



US Employers Hiring In Canada – The Basics Part I: Good Bye Employment At-Will; Hello Entitlements

Insights

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Fisher Phillips' International Employment Practice Group routinely counsels employers that are planning to move into the Canadian employment market (or have done so already without the requisite due diligence). In these situations, we often find that even seasoned US HR Professionals are taken aback by the stark differences between the employment law regimes in the US and Canada. Accordingly, in this blog series, we will address at a high level some of the basic differences that employers should be aware of before hiring employees in Canada.

One of the most basic differences between Canada and the US is that Canadian employees are generally entitled to far more in the way of benefits and protections than their US counterparts. One glaring example is employment at-will – it does not exist in Canada (or virtually anywhere outside of the US, for that matter). Rather, all Canadian employees operate under the terms of an employment contract, whether reduced to a formal writing (typically the preferred method) or as implied by common law (the Canadian employment contract will be the featured topic of our next blog). Further, minimum entitlements to benefits such as paid time off and notice in advance of termination without cause or payment in lieu of notice, are all defined by provincial statutes, such as Ontario's Employment Standards Act, 2000 (the "ESA"). By way of example, in Ontario, once an employee is with a company for twelve months, he or she is entitled to two weeks of vacation time and the company generally has an affirmative obligation to ensure that the employee actually uses the entire two weeks. That same employee is also generally entitled to two weeks of notice, or payment in lieu of notice, and other statutory benefits, before his or her employment may be lawfully terminated without cause (and "cause", as defined by courts throughout Canada is a lofty bar).

Based on the foregoing, and despite other perceived similarities between the US and Canada, even a well-drafted set of US-centric employment policies will need to be reviewed and revamped before it would be appropriate to apply the policies to Canadian employees. Indeed, many garden-variety US handbook provisions are wholly inappropriate under Canadian employment law. Accordingly, we regularly work with local counsel throughout Canada to prepare Canadian handbooks and addendums for our US clients. We also prepare locally appropriate employment agreements but to learn more about that issue in Canada, you will have to stay tuned for the next blog in this series!

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