

MLT AIKINS WESTERN CANADA'S LAW FIRM

# GUIDE TO SUCCESSFUL WORKPLACE POLICIES AND PRACTICES

Robert J. Frost-Hinz  
May 8, 2019

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## INTRODUCTION AND OVERVIEW

- Understanding legal obligations for employers is a key ingredient to managing any organization with employees
- Basic obligations are set out in legislation and supplemented by the common law
- Sometimes can be difficult to apply in practice

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## INTRODUCTION AND OVERVIEW

**Objectives:**

- Increase understanding of legal framework that applies to employers
- Limit the risk of liability
- Compliance with legal framework may also have positive impact on productivity and morale

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## INTRODUCTION AND OVERVIEW

**Overview**

- General Obligations of Employers
  - Employment Standards
  - Occupational Health and Safety
  - Human Rights
  - Labour Relations and Collective Bargaining (Unionized Workplaces)
  - Common Law

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## INTRODUCTION AND OVERVIEW

**Overview**

- Employment Contracts
  - Why have written employment contracts?
  - What should be included in an employment contract?
- Employment Policies
  - Harassment Policy
  - Violence Prevention Policy
  - Drug & Alcohol Policy
  - Conflict of Interest Policy

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## GENERAL OBLIGATIONS OF EMPLOYERS

**Employment Standards**

- Saskatchewan: Part II of *The Saskatchewan Employment Act*
- Sets out statutory minimums for items such as minimum wage, hours of work, overtime, maternity and parental leaves and notice of termination
- Compliance with minimum standards is mandatory – meaning that employers and employees cannot agree to benefits which are less than those guaranteed by the applicable legislation

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Employment Standards

- Useful resources available online:
  - <http://www.saskatchewan.ca/business/employment-standards>

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Occupational Health and Safety

- Part III of *The Saskatchewan Employment Act* and regulations including *The Occupational Health and Safety Regulations, 1996*

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Occupational Health and Safety

- Sets out basic obligations for employer to maintain a safe workplace
- Regulations set out detailed requirements

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Occupational Health and Safety

- Key points: employer's responsibility to maintain a safe work place
- Employees and contractors also have responsibilities to maintain safety
- Employees have the right to refuse unsafe work

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Human Rights

- Saskatchewan: *The Saskatchewan Human Rights Code, 2018*
- Both prohibit discrimination and harassment on prescribed grounds

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Human Rights

- *The Saskatchewan Human Rights Code, 2018*, subsection 16(1):  
No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term of employment on the basis of a prohibited ground.

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Human Rights

- Prohibited Grounds
  - Religion
  - Creed
  - Marital status
  - Family status
  - Sex
  - Sexual orientation
  - Disability
  - Age
  - Colour
  - Ancestry
  - Nationality
  - Place of origin
  - Race or perceived race
  - Receipt of public assistance
  - Gender identity

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Human Rights

- Employers and unions are required to make every reasonable effort, short of undue hardship, to accommodate an employee who comes under a protected ground of discrimination under *The Saskatchewan Human Rights Code, 2018*.
- Goal of duty to accommodate is to create a more inclusive workplace
- Practically, this is the most difficult aspect of human rights laws to apply – since every case is different

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## GENERAL OBLIGATIONS OF EMPLOYERS

### Human Rights

- What is a disability?
  - Injury
  - Non-transient illness
  - Alcoholism
  - Drug addiction
  - Mental disability
  - Depression

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## GENERAL OBLIGATIONS OF EMPLOYERS

**Labour Relations and Collective Bargaining**

- Saskatchewan: Part VI of *The Saskatchewan Employment Act*
- Applies to unionized workplaces and those which are subject to an organizing drive
- Employees have the right to join a union and be represented by the bargaining agent of their choice

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## GENERAL OBLIGATIONS OF EMPLOYERS

**Labour Relations and Collective Bargaining**

- Once certified, an employer has an obligation to collectively bargain in good faith
- Collective agreement provisions form terms and conditions of employment
- Employer is no longer permitted to negotiate terms and conditions of employment directly with employees

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## GENERAL OBLIGATIONS OF EMPLOYERS

**The Common Law**

- Wrongful/constructive dismissal
- Claims for unpaid compensation or benefits above minimum labour standards
- Based on the principle that an employment relationship is a contract between employer and employee
- May be written and/or implied terms of the contract of employment
- Also supplements legislation in the areas of employment standards, occupational health and safety, and human rights

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## GENERAL OBLIGATIONS OF EMPLOYERS

**Employment Contract/Policies**

- May govern the terms and conditions of employment
- Some policies are required by law and some are optional
- Can be invaluable in showing employer's due diligence and in some cases, limiting exposure to liability

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## EMPLOYMENT CONTRACTS

- Important to remember that there is always an employment contract between an employer and an employee – it may not be written down.
- Written employment contracts lend foreseeability and surety to the employment relationship.

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## EMPLOYMENT CONTRACTS

- Employment contract should cover:
  - Identity of employee / employer
  - Term of contract (term contract?)
  - Position, title, and role
  - Probationary period
  - Remuneration
  - Vacation
  - Benefits
  - Confidentiality obligations
  - Employer's policies
  - Restrictive covenants
  - Rules over work product
  - Termination

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## EMPLOYMENT POLICIES

**Harassment Policy**

- All employers are required to have a harassment policy.
- Particulars of the content of the required policy are set out in the Regulations.

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## EMPLOYMENT POLICIES

**Violence Policy**

- The Regulations also require employers to have a violence prevention policy if the employer falls within an enumerated group including:
  - Pharmacies
  - Education services
  - Police / corrections / security / law enforcement
  - Late-night retail
  - Financial
  - Taxi / transit

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## EMPLOYMENT POLICIES

**Violence Policy**

- Content of violence prevention policy is also particularized in the Regulations
- Requires employers to explore the factors which may lead to violent incidents in the workplace and formulate effective responses prior to an incident occurring

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## EMPLOYMENT POLICIES

### Drug and Alcohol Policy

- Most commonly applicable to safety-sensitive workplaces – but not always.
- Three key aspects to policy:
  - 1) *General prohibition of possession or use of alcohol or drugs at the workplace ("fit for duty" requirement);*
  - 2) *Framework for alcohol / drug testing; and*
  - 3) *Process for failed tests / accommodation issues*

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## EMPLOYMENT POLICIES

### Drug and Alcohol Policy

- Employers are entitled to expect employees to be fit to perform their duties at the workplace.
- This means the employee is not impaired at the workplace by:
  - *Alcohol*
  - *Drugs (prescription, non-prescription or illegal/illicit)*
  - *Fatigue*

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## EMPLOYMENT POLICIES

### Drug and Alcohol Policy

- For safety-sensitive positions, employers can require alcohol/drug testing in specific circumstances:
  - *Pre-employment / pre-placement*
  - *Reasonable cause*
  - *Post-incident / near miss*
  - *Return to work*
  - *Random*

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## EMPLOYMENT POLICIES

### Drug and Alcohol Policy

- Need to ensure proper consideration is given to accommodation issues as part of a drug and alcohol policy.
- Employer's obligation to accommodate to the point of undue hardship remains despite the policy.

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## EMPLOYMENT POLICY

### Conflict of Interest Policy

- All municipalities are required to have a "Code of Ethics" policy (s. 93.1 of *The Municipalities Act*)
- All municipalities must also establish a publicly available "Code of Conduct" for employees that includes conflict of interest rules (s. 111.1 of *The Municipalities Act*)

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## EMPLOYMENT POLICIES

### Conflict of Interest Policy

- Conflict of Interest Policy should include:
  - Identification of employees' obligations to avoid conflicts and pursue the best interests of the organization
  - Identification of what a conflict of interest is and how it arises
  - Identification of what to do if a potential conflict arises

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# Q&A

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# THANK YOU

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