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ARE YOU IN COMPLIANCE?

Recently, the Ontario Ministry of Labour launched a newsletter, “What’s New”. While it is full of interesting information (please see **Downloadable Diamonds** for details), one thing stood out in its August 2010 edition. It was a listing of convictions for violations of the *Employment Standards Act*.

As a refresher, the Ministry of Labour has the ability to prosecute and fine employers and individuals for violations of the *Employment Standards Act*. As of July 14, 2010, the Ministry’s Employment Standards Officers can give a ticket worth \$295 for failure to comply with specific provisions of the *Employment Standards Act* (plus applicable costs and victim fine surcharges). The Ministry can also issue a summons to appear in court that can result in a \$500 fine. And let’s not forget that an individual can be fined up to \$50,000 plus up to 12 months in jail for violations of the *Act*, with a Corporation looking at a potential \$100,000 fine for the first offence, \$250,000 for the second offence, and \$500,000 for the third offence.



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USING PROBATIONARY PERIODS

Most employers have some form of probationary period for new employees. These periods range from a few weeks to an entire year, depending on the nature of the job. If there is a specific time reason for a set time

period, it is often related to the amount of time it is estimated that it will take an employee to demonstrate all of the skills necessary to be successful in the job. For example, for a labourer position, three months may be sufficient,

while for an accountant, the need to see skills for an entire accounting cycle may mean that a one year probationary period is called for.

In many organizations, the
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Back to the list of convictions. In its August 2010 “What’s New”, the Ministry provided a link to a list of sixteen convictions, along with the names of the organizations, from July, 2010. If you like, you can visit the Ministry’s website, and by clicking on “Convictions Archives”, go all the way back to July 2009 to see who has been convicted and for what. Even a brief review shows that there is a trend in what the Ministry is finding.

In May of 2010, there were ten convictions. Three came under the heading “Require or permit hours of work to exceed limits s. 17(1)”, another three for “Failure to give substitute day off with public holiday pay (for a) day not ordinarily a work day s. 29(1)” and one for “Failure to pay overtime pay s. 22(1)”. In June 2010, out of eighteen convictions, four were for exceeding the limits of hours, three were for failure to give the substitute day, and five for failure to pay overtime. In July 2010 the numbers, out of sixteen convictions, were four for exceeding the limit of hours, three for failure to give the substitute day, and three for failure to pay overtime.

While these numbers, given the number of employers in Ontario, may not seem significant, it is important to remember that, for the most part, the enforcement of the *Employment Standards Act* is done on a complaint-driven basis, and so may not be reflective of what is actually going on with employers. In some cases, these violations may be the result of a lack of knowledge of the provisions of the *Act*, particularly when it comes to hours of work.



While most employers do a great job of ensuring that they are in compliance with the *Employment Standards Act* and other provincial legislation, it may be a good idea to do a little audit of your policies and practices, just to make sure. If **JM Box Consulting Services** can be of assistance to you doing this kind of review, please let us know.

WHY ARE MANHOLE COVERS ROUND?

Several years ago, an eminently qualified individual went for an interview for an accounting job. She was prepared for the standard interview questions, both general and accounting related. What she was not prepared for was for this question in the middle of the interview: “Can you tell me why manhole covers are round?” Experienced interviewers will recognize this as a “shocker” or “shaker” question, designed to see how fast a candidate can think on their feet. What is more important than the right answer was how it was answered. If anything credible came back from the applicant, that was a good sign that the individual could react quickly in unforeseen circumstances. A blank stare or even worse a candidate snapping back at the interviewer that the question is irrelevant paints a different picture.



In today’s workplace, we are often looking for adaptable people who can deal with a lot of different scenarios. While “shocker” questions cannot give us a true sense of a candidate’s ability to deal well with unusual situations, they can be used as a starting point.

And the answer to the lead question? Manhole covers are round because a round object cannot be forced through a circle of the same circumference. It’s a health and safety issue.

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probationary period is seen as just something you put into the employment contract or collective agreement and ignore unless there is a problem with the employee. On many occasions, an employer decides at the 89th day of a 90 day probationary period, that the employee is not working out, and needs to be let go. So the employee is brought in and, even though no one has talked to the employee previously about their performance, employment is terminated. This is not only upsetting to the now former employee, but sends a message to the rest of the staff about how business is conducted.

Let's start out by looking at the probationary period from the employee's perspective. Starting a new job is intimidating enough, but the knowledge that, for a set period of time you can be let go without much recourse, makes things even tougher. It gets even worse if no one is talking to you and giving you feedback about your performance. This is particularly true with younger employees, who may not have a lot of job experience, may not know what is expected of them, and require a lot of feedback even after being on a job for a while. Silence from the employer is not helpful to them, and to be told "it just isn't the right fit" without any previous attempt to deal with performance issues, is discouraging and potentially harmful to the employee.

So how does this termination look to the rest of your staff? Even in situations where the termination is justified, anyone losing their job has an impact on the remaining staff. This situation is particularly heightened when the other staff know that no one (including themselves) has tried to help the former employee learn what it takes to do their job. It sends a message about the culture of the organization, and how expendable they might be.

To the outside world? How many times have you seen an ad in the paper for the same employer recruiting for the same job? Doesn't that make you wonder about that employer? Even when the job is not advertised, word gets around to potential employees about particular employers, and as the labour market shrinks and there are fewer people available with the required skills, this kind of approach to new employees could become a big recruiting issue. And how about for your organization? If you look at how much time and money recruiting that new employee cost you, do you really want to go through that again? Even though it was only 89 days without much effort with regards to the new employee, it was still time and money spent which was basically wasted.



"Starting a new job can be intimidating enough..."

Downloadable Diamonds

The purpose of this section of our newsletter is to alert readers to some resources available from the internet that they might not be aware of.

As referenced earlier, the Province of Ontario's Ministry of Labour has introduced its own newsletter, "What's New". It is designed to provide subscribers with information about what is going on with regards to Employment Standards, Labour Relations, and Health and Safety. For example, its September 2010 issue contained brief articles entitled "Ministry Launches Employment Standards Workbook", "MSD Blitz Begins" and "Vehicle Body Shops Revisited". You can receive this free newsletter by e-mail by going to www.labour.gov.on.ca and visiting the "Subscribe" section on the bottom left section of their website.



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An Overview of Our Services

JM Box Consulting Services provides innovative, cost-effective Human Resources support and services that assist clients in dealing with their issues and challenges with confidence. Together, we will resolve issues one at a time, either through consultation, training or working together on necessary projects. These services are designed to be of greatest service to small to medium size organizations, including the municipal, health care, charitable, not-for-profit and small business sectors. Based in Windsor, Ontario, **JM Box Consulting Services** can meet the needs of clients throughout the Province.

JM Box Consulting Services takes the approach of meeting client expectations by identifying the gap between the desired goals and current realities, to discover the best ways of eliminating that gap- not just for the present, but for the future as well.

Services

E-Consulting- providing clients with quick, cost-effective access to Human Resources expertise through the use of e-mail and telephone communications, without the expense of or supplemental to internal Human Resources staff.

Project Management Services- to provide project management and expertise on matters such as job evaluation/pay equity, wage/salary administration systems, policy and procedure review and development, and organization redesign and restructuring.

Training Services- to address client needs that are best addressed through training specific to the needs of the organization, such as Violence in the Workplace, Working in a Respectful Workplace, and Organizational Community Presence.

EMPLOYEES SAY THE DARNDDEST THINGS

Years ago, the late Art Linkletter had a show, "Kids Say the Darndest Things". Art would interview children, and every once in a while a child would come out with something really endearing or outrageous. Such things make good television. And while they don't always make for a good workplace, particularly at the time, sometimes our employees come out with something quotable. If you have heard an employee say something that fits into this category, please send it to us at info@jmboxconsulting.com for inclusion in what we hope will be a regular feature.

Explanation from a hotel concierge employee shortly after he was caught in the lobby of a four star hotel handing out the cards of employees from a local escort agency: "I did it because I was told in orientation to do everything that I could to make our guests stay here enjoyable." The employee was fired.