

# An Employment Lawyer's TOP 10

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# Introductions...



- ▶ **Primary Practice Areas:**  
Labour and Employment; Human Rights
- ▶ **Fun Fact:**  
World's Greatest Karaoke Singer (unofficial)

# Takeaway #1

- ▶ Employment rights flow from government laws and contract
  - Important laws include:
    - Employment Standards Act
    - Human Rights Code
    - Workers Compensation Act
      - Occupational Health and Safety Regulations
    - Personal Information Protection Act

# Takeaway #2

- Every Employee has a Contract
- Union members, executives and landscapers all have contracts

# Takeaway #3

- We can't 'contract out' of laws
  - "We don't pay severance"
  - "It's company policy to not pay overtime"
  - "You acknowledge that if you are unable to work due to disability for longer than 3 months, we can terminate"
  - "This position pays \$10/h"
  - "Employees are prohibited from filing WorkSafeBC / OH&S claims"

# Takeaway #4

- Generally, companies cannot suspend, demote or substantially reduce employee salaries or benefits.
- May be considered a “constructive dismissal”.

# Takeaway #5

- ▶ A “layoff” is the same as a “termination”.
  - If you do need the option of issuing a temporary layoff, make sure that it is in writing and signed off by the employee.
  - For example:
    - Seasonal Employment
    - Temporary staff covering sick leaves
    - Employment subject to “shut downs” or “slowdowns”
  - Employment Standards allows for temporary layoffs of 13 weeks within a 20 week period.

# Takeaway #6

- ▶ Use caution when hiring ‘contractors’ over employees
  - Apply the “Duck Test”
  - Think hard about:
    - Control
    - Risk of Gain/Loss
    - Tools
    - Ability to Sub-Contract
    - Insurance / WorkSafeBC coverage
- ▶ Yes, you need a contractor agreement.



# Takeaway #7

- ▶ Overtime is payable to non-management employees for work performed over 40h/w or 8h/d
- ▶ Your receptionist is not your “customer service manager”.
- ▶ Time can only be banked upon agreement (and is payable on request)
- ▶ Dentists are exempt from protections of the Employment Standards Act.

# Takeaway #8

- ▶ Policies are only useful if they are current, understood and applied consistently.
  - Embrace the “lunch and learn”
  - Yearly “sign offs are excellent ideas”

# Takeaway #9

- ▶ Non-competition agreements can be wickedly difficult to enforce

# Takeaway #10

- ▶ **Severance can be expensive!**
  - The best and easiest way to protect your business from HR related liability is through a professionally drafted employment contract.
  - **BTW – Contractors may also be entitled to severance.**

# Questions?



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