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Toto, We're Not in Kansas

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Alberta Foodservice Expo 2011
October 3, 2011



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Employment Agreements

Alberta Foodservice Expo 2011

Len Polsky

October 3, 2011

Today's Topics:

- An employment contract is born.
- Must-Have Provisions.
- Employment Standards Code.
- Avoiding constructive dismissal.
- Termination.

An Employment Contract is Born

Importance of employment contracts:

- Verbal or written.
- Written agreement protects both sides.
- Importance highlighted in recessionary times when mitigation difficult and termination more likely.

An Employment Contract is Born

Employment contracts don't exist in a vacuum:

- Terms implied by statute, case law, industry standards.
 - *Employment Standards Code.*
 - Reasonable notice of termination.
- Consider history of relationship between the parties.
- Employee benefits unilaterally conferred are hard to take away.

An Employment Contract is Born

Drafting suggestions:

- Letter format or formal agreement.
- Simple language is always good.
- Use a checklist for must-have provisions.
- Non-competition, non-solicitation clauses – use sparingly.
- Avoid vague post-employment restrictions.
 - Example: ‘Don’t make negative comments’
- Avoid step-down clauses.

Eight Must-Have Provisions

Contract to cover:

- Scope of duties. Job description.
- Length of engagement
 - Fixed term?
 - Open-ended?
- Compensation
 - Fixed salary?
 - Commissions?
 - Bonuses & perqs
- Required notice of termination/resignation.

Eight Must-Have Provisions

- Probation
 - If > 3 months, pay in lieu required under *Employment Standards Code*
- Non-competition/Non-solicitation.
- Reserve right to amend.
 - If employee – job duties, location of work, title, salary
 - If employer – compensation, services required
- Independent legal advice before signing.

Key principles:

- **Cannot contract out of minimum standards:**
 - *Code's minimum standards cannot be avoided.*
 - “An agreement that this Act does not apply is *against public policy and void.*”

Minimum requirements:

- *Minimum wage.*
- *Notice of termination or pay in lieu.*
- Hours of work.
- Rest periods.
- Time off.
- Overtime pay or time off in lieu.
- Statutory holidays.
- Minimum vacations.
- Maternity/paternity leave.

Minimum wage:

- General minimum wage:\$9.40/hour
- Workers who serve alcohol as part of their regular job: \$9.05/hour

Employment Standards Code

Termination:

Length of Employment	Amount of Notice Required
Less than 3 months	No notice required
3 months or more but less than 2 years	1 week
2 years or more but less than 4 years	2 weeks
4 years or more but less than 6 years	4 weeks
6 years or more but less than 8 years	5 weeks
8 years or more but less than 10 years	6 weeks
10 years or more	8 weeks

Deemed contractual provisions:

- Employment deemed continuous when business sold, transferred or merged.
- Employment deemed continuous if < 3 mos. between periods of employment with same employer.
- Layoffs: No termination if employee recalled within 60 days.

Constructive dismissal:

- Employment continues.
- Change in fundamental term of employment.
- Examples:
 - Amending commission structure, bonuses, benefits, salary.
 - Changes to job duties, responsibilities, reporting structure.

Constructive Dismissal

Reducing pay and benefits:

- Evaluate change relative to total compensation package.
 - <5% likely *not* constructive dismissal.
 - 10% - 15% likely constructive dismissal.
 - > 20% *very likely* constructive dismissal.
- Anything over 10% fraught with risk.
- More flexibility if doesn't affect employee's wallet.

Constructive Dismissal

Use employment agreement to avoid constructive dismissal:

- Preserve right to amend certain terms.
- Provide flexibility so court less inclined to find constructive dismissal.
- Agreement on termination damages can avoid protracted expensive litigation.

Conclusion

- **Clearly drafted employment contract can avoid lawsuits and costs down the road.**
- **Employment relationships usually start out on positive note.**
- **Often end on negative note unless rights and obligations clearly defined.**

The End

Thank you!



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Employing Foreign Workers: *Immigration 101 (and 202)*

Alberta Foodservice Expo

Henry Chan

October 3, 2011

Overview:

- Immigration 101: Hiring Basics
- Immigration 202: Retaining TFW's via Permanent Residency
- Recent updates to Canada's TFW Program

- What does a TFW need to work in Canada?
- 1) Labour Market Opinion (LMO)
 - Application to Service Canada
 - Six assessment criteria
 - Advertising
 - Impact on the Canadian labour market
 - Wages and working conditions
 - NOC Code (National Occupation Classification)
 - Skilled Positions (NOC A/B/0)

“Pilot Project” for NOC C and D

- Occupations that require lower levels of formal training
 - High school diploma
 - Maximum of two years of job-specific training
- Also called “low skill” or “semi-skill”
- Same assessment criteria apply
- Housing requirement
- Transportation costs
- Health insurance
- Prescribed employment contract

Employment Contract (NOC C and D)

- Signed contract must be included with LMO application
- Contract includes:
 - Job description
 - Terms of employment (hours, vacation)
 - Wages
 - Transportation costs
 - Housing
 - Health Insurance
 - Termination

- 2) Work permit applications
 - Submitted within versus outside of Canada
- Temporary Resident Visa (TRV)
- LMO exempt categories
 - NAFTA
 - Spousal open work permit
 - Working holiday/SWAP

- Mechanics of extending a work permit
 - LMO
 - Advertising
 - Execute another employment contract
 - Timing and Implied Status
 - Allows an employee to continue working past the expiry of their work permit if an extension application has been submitted but not yet approved
 - Employee must remain in Canada
 - TRV must also be extended
 - Restoration of status (90-day window)

- The Next Step: Permanent Residency
 - Alberta Immigrant Nominee Program (AINP)
 - Employer Driven Stream
 - Skilled worker category (NOC A, B, and 0)
 - Semi-skilled category (NOC C and D)
 - Skilled: additional criteria
 - Foodservice Industry: Employer Compliance Declaration
 - Semi-skilled: Eligible Industries:
 - Food and Beverage Processing Industry
 - Hotel and Lodging Industry
 - Foodservices Industry (Pilot Project)

Permanent Residency continued

- Food and Beverage Processing Industry
 - Food and Beverage Production Worker (NOC 9617)
 - Bakery Production Worker (NOC 9617)
 - Food and Beverage Processing Equipment Cleaner (NOC 9617)
 - Industrial Butchers and Meat Cutters (NOC 9462)
 - Poultry Production Workers (NOC 9462)
- Hotel and Lodging Industry
 - Food and Beverage Servers (NOC 6453)
 - Room Attendants (NOC 6661)
 - Front Desk Agent/Clerk (NOC 6435)
- Foodservices Industry (Pilot Project)
 - Food and Beverage Servers (NOC 6453)
 - Food Counter Attendants (NOC 6641)
 - Kitchen Helpers (NOC 6641)

Permanent Residency continued

- Semi-Skilled: Industry Specific Criteria
 - Language and work experience requirements
 - Maximum allocations
 - Quotas
- Compulsory and Optional Trades (chefs, cooks, and line cooks)
 - Certification requirements
- Other options for Permanent Residency
 - Family/Spousal sponsorship
 - Canadian Experience Class

Recent Immigration Law Changes

- Effective April 1, 2011
- Restricts the ability to employ TFW's
 - Four-year cumulative cap
 - Increased scrutiny of job offers
- Employer compliance and monitoring
 - Two-year prohibition for failing to comply with a job offer
 - A list of offenders will be published on the Citizenship and Immigration Canada website
- Assessing any current TFW's and how these changes may affect them

How we can assist

How an immigration lawyer can help:

- Will not get you preferential treatment
- Will not make an ineligible applicant become eligible
- Will answer questions
- Will expedite timing
- Will advocate on behalf of the applicant
 - Persuasiveness
 - Knowing what to include and what not to include in your application

Questions?



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A Quick Primer on Commercial Host Liability

Heather Sanderson

Alberta Food Service Expo

October 3, 2011

General Principle

Those who make a profit from the sale of alcohol
owe a duty of care to their patrons to
monitor consumption while on the premises and
take reasonable steps to ensure that their patrons
arrive home safely
without harm to themselves or others.

Tired of the warnings of liability?



Santa Fe, N.M., December 2010



Follow- up Investigation



Key facts

- 26 year-old Kaylene Holmes and Jennifer Belvin arrive at Cowgirls by car.
- An open bottle of vodka was in Holmes' trunk.
- Holmes' passenger and friend, Jennifer Belvin, admitted to police that both of them had been smoking marijuana throughout the day.
- Holmes and Belvin were over-served by a Bartender at Cowgirls Bar.

Key facts continued

- Holmes and Belvin left Cowgirls intoxicated.
- Doorman at Cowgirls tried to stop Holmes from driving by offering to get them a cab.
- Doorman told Holmes and Belvin that if they refused the cab he was calling the cops. They told him to call the cops and drove away.
- The Cowgirls doorman called 911.

Key facts continued

- Holmes drove the wrong way down Interstate 25 and slammed head on into an oncoming ambulance.
- Holmes was killed outright. Holmes' passenger and the ambulance driver were injured.
- The local press is having a field day with the story

Still tired of the warnings?



Alberta Gaming & Liquor Act, s. 75.1

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Duty to intoxicated person

75.1 No liquor licensee may

- (a) sell or provide liquor in the licensed premises to a person apparently intoxicated by liquor or a drug,
- (b) permit a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises, or
- (c) permit a person apparently intoxicated by liquor or a drug to take part in a gaming activity or provincial lottery that is conducted in the licensed premises.

2002 c15 s19

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Assess for intoxication on arrival
Monitor while service is in progress
Assess for intoxication on departure

The Warning signs

- Leaving with intoxicated friends
- Driving when intoxicated

- *Leaves in sober company*
- *Leaves in a cab*

How Bad Can it Get?

- *Bars can be held 5% to 80% liable, depending on the facts*

Still Tired?



Go Home Safely!



Questions?

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