

Three Costly Employment Law Errors that are Holding back your Business

Author : Deb Kondysar

Employment lawyers typically spend their time helping clients resolve a dispute. After all, there are so many different obligations for employers it is little wonder that their fingers get burnt every now and then. Or is it? A few years ago, Duncan Craig LLP began conducting Human Resource (HR) Audits for companies ranging in size from 5-100 people to see if their HR practices could be improved so that the number of disputes and associated costs could be reduced. The companies had different management structures and were in different sectors. The one thing that most of the companies had in common was that they did not have a full-time professional HR person in-house.

The three most common errors we have found in conducting the audits were:

1 - Not having Employment Contracts in Place

The number one problem we have found when conducting HR Audits was that too many employers did not have signed employment contracts with their staff. This can be a major problem and significant liability if you need to terminate staff. In one instance, there was a staff member with 25 years of service who was not under contract. The potential liability for the employer if that staff member was terminated was \$0.5M. Once a contract was put in place with the appropriate termination clause, that liability was capped at a fraction of the potential amount.

It is never too late to ask employees to sign an employment contract. However, proper steps need to be taken to ensure it is enforceable.

#2 - Illegal Overtime Practices

The second error that stood out from our audits was that many companies had overtime policies that did not comply with the *Employment Standards Code*. Depending on the size of the workforce, an employer could have a massive liability that they are not aware of. If a complaint is upheld by the Employment Standards Office an employer could be required to pay employees for all overtime from the past six months. Solutions we have introduced to prevent potential overtime claims include restructuring the workforce to make better use of staff resources without incurring overtime costs and putting in place overtime agreements that introduced alternatives to overtime pay such as banking time.

#3 – Non-compliance with Human Rights Code and Employment Standards Code

Being an employer is challenging, especially when there are so many rules set out in the *Alberta Human Rights Act* and the *Alberta Employment Standards Code*. The most common errors we have come across are violations of the policies on maternity and other forms of leave of absence, drug testing, and holiday and vacation pay. Violations of the Human Rights Code in particular can be costly. Employees do not need to hire a lawyer to launch an action. Complaints can be filled with the Human Rights Commission and if an employer is found to be in breach the damages award can be significant.

Staff Know their Rights

Being on top of employment laws has always been important. These days, the chances of any indiscretion going unnoticed are slim. In the past ten years or so we have witnessed a profound change in the level of awareness staff at every level have about their employment rights and the duties of employers. Any employee who thinks their employer's actions violate their rights is just a few clicks away from finding the information they need to determine if they should make a complaint, and bad news spreads quickly. If an employee feels they have not been paid adequate overtime, then you can be certain every employee will soon feel the same way. An HR Audit can help identify these types of issues before anyone else does.

Much more than Risk Prevention

While the initial objective of the HR Audit was risk prevention, we quickly learned that there were other significant upsides. At all the companies we reviewed, the day-to-day HR management was conducted by the head of the company or someone in senior management. Inevitably, the person responsible for HR had little, if any training. Not surprisingly, managing the day-to-day HR paperwork was challenging. Dealing with real HR problems was extremely time consuming and stressful for these business leaders. Time and stress have a cost and that cost was impacting the running of the business.

The audits we conducted identified problem areas. The contracts, policies and processes that were put in place afterwards gave management the roadmap they needed to deal with employment law issues in a clear and consistent way. The reduced stress and time required to deal with employment law issues freed up these business leaders to focus on the things that made their business a success in the first place. It allowed them to spend less time on the day-to-day management and more time to focus on taking their business forward.

For most business leaders, having their HR practices audited and updated is like eating healthy and going to the gym. They know they should do it but too often it gets put on the back burner until there is a real problem. Our experience conducting the audits over the last few years has shown that there are real and immediate benefits. If you would like to learn more about the benefits of having an HR Audit at your company, the Employment Solutions Group at Duncan Craig LLP would be pleased to help.

[Ronald Smith](#)