Employment and labour law can be complex for foreign and domestic employers alike. Before becoming an employer in Canada, organizations must meet certain logistical requirements. Firstly, an employer must be registered with the Canada Revenue Agency, or Revenu Québec if the employee is based in Québec. Depending on the size of the payroll, an employer may also have to register with other provincial taxation authorities.

The applicable employment and labour laws are determined by the nature of the employer's business. The vast majority of employers are governed by provincial laws, and an employer operating in more than one province must comply with each province's legislation. Approximately 10 per cent of the Canadian workforce is governed by federal laws, such as the Canada Labour Code and the federal Employment Equity Act. Even if an employer is federally regulated, it must still conform to certain provincial laws related to matters such as workers' compensation.

While the laws are substantially similar across the country, there are important variations regarding minimum wage and hours, statutory leaves, vacation entitlements, entitlements upon termination, and health and safety. This adds significant complexity to managing a workforce in Canada.
The bulk of the discussion that follows assumes that the employer is non-unionized, as there are very different requirements imposed on the employer once a union and a collective agreement are in place. Some of these requirements are discussed later in this chapter under "Labour relations." In many cases, the collective agreement imposes its own regime, which replaces the statutory regimes discussed here.

1. **The contractual nature of the employment relationship**
2. **Termination of employment**
3. **Duty of confidentiality**
4. **Restrictive covenants**
5. **Legislation governing the employment relationship**
6. **Labour relations**
7. **Public health insurance**
8. **Workers’ compensation**
9. **Employment Insurance**
10. **The Québec Charter of the French Language**
11. **The "status" of workers**

### 1. The contractual nature of the employment relationship

Canadian employment law is based on the premise that the employment relationship is a contract. The applicable legislation will imply certain terms and, in the absence of written contractual terms, the courts and tribunals will imply a host of contractual obligations on both parties. The general law of contracts - such as offer and acceptance, duress, and frustration (outside of Québec) - also plays an important role in employment law.

While there are some narrow exceptions for certain industries and sectors, most employment contracts are assumed to be of indefinite duration and can only be terminated by specific events, such as:

- Resignation of the employee
- Termination for just cause
- Termination without cause
- Death
- Frustration of the employment relationship (outside of Québec)

Certain employees governed by federal, Québec and Nova Scotia laws enjoy significant
protection against termination without cause, which is not afforded to employees in other jurisdictions. These protections are outlined later in this chapter.

Limited-term contracts are often the exception to the norm and need to be established on the evidence. The best evidence is, of course, a written agreement. However, the courts have on occasion deduced that a term contract exists based on the parties' conduct, job titles and/or the wording in a job posting. Term contracts come to an end at a predetermined point in time or, in some cases, when a specific event or milestone is reached. Subject to certain statutory requirements, limited notice or other formalities are required upon the end of a term contract. Nonetheless, great care should be taken in drafting offers for this type of employment. One significant risk that employers face is the requirement to pay out the balance of the term in the event of an employee's early termination without cause. This can be avoided through a carefully drafted written agreement in most of the provinces, with the exception of the province of Québec.

2. Termination of employment

As previously stated, most employment relationships are considered to be of indefinite duration.

There is no "at will" employment in Canada - some courts have even found that "probationary" employees are entitled to a fair opportunity to demonstrate their competence. In most cases, in order to terminate employment without notice or compensation in lieu, the employer must prove just cause. There is a significant onus on the employer to provide compelling evidence. The vast majority of employer-initiated terminations will be without cause, and the employer will be required to provide working notice or monetary compensation in lieu of notice. Some provinces, however, provide accrued rights to employees in these situations.

a. Termination without cause

In most cases, an employee who is terminated without cause is entitled to notice of termination or pay in lieu of notice. However, as mentioned above, certain employees governed by federal, Québec or Nova Scotia laws have special protections against terminations without cause, of which employers in those jurisdictions need to be aware.

i. General

In general, an employee's entitlement to notice of termination is derived both from statute and the common law or civil law (i.e., "reasonable notice"). The applicable provincial and
federal employment statutes prescribe only the minimum period of notice or payment in lieu of notice that must be given to a dismissed employee. The parties are not permitted to "contract out" of the statutory minimums, and in some cases, to contract-out at all (Québec).

Statutory minimums usually range from one to eight weeks of notice. In Ontario, some employees are also entitled to an additional lump-sum payment known as "statutory severance pay," which ranges from five to 26 weeks of regular earnings.

There may be separate and additional obligations in situations involving the termination of a group of employees - including the obligation to provide additional notice, and the obligation to provide advance written notice to a specific government department. These situations are often referred to as collective dismissals.

It is a common and serious mistake to assume that the statutory minimums are the employer's only obligations in the event of a termination without cause. Employees also have rights under common law or civil law (Québec).

In the absence of a contractual stipulation to the contrary, an employer will routinely be obliged by judges to provide far greater notice periods under common law or civil law than those prescribed by the applicable statute. Factors that the courts consider in determining what constitutes reasonable notice include:

- Years of service
- Seniority within the organization
- Salary and other compensation
- Employee's chances of finding similar, suitable alternative employment
- Employee's age
- The character of the work the employee was engaged in
- Employee's health
- Employee's education, experience and expertise
- Promises of job security, even if not enforceable at law
- Whether the employee was enticed from secure employment

There have been cases where employees with long-term service have been awarded more than 24 months of notice, or compensation in lieu of notice. In general, if the employee is successful in finding other employment within that time, the earnings from the new
employment will be deducted from the compensation payable by the employer. However, these "mitigation earnings" do not reduce the employer's obligation to provide the minimum statutory requirements of pay in lieu of notice and, in Ontario, severance pay. An employee's failure to act reasonably in terms of their efforts to mitigate can reduce the damages payable by the employer.

Provincially regulated employees outside of Québec can contract out of the common law obligation to provide reasonable notice. However, the contract cannot and should not make any effort to exclude the statutory minimum notice or severance pay. Where a contract does not comply with the minimum standards of the applicable statute, the offending provision will be considered void. The courts will not simply impose the minimum statutory notice, but will award pay in lieu of the common law "reasonable notice," which is almost always significantly greater than the notice period or pay in lieu that the employer intended.

ii. Québec
The Civil Code of Québec specifically provides that employees may not contractually waive in advance their right to obtain a reasonable notice of termination, or damages in instances where the manner of "resiliation" (the Civil Code word for termination) is abusive. Therefore, it is important that a contractual termination clause reflects the prevailing norms in the jurisprudence regarding what is a fair, reasonable and appropriate notice of termination pursuant to civil law.

It should be noted that in Québec, an employee who has at least two years of uninterrupted service (with the same employer) and who believes that he or she was dismissed without just and sufficient cause can challenge the employer's decision. The employee may apply to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (Québec's provincial labour standards board) in order to seek reinstatement, monetary compensation, an indemnity in lieu of reinstatement or even damages and punitive damages.

Therefore, when employees have more than two years of uninterrupted service, an employer needs just and sufficient cause to terminate their employment - or it must be able to demonstrate that the termination was a result of a genuine restructuring, such as an overall reduction in force.

ii. Nova Scotia
In Nova Scotia, an employee with 10 or more years of service may seek reinstatement or damages in lieu of notice through the Nova Scotia Labour Standards Tribunal. To defend
such an order, the employer must prove that it had good reason or just cause for the termination. The Tribunal has the power to order reinstatement with back wages, or an appropriate alternate remedy if the employee does not wish to return to work. The employer can attempt to avoid reinstatement - but not compensation for reasonable notice - by proving that the termination was related to a genuine restructuring, such as downsizing or plant closure.

v. Federally regulated employers

Federally regulated employers - such as banks, interprovincial trucking companies and airlines - are governed by the Canada Labour Code. Non-managerial employees with 12 months of service may challenge their termination and seek reinstatement from the Canada Labour Board, or seek damages in lieu. The onus is on the employer to establish just cause for the dismissal.

The Canada Labour Board has established significant case law, which it will consider in its review of the employee’s job functions and role in the organization to determine whether an employee was managerial. Job titles are not determinative of the issue. Many mid-level managers would not be considered to be true managers for the purposes of the Canada Labour Code.

b. Termination with cause

If an employer wishes to terminate an employee for misconduct without providing notice or compensation in lieu, the employer must establish just cause. In the courts and tribunals in Canada, this is a difficult burden.

Effectively, the employer must establish that the employee’s conduct amounted to a repudiation of the employment contract. Examples of just cause include:

- Serious acts of dishonesty, fraud or theft
- Gross misconduct, such as violence or harassment
- Breach of the duty of confidentiality
- Persistent neglect of duties
- Gross insubordination

Whether conduct amounts to just cause will be determined in the context of the employee's period of service and overall work record. In general, it is extremely difficult to terminate a long-service employee for just cause, even where they engage in serious misconduct. While employers may rely upon "after acquired cause" they may not rely upon cause known at the
time of the termination unless the employer purports to terminate for such cause.

There is no such thing as "near cause" or "diminished notice" and so just cause really is an all-or-nothing proposition.

c. Resignation

Employees may resign their employment. While the law implies a duty to provide reasonable notice, there are very few cases where an employer has been able to obtain redress from the courts or tribunals due to inadequate notice. These cases usually involve highly placed executives or professionals, and are often coupled with serious misconduct - such as theft of a corporate opportunity, flagrant solicitation of clients or misappropriation of employer trade secrets.

d. Resignation by employee due to constructive dismissal

In certain cases, employees may resign on the basis that the employer has made unilateral and fundamental changes to an important aspect of the employment relationship - referred to as "constructive dismissal." Examples of constructive dismissal include a significant reduction in pay, changes to the structure of compensation, a relocation outside of the normal commuting area or a demotion in the corporate hierarchy (even if pay and job title are maintained). In some cases, employees have successfully argued that workplace harassment or discrimination constitute constructive dismissal on the basis that an implied term of the employment agreement is that the employee would not be required to work in a toxic work environment.

An employee who establishes constructive dismissal is able to sue for damages equivalent to the notice the employer would have had to pay upon termination without cause.

Employers contemplating significant changes to an employment relationship should implement strategies to avoid a claim of constructive dismissal, including providing advance notice of any changes. Written contracts of employment can be used to preserve an employer's right to implement certain types of changes that would otherwise be considered a constructive dismissal.

3. Duty of confidentiality

All employees have an implied legal obligation to keep secret the confidential information of their employers. However, it is prudent to have a written agreement determining what the employer
considers to be confidential information, and to implement procedures to maintain the confidentiality of sensitive information. Courts are prepared to enforce the duty of confidentiality with an injunction.

4. Restrictive covenants

Employers often wish to implement post-termination restrictions on employees' business activities. These clauses are usually divided into two categories: non-solicitation and non-competition clauses. The general rule is that any restrictive covenant:

- Must be limited to what is strictly necessary to protect the employer's legitimate interests
- Must be reasonable
- Cannot be contrary to public policy

According to Canadian law, there is a strong public-policy interest in permitting individuals to work freely in the market. Therefore, courts are very reluctant to enforce restrictive covenants that they deem unreasonable. Courts typically examine reasonableness in terms of duration, scope of behaviour or activities and geographic limits. The clause must be clear and precise. Courts will generally not "blue-pencil" or redact unenforceable clauses in order to make them enforceable, nor will they "read them down."

Non-solicitation clauses limit the employee's ability to solicit customers or other employees. Although the courts generally enforce well-drafted non-solicitation clauses, care must be used to ensure that the duration and scope of the clause are not excessive.

Non-competition provisions are enforceable only in exceptional cases. The onus is on the employer to establish why the non-competition clause is necessary, and why a non-solicitation clause is inadequate to protect its interests. Different rules apply, however, if the non-competition clause is part of an acquisition of the employee's ownership interest, or where it can be established that the purchaser required the clause in order to preserve the value of the assets or shares purchased.

In certain cases, courts will enforce a restrictive covenant with an injunction. Legal advice should be obtained regarding the proper drafting of confidentiality, non-solicitation and non-competition clauses.

5. Legislation governing the employment relationship
The Canadian workforce is heavily regulated. As previously discussed, depending on the industry and type of business, an employer may be regulated federally, provincially or a mix of both. The following are the main types of legislation that exist in virtually every jurisdiction.

a. Employment or labour standards

All jurisdictions provide minimum standards for the terms of employment. Employment standards can be quite complex and the legislation can often be varied by obscure regulations that apply to specific industries. As well, certain exemptions apply to some types of employees, such as managers or professionals, regardless of industry. The specific provisions vary by jurisdiction, but can be verified by checking governmental Internet resources or calling the appropriate department's information line.

Typically, to avoid coercion, employees are not permitted to contract out of the minimum standards through an agreement with the employer. However, if there is a compelling business reason, it is possible to obtain exemptions to some minimum requirements by applying to the appropriate ministry or department.

i. Hours of work

The statutes will typically provide for maximum hours per day and per week, as well as mandatory intervals between shifts.

ii. Overtime pay

The legislation will typically set a threshold of hours per week beyond which employees will be entitled to premium pay (typically 1.5 times the regular rate). The threshold varies across the country, but typically ranges between 40 and 44 hours per week.

The legislation in some provinces establishes methods to "average" overtime over more than one week in order to permit different types of scheduling. Time off in lieu of overtime pay, at the employee's request, is generally permitted.

iii. Public or statutory holidays

Canadians generally enjoy at least eight statutory holidays: New Year's Day, Good Friday (Friday before Easter Sunday), Victoria Day (last Monday before May 25), Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Christmas Day (December 25) and Boxing Day (December 26).
Remembrance Day (November 11) and the third Monday in February are holidays that are observed in many provinces. The first Monday in August is often observed as an additional holiday, although it is not a formal statutory holiday. In Québec, employees are also entitled to a paid holiday on June 24 (St. Jean Baptiste Day or Fête Nationale du Québec).

Businesses are typically required to be closed on statutory holidays, although many exceptions and exemptions exist. Employers usually have to pay a significant premium to employees who work on a statutory holiday.

v. **Vacation**

Employment standards laws generally prescribe minimum paid vacation entitlements. The minimum vacation entitlement is typically two weeks per year, rising to three weeks in several provinces after five years of employment. The employer may determine when employees take vacation.

The calculation of vacation pay is technical and can lead to unexpected liability for employers. Vacation pay is often a percentage of all earnings, including commissions and bonuses.

v. **Pregnancy/parental leave**

Most pregnant employees are entitled to 16 or 18 weeks of unpaid leave, depending on the jurisdiction. An employer cannot force or require an employee to commence their pregnancy leave early.

New parents - including the birth mother - and adoptive parents are entitled to take unpaid parental leave of 32 to 62 weeks, depending on the jurisdiction.

At the end of the pregnancy and/or parental leave, the employee is entitled to be reinstated to active employment. The rules regarding the nature of reinstatement differ slightly across jurisdictions. In some provinces, the requirement is to reinstate to the same job if it still exists, or to a comparable job if it no longer exists. In others, it is to a comparable position.

vi. **Emergency leave/family responsibility/bereavement**

Most jurisdictions permit employees to take a certain number of unpaid days off for personal reasons. The permitted reasons and duration differ in each jurisdiction. In some cases, leave due to the death of a family member is dealt with under a specific bereavement-leave section, while in other jurisdictions the statute establishes a variety of reasons that allow an
employee to take days off. These reasons include the death of a family member, but can also include the illness or injury of the employee or immediate family members, a household crisis, or unexpected interruptions in childcare plans.

ii. **Family medical leave/compassionate care leave**
Employees who need time off to take care of a seriously ill or dying relative are entitled to leave without pay ranging from eight to 27 weeks, depending on the jurisdiction. Employees may be entitled to benefits under the Employment Insurance Act during this period.

ii. **Military/reservist leave**
All jurisdictions provide job-protected leave for members of the reserve forces who are called into active duty or are required to participate in reservist training.

x. **Sick leave/family caregiver leave and critically ill child care leave**
Depending on the jurisdiction, there may be specific job protected leave granted to employees who need to take time off due to a serious personal illness or the serious illness of a child.

x. **Other leaves**
Other unpaid leaves are granted for circumstances such as organ donation, crime-related child death and disappearance, and family weddings (Québec).

xi. **Jury duty**
All jurisdictions provide job protection in order to enable an employee to serve on a jury. In addition, many jurisdictions will fine an employer significant amounts for not permitting an employee to serve on a jury.

xii. **Equal pay for equal work**
Canadian employers are prohibited from differentiating between male and female employees who perform substantially the same kind of work in the same establishment, requiring essentially the same skill, effort and responsibility. In such circumstances, different rates of pay are prohibited, except where differences are attributable to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any factor other than sex. The courts and tribunals have established that titles are not determinative and that careful regard should be paid to the actual duties.

b. **Pay equity**
Québec, Ontario and federally regulated employers are subject to pay-equity obligations. The scope of obligations differs with the size of the workforce. The legislation is an effort to redress the historic gender gap in compensation. In essence, it seeks to ensure that there is equal pay for work of equal value. It requires employers to analyze jobs across their organization, review them for value (based on a number of statutory criteria) and examine whether there are compensation disparities between male-dominated and female-dominated jobs within the organization. Where female jobs are underpaid, the legislation prescribes a schedule for pay increments that have to be implemented to redress the balance. Although other jurisdictions have similar legislation, the scope is limited to the public sector.

c. Human rights

Human rights codes in every jurisdiction prohibit discriminatory practices in the context of employment. Generally, these codes provide that every person has a right to equal treatment in their employment without discrimination based upon race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (e.g., a conviction for which a pardon has been granted), marital status, same-sex partnership status, family status or disability. Discrimination on the basis of sex includes pregnancy. Virtually all jurisdictions have recently amended their human rights codes to make discrimination on the basis of gender identity and gender expression illegal. This amendment is targeted at the transgendered population.

Employees also have a right to freedom from harassment in the workplace based upon any of the prohibited grounds of discrimination - whether at the instance of the employer, an agent of the employer or by another employee.

While mandatory retirement policies were once common across Canada, they are now increasingly treated as a form of age-related discrimination. Employers are required to establish a bona fide occupational reason why an employee must retire at a certain age, as opposed to undergoing individualized fitness or aptitude tests. There is no legislated mandatory retirement age. In large part, however, pensions are structured around a presumed retirement age of 65, and it may be financially disadvantageous for an employee not to start retirement at that age.

Normally employers are required to accommodate employees to the point of "undue hardship" where a job requirement brings into play a prohibited ground of discrimination. One example where the jurisprudence is evolving is the area of family care obligations and the duty to accommodate on the basis of "family status."

Employers are expected to be vigilant about any allegations of discrimination and harassment.
Where there are reasonable grounds to believe a concern exists, employers are expected to investigate fairly, promptly and competently. Depending on the results of the investigation, employers are required to implement appropriate remedial and corrective measures.

d. Employment equity

The federal Employment Equity Act provides for employment equity for women, Indigenous peoples, people with disabilities and members of visible minorities. It is designed to remove inequality in the workplace by eliminating systemic barriers facing historically disadvantaged groups. The Act applies to all federally regulated employers who employ 100 or more people. Employers must identify and remove offending policies and practices, and, in place of these policies, employers must institute positive policies and practices to achieve a proportionate representation of people from historically disadvantaged groups in their workforce.

Such employers must also file annual reports concerning the number of persons they employ and the number of persons they employ from designated groups, with a breakdown by occupational groups and salary ranges.

The Federal Contractors Program applies to suppliers of goods and services to the federal government that have 100 or more employees and are bidding on contracts worth $200,000 or more. It imposes on such private sector employers obligations to implement employment equity in the workplace. Federal contractors can be audited for compliance and, where the results are unsatisfactory, given a specific time period for remedying any gaps. Québec has also instituted the Québec Contractors Program, which is designed to promote the employment of women, visible and ethnic minorities, and Indigenous peoples.

e. Occupational health and safety

The provinces regulate workplace health and safety in Canada to ensure that employers provide a safe work environment. There are stringent rules requiring the posting of safety legislation, the existence and updating of written policies, the establishment of workplace safety committees, safety training, the use of personal protective equipment, and the handling of hazardous materials. Employers, directors, managers, supervisors and workers all share obligations to maintain a safe workplace. The failure to maintain a safe workplace can lead to both civil, penal and criminal consequences.

Many jurisdictions in Canada have tried to deal with workplace violence in a proactive manner. Depending on the jurisdiction and industry, an employer may have obligations to create and
conduct risk assessments, institute and update policies, train employees, and introduce physical and electronic safety measures that help protect the workforce from violence in the workplace. Where there are complaints of workplace violence, employers generally have a duty to conduct a prompt, fair and competent investigation. Furthermore, in Ontario, where there are reasonable grounds to believe that an employee is at risk due to domestic violence - such as stalking from a domestic partner - the employer has an obligation to take active steps to help prevent the employee from becoming a victim.

Employers in Québec and Saskatchewan have specific obligations with respect to the prevention of psychological harassment in the workplace. In general, the laws aim to prevent egregious bullying in the workplace and do not protect against the normal psychological stresses in the workplace such as performance management, and scrutiny by managers and supervisors.

Ontario, Alberta and British Columbia have enacted specific provisions regarding workplace bullying and harassment in their occupational health and safety legislation. Employers have a specific obligation to establish anti-harassment policies, train their employees about the law and investigate allegations of workplace harassment. Ontario and Alberta have also recently made changes to its occupational health and safety legislation with a view to preventing harassment and sexual harassment in the workplace.

Under the Criminal Code, which is applicable throughout Canada, directors and executives may face criminal prosecution for negligence that leads to serious injury or death of an employee or member of the public because of unsafe workplace practices. Under the various occupational health and safety laws across the country, there are significant fines and penalties if an employer fails to comply with applicable legislation. Fines can exceed $500,000 per charge where death or serious injury occurs, and multiple charges can be brought. Fines in the range of $100,000 to $150,000 are common for less serious violations. Recent criminal cases with outstanding circumstances have even sentenced directors, executives and managers of companies to years of imprisonment, declaring them culpable of criminal negligence leading to the death of an employee.

f. Canada/Québec pension plan

The Canada Pension Plan - or, in Québec, the Québec Pension Plan - is administered by the government and requires contributions from both employers and employees at prescribed rates. Employers are required to deduct a percentage of an employee's pensionable earnings and remit that amount to the federal government together with an equal amount contributed by the
In 2016, the contribution rate - except in Québec - is currently 4.95 per cent of annual income (capped at $54,900), to a maximum of $2,544.30 for both the employer and employee. The contribution rates in Québec are slightly higher at 5.4 percent to a maximum of $2,797.20 for each of the employer and employee.

g. Private pensions

There is no statutory obligation on an employer to implement a private pension plan for its employees, except in Québec, where employers must now provide employees with the opportunity to contribute to a private pension plan, without the obligation to contribute themselves. Federal and provincial laws regulate the terms, conditions and administration of private pensions.

6. Labour relations

Canadian law recognizes the right of employees to unionize, but does not impose a union or work council on employers. Each jurisdiction has comprehensive legislation with respect to the right and process through which workers can unionize. While the legislation recognizes an employer's right to fair comment during a unionization drive, the legislation precludes "unfair labour practices," such as coercion, intimidation, threats, promises or undue influences. The labour boards closely scrutinize any employer communication during a certification drive. The line between fair comment and unfair labour practice is often difficult to ascertain.

Once an application for certification is granted, legislation imposes a temporary "freeze" preserving the status quo while the collective agreement is negotiated. Once a union is certified, the employer is required to negotiate a collective agreement that governs the workplace terms. Many jurisdictions also have a process by which the parties can be ordered to binding arbitration of the first collective agreement post-certification.

The legislation also provides for grievance arbitration of workplace disputes, and provides protections designed to preserve the union's right to represent the workers in the bargaining unit. For example, successor-rights provisions are designed to ensure that bargaining rights survive the sale or divestiture of a business.

The Canada Industrial Relations Board, the provincial labour relations boards and various arbitration panels have developed a sophisticated body of case law interpreting both federal
and provincial labour laws. Canadian labour boards and arbitrators have broad remedial powers. Although the courts have the power to review the decisions of the labour boards, considerable deference is given to their specialized expertise.

7. Public health insurance

Canada has a public health-care system that provides almost all critical medical services to almost all legal residents of Canada. The public health care system - often referred to as "medicare" - provides most health care services supplied by physicians, but does not cover supplementary health-related costs such as prescription drugs and routine dental visits. While there is no obligation to do so, because of the gaps in the public health-care system, many employers provide their employees with private supplemental health coverage, the particulars of which can vary greatly.

If the employer chooses to offer supplemental health-care coverage, employers cannot discriminate in the scope of the coverage. For example, spousal plans must also cover common-law and same-sex spouses.

While the public health-care system is largely paid for through general revenues, several provinces, including Ontario, British Columbia and Québec, have imposed a payroll tax on employers to help defray the cost of the medicare system.

New Canadian residents, including employees transferred to Canada, are not covered by public health insurance for the first three months of their stay in Canada. As such, special health insurance must be purchased.

8. Workers' compensation

a. Introduction

Workers' compensation is a system of income replacement benefits payable to a worker who is injured or develops an illness as a result of performing their job duties. The scheme is intended to relieve the injured worker of the delay, cost and difficulty of suing an employer in a civil action for negligence in the workplace. Compensation is to be provided expeditiously and without proof of fault. Assessments are levied upon employers, which are then gathered into a common fund from which benefits are paid to workers. In turn, employers are shielded from the risk of lawsuits and damages payable to injured or ill workers.
Administration and adjudication are carried out by a statutory corporation known in most provinces as the Workers’ Compensation Board, but known as the Workplace Safety and Insurance Board in Ontario and the Commission des normes, de l’équité, de la santé et de la sécurité du travail in Québec.

b. Determination of employer contributions

The legislation governing workers’ compensation is provincial in scope, so the particulars of each statute vary from province to province. However, the statutes generally apply automatically, and the coverage is compulsory for most employers. If coverage is mandatory, an employer must register immediately with the appropriate authority and commence paying a certain percentage of its payroll as the employer’s premium. Premiums vary greatly, depending on the nature of the employer’s industry.

Where an industry is excluded from the compulsory coverage, it may be possible for an employer to opt in. The employer may apply to the appropriate board for coverage of the business or undertaking.

Rates are usually established by examining the employer’s industry group, and then adjustments are made based upon claims experience. Surcharges arising from the value of actual claims can be significant. Employers are prohibited from seeking any indemnity or contributions from workers for assessments or other liabilities arising under the applicable legislation.

c. Benefits

Injured workers are entitled to income replacement if the injury results in an inability to work. In addition, benefits will cover health-care needs arising from the injury, such as prescription drugs, assistive devices and therapy. Workers may also be entitled to a lump-sum amount if the injury results in a permanent impairment.

Where reintegration into the former workplace is not feasible due to the nature of the injury and any permanent impairment, an employee may also qualify for job retraining.

d. Duty to accommodate rehabilitated workers

The legislation generally requires an employer to re-employ an injured worker in the pre-injury position or to other suitable employment. This obligation is intended to reduce the accident costs arising from workers’ compensation claims, as well as to encourage reintegration of
injured but rehabilitated workers into the workplace.

9. Employment Insurance

The federal government, through Human Resources and Skills Development Canada, administers a program called Employment Insurance (EI), which provides payments for a period of time to workers who experience an interruption in their earnings for various reasons - including pregnancy or parental leave, lengthy illness and involuntary job loss for reasons other than their own misconduct.

An employee will not be entitled to benefits if he or she resigned without good reason or was fired for cause. The purpose of the program is to cushion the blow of a loss of earnings and, in the case of involuntary job loss, encourage the worker to search for new employment. The program is funded by premiums collected from both employees and employers through a payroll deduction made by the employer and submitted to the government.

Almost all full-time employees, as well as part-time and casual employees, are covered under the EI program, provided they meet specified minimum requirements. In some situations, self-employed workers may be eligible for EI special benefits.

Québec employees must apply to the Québec Parental Insurance Plan (QPIP), which provides more generous benefits to new parents than those given by EI. One interesting feature of the QPIP is that it provides maternity, paternity and parental leave, the latter of which can be divided between the two new parents at their discretion.

10. The Québec Charter of the French Language

This legislation is designed to make French the default language of work in Québec. It requires that written communications to staff in general - e.g., employee handbooks, benefit booklets, memos, etc. - be in French only, or at least bilingual (French and English). Employers must be careful to comply with the requirements of this legislation in terms of workplace intranet and computer-software resources. Verbal communication should also be in French. Accordingly, such policies and practices related to telephone support and voicemail systems must comply with the legislation.

Communications with a specific employee, such as offers of employment, disciplinary memos, and notices of promotions or salary increases, should also be in French - unless the employee specifically requests that they be in English. If so, there should be a written directive from the
employee that communications are to be made in English.

It is illegal to make knowledge of any language other than French a job requirement, unless the employer can establish that such language skills are truly required.

11. The "status" of workers

There are risks associated with treating any worker (even a part-time worker) as an independent contractor as opposed to an employee. Historically, the determination of whether a worker is an employee or an independent contractor is not always easy. Courts have applied a number of tests, though the proposition remains that there is no conclusive way to determine whether a person is an employee or an independent contractor. Ultimately a court will engage in a search for the "total relationship of the parties," and the parties' own categorization of the relationship will not be determinative.

The court will consider a number of factors, including the level of control over the worker's activities, ownership of equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks. This is, of course, a non-exhaustive list and other cases involve an examination of, for example, the degree of management supervision and responsibility, hours of work, method of payment, and exclusivity of the relationship.

Recent case law has developed a category of worker referred to as a "dependent contractor." Providing most or all of their service to one business, these workers are not employees, but have been awarded the right to reasonable notice of termination in the absence of just cause.

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Although Canada’s legal system may be familiar to many foreign investors and companies, it has a number of unique aspects that may surprise you.

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