Ask the same questions for equal playing field
4. Listen more – talk less
5. Questions
 1. Initiative
 2. Coping
 3. Organization and Planning
 4. Interpersonal Skills
 5. Self Assessment

References

Checking References

1. Reference checking is distinct from employment verification. Verification is confirming the accuracy of information.
2. Reference Check gathers information about the individual's performance, skills, weaknesses, etc.
3. Consent should be ascertained prior to contacting references
4. Employer's cannot consider factors which are protected by human rights legislation (age, race, sex, disability, etc.)
5. Issues – negligence/screening
 - Swim Club Example

Providing References

1. When contacted to provide a reference, ensure the employee consents
2. Issues of concern – defamation

Growing Consensus

Debate is not on whether we must screen (as it is widely accepted that we must) but on how it should be done, given the need to find a practical balance between the duty of an organization to provide a safe environment and the practical limits of what an organization can afford to do, or has time and resources to do.

Screening

- Drafting a Screening Policy
 - Who is to be screened
 - What acts are prohibited
 - How are you going to make decisions on each person (Screening Committee)
 - How are you going to manage confidential records ... etc.
 - Jurisdiction of PRC/VSC
 - True Copies/Fraud

Post-Hiring Screening Tools

- Orientation/Training
- Impose a Probationary Period
- Volunteer Agreement
- Evaluations
- Follow up with participants and co-workers

TEN “SAFE STEPS” PROGRAM

1. Determine the risk
2. Write a clear position description
3. Establish a formal recruitment process
4. Use an application form
5. Conduct interviews
6. Follow up on references
7. Request a Police Records Check
8. Conduct orientation and training sessions
9. Supervise and evaluate
10. Follow up with program participants

ARE YOU PREPARED?

1. Have you done everything reasonable to provide a safe environment?
2. Media, Parents, Victims
3. Can you sleep at night?

Contract

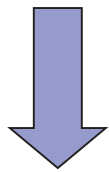


What is a Contract?

- A Contract is:
 - A “deal” two or more parties have agreed to, are expected to abide by and be bound by their promises.
- Contracts may be formed orally or in writing.
- There is no single form of contract that can be used in every situation.

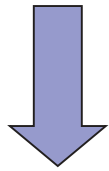
EMPLOYMENT RELATIONSHIP

- Employment Standards Legislation



(absolute minimums)

- Personnel policy of organization



(beyond the minimums)

- Individual employment contracts
(beyond the personnel policies)

EMPLOYMENT STANDARDS ACT

Hours of Work

- Maximum of 48 Hours in a work week

Overtime and Overtime Pay

- Hours worked in excess of 44 per week must be totaled and the number of hours worked in excess of 44 per week are deemed overtime hours.
- An employer must pay an employee overtime pay at least 1.5 times the wage.

Averaging Agreements

- Employees and employers may enter into a written agreement to average overtime over a greater period of time, rather than 1 week.
- Time off may be taken if agreed by the Parties.
- If the time off is not taken, the employer may pay the overtime.

Vacation

- At least two Weeks Vacation

Termination of Employment - Employee

Employees wishing to terminate must provide written notice:

- 1 week, if employed less than 2 years
- 2 weeks, if employed 2 years or more.

Termination of Employment – Without Cause

Employers wishing to terminate to provide written notice or pay in lieu of notice:

- 1 week, if employed more than 3 months but less than 2 years
- 2 weeks, if employed 1 - 3 years
- 3 weeks, if employed 3 - 4 years
- 4 weeks, if employed 4 - 5 years
- 5 weeks, if employed 5 - 6 years
- 6 weeks, if employed 6 - 7 years
- 7 weeks, if employed 7 - 8 years
- 8 weeks, if employed 8 or more years.

Termination Without Cause

- Can terminate at any time provided that notice, or pay in lieu of notice is given
- Legislation states minimum
- May be modified by personnel policy
- May be modified by employment contract
- Common law (Availability of alternate employment, length of service, position with employer, age, salary, lack of good faith and fair dealing by the employer)

Termination with Cause

- Defined as “*willful misconduct or disobedience, or willful neglect of duty that is not condoned by the employer*”
- No notice is required
- Must issue warnings specific to termination
- Must show progressive discipline and a paper trail
- What is sufficient depends on circumstances of each case

Constructive Dismissal

- Unilateral and fundamental change to the employment relationship (it must be “substantially altered”)
- Examples: less responsibility, significant change in duties, change in policy, new location of work, loss of status
- Notice is required if constructive dismissal is proven

ADVANTAGES FOR EMPLOYEE

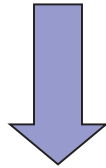
- Stable pay with no risk of loss
- Paid holidays, lieu days and sick pay
- Statutory protection (Employment Standards Act)
- Vicarious liability of employer
- Skills training
- Reasonable notice to terminate
- Tax deducted at source and submitted for you
- Pay into Employment Insurance scheme
- Employer contributes to EI, CPP
- Other employment benefits provided

DISADVANTAGES FOR EMPLOYER

- Expensive (higher due to statutory obligations)
- Less flexibility in staffing
- Vicarious liability
- Employer liability (termination, severance, other statutory requirements, administrative burden)
- Need to supervise/direct

CONTRACTOR RELATIONSHIP:

- The 'Contract'



- Contract law and language

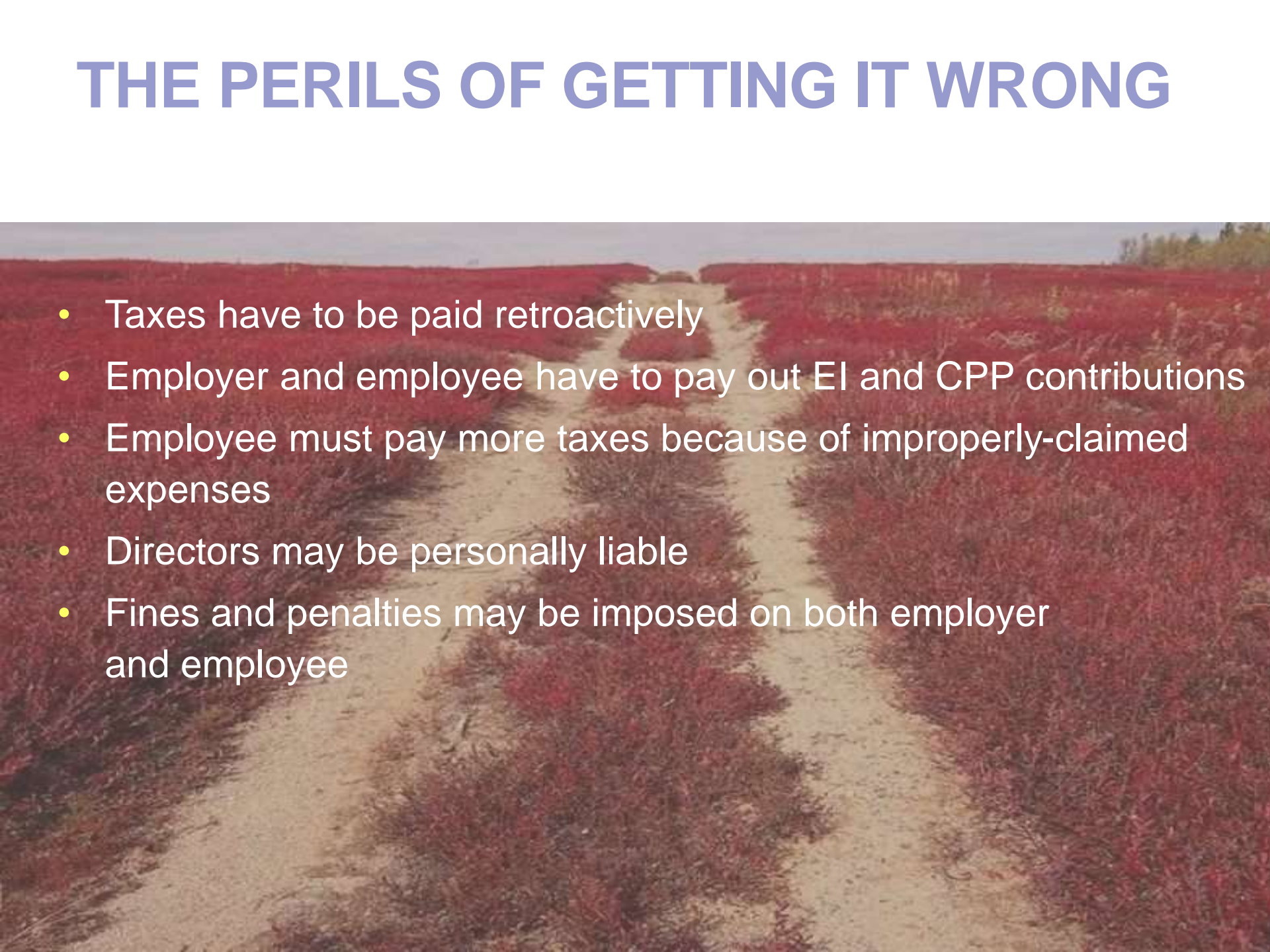
Descriptors of a Contractor

- No deductions
- No statutory holidays
- No mention hours of work
- Chance of profit and some risk of a loss
- Works away from the employer's business.
- Incorporation
- No minimum notice of termination
- No job description
- Pay a “rental” for use of any employer's equipment
- Submit an invoice for payment each month
- Charge HST
- No job title or a business card

EMPLOYEE or CONTRACTOR

- **Control test** (the worker's independence)
- **Integration test** (are worker's tasks integral to organization's day-to-day business)
- **Economic reality test** (control over work, ownership of tools, financial risk)
- **Specific result test** (is work time-specific or ongoing)

THE PERILS OF GETTING IT WRONG

- 
- A photograph of a dirt path winding through a field of red flowers, likely a coastal or marshy area. The path is light brown and leads towards the horizon. The flowers are a vibrant red color, and the sky is a pale blue.
- Taxes have to be paid retroactively
 - Employer and employee have to pay out EI and CPP contributions
 - Employee must pay more taxes because of improperly-claimed expenses
 - Directors may be personally liable
 - Fines and penalties may be imposed on both employer and employee

EMPLOYMENT CONTRACT

The background of the slide features a photograph of a person walking away from the camera on a path that leads into a wooded area. The entire image is covered with a semi-transparent blue overlay, which serves as a backdrop for the text.

- Description of job duties
- Term of agreement
- Compensation, benefits, holidays
- Supervisory relationship
- Performance appraisal
- Termination and severance
- Confidentiality
- Link to personnel policies (if applicable)
- Proprietary Rights

CONTRACTOR AGREEMENT

The background of the slide features a blue-tinted image of a person climbing a rope. The person is silhouetted against a lighter blue background with a wavy, water-like texture. The person is positioned on the right side of the frame, with their body angled towards the left as they ascend the rope.

- Deliverables
- Term of agreement
- Compensation
- Reporting relationship
- Termination
- Risk, indemnification, insurance
- Confidentiality
- Proprietary Rights

MANAGING THIS RISK

For the business:

- Structure the relationship to be one of true contractor
- Ask contractor to provide an indemnity
- Or, play it safe and establish employment relationship

Human Resources Manual



Human Resource Policies & Procedures

What should be in it?

- Terms of Employment
 - Probationary period
 - Employee Benefits
 - Performance Reviews
- Work Environment
 - Hours of operation
 - Personal appearance/attire
 - Personal appointments
 - Reporting absences
 - Keys/Codes
 - Personal phone calls, voice mail, emails
 - Work stations
 - Health & safety protocols in office

Human Resource Policies & Procedures

What should be in it?

- Leave & Other time off
 - Statutory Holidays
 - Annual Leave
 - Sick Leave (Personal Days)
 - Overtime & Lieu time – non-management employees
 - Overtime & lieu time – management employees
 - Family Medical leave
 - Time off without pay
 - Jury/witness duty
 - Bereavement leave
 - Pregnancy & Parental leave
 - Flex Time

Human Resource Policies & Procedures

- Work Place conduct, privacy & confidentiality
 - General Code of Conduct
 - Personnel Records Policy
 - Confidential information policy
 - Business ethics – Conflict of Interest
 - Workplace communications policy
 - Voice mail, email, internet access and computer files policy
 - Human Rights policy
 - Official Languages policy
 - Accessibility policy
 - Complaint procedures

Human Resource Policies & Procedures

What should be in it?

- Disciplinary Policies & Problem Resolution Procedure
 - Rules & regulations
 - Corrective Action
 - Grievances
 - Termination

For more information, visit:

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