



TOP 10 WAYS

If your Human Resources department is facing big challenges, we can help. From single terminations to large-scale downsizing, collective bargaining to grievances and arbitrations, we have handled it all.

However, if the only time you call your Labour/Employment lawyer is when you are in crisis, you are missing some key opportunities to streamline your business, strengthen your team and, quite frankly, save money.



1 Review your contractual termination clauses

A termination clause for non-union staff is like fire insurance on your home – you buy it and hope you never need it, but you're very grateful to have it if the house does burn down.

Take a look at your termination clauses to ensure they are still enforceable. The law changes, and what used to be enforceable may no longer be so. With a properly drafted termination clause, you and your employees will have pre-agreed to the notice or severance required to break up. Not only does this bring clarity to all parties and make for a more amicable parting, it also reduces your overall severance expenses.

2 Reduce High Vacation Accruals

High vacation accruals mean you are carrying a significant potential liability on your balance sheet, exposing you to payouts when employees depart for any reason.

You can mandate caps on how much vacation can be carried over, as well as implement right-sizing programs to help over-accrued staff get back in the black. Not only will you downsize a potential financial risk, but your staff will likely be compelled to take their vacation, increasing productivity and improving your workplace atmosphere with more rested employees.

3 Stop Paying Out Unused Sick Time

Unlike accrued vacation, you are not legally obligated to pay out unused sick time, and we recommend against doing so. These types of programs often result in sick staff coming to work to preserve “perfect attendance” rewards and payouts, resulting in longer recovery times, the spread of infections in the workplace and overall decreased productivity.



4 Stop Paying Absent Employee's Pension & Benefit Contributions

Employees go on leave for many reasons - maternity/parental, medical, WCB, apprenticeship training, and so forth. While on leave for any reason, an employer is entitled to require an employee to make reasonable arrangements to pay for his/her employee contributions - you do not have to start paying their contributions for them.

And, if handled appropriately, an employer is also entitled to conclude participation in those programs if the employee does not pay his/her contributions. Of course, this type of remedy must be approached with caution. However, we assure you it is achievable.

Consider this: We had a client that paid the employee benefit contributions (about \$130/month) for an employee on long-term disability for 14 years! The employee's cost alone was over \$25,200.00, and that was unnecessarily paid by the employer! And that brings us to our next issue - concluding employment for "frustration".

5 Conclude Employment for Frustration

When an employee has been on a medical leave for an extended period of time and there is little likelihood that the employee will return to work in the reasonably foreseeable future, the employer is often entitled to conclude the employee's employment for frustration. "Frustration" does not mean that the employer has become exasperated. Rather, frustration is a legal term that means through no fault of the employer or the employee, the employment contract can no longer be performed. On this basis, the employer is often able to conclude employment without notice or severance. You will also be released from your duty to accommodate that employee's return to work and can eliminate or permanently fill that position, resulting in many cost savings and efficiencies in your organization.

6 Actively Engage with Staff on Leave, Particularly Medical Leave

We see many employers that patiently sit and wait for employees to return from leave, particularly medical leave. Often out of fear of asking the "wrong" question, and misunderstandings about an employer's duty to accommodate, many employers take a "hands off" approach.

Knowing the questions to ask can help employees return to work more quickly. Furthermore, maintaining engagement with the employee while they are on leave dramatically increases the likelihood that they will return to work when able. Last but not least, active management of medical leaves in particular will help reduce your WCB or insurance premiums.



7 Strategically Set Probationary Periods & Use Them

Pursuant to the Alberta Employment Standards Code and with a properly worded employment agreement, a non-union employee can be terminated without notice or severance if employment is concluded within the first 3 months. Similar rules often exist for unionized staff in the Collective Agreement.

Missing this critical deadline - even one day after the 3-month anniversary - can be enough to trigger higher severance entitlements. Notwithstanding mentorship and coaching, if you believe the person is unlikely to meet expectations, early conclusion of their employment is often the best strategy. Which leads us back to our first point: ensure you have properly worded and enforceable termination clauses!

8 Learn How to Effectively Discuss Drugs & Alcohol in the Workplace

Drugs and alcohol in the workplace have been long-standing challenges for employers, and it's about to become even more challenging with medical marijuana use on the rise and the possible legalization of recreational marijuana.

We often see that the HR team is well trained to deal with these complex issues, but this may not translate into skills within the front-line managers. Whether or not you have a safety-sensitive workplace, we encourage you to help managers practice these skills. Preparation for these conversations will not only help to manage and decrease the significant legal risks but also help you establish a culture of safety and compassion. Who knows, you may even save a life!

9 Learn How to Effectively Discipline Employees

Quite often we work with employers who have meticulously recorded every infraction by an employee and wish to terminate for cause. However, they've never appropriately shared their concerns with the employee and therefore have never given them the chance to improve. Similarly, even when verbal warnings have been provided, the reality is that written warnings are the only useful tool to establish just cause, absent a very serious incident.

Learning how to have these difficult conversations as well as effectively write disciplinary letters and grievance replies is necessary to help get performance back on track but also, in a worst case scenario, cleanly conclude employment without litigation or arbitration.



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An Ounce of Prevention is Worth a Pound of Cure

When in doubt, call us! Whatever the issue may be, it is almost always less costly to be proactive than reactive.



Actions:

Before undertaking these changes, we encourage you to review your existing contracts, policies and collective agreements as applicable and, when needed, seek further legal advice.

At Brownlee, we take pride in helping our clients be proactive. Whether providing legal advice on a specific issue, or providing training and education in your workplace, we are here to help.

TO BOOK AN EDUCATION WORKSHOP ON THESE AND OTHER WAYS BROWNLEE CAN SAVE YOU MONEY, CONTACT US AT:



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