

# Week 9- Module 8

Labour and Employment Law

Law, Ethics and Professional Practice -  
ENGI3500

WINTER 2025



**WE ARE  
HUMBER**

# Introduction

- Understanding labor and employment law is important for engineers due to its significant impact on various aspects of their professional engagements. Engineers often work within project teams, and comprehension of labor laws ensures adherence to fair employment practices, safeguarding the rights and well-being of both employers and employees.
- Knowledge of employment regulations helps engineers navigate issues such as hiring processes, workplace discrimination, and termination procedures, fostering a fair and inclusive work environment. Additionally, understanding labor laws aids engineers in creating contracts, addressing occupational health and safety concerns, and managing potential disputes effectively.

# Federal Labor Legislation Overview

## **Constitutional Division of Powers:**

- Federal labor legislation governs industries and undertakings of interprovincial, national, or international nature.
- Examples include transportation, communications, and endeavors for the general advantage of Canada or multiple provinces.

## **Canada Labour Code:**

- The Code covers three main areas: relations between trade unions and employers, safety of employees, and minimum employment standards.
- Includes provisions for union certification, unfair labor practices, safety regulations, and employment standards such as working hours, wages, holidays, and maternity leave.

# Federal Labor Legislation Overview

## Canada Pension Plan:

- Employers deduct a percentage of employees' earnings for pensionable employment and contribute to the federal government.

## Employment Insurance:

- Employers deduct and remit employment insurance premiums on behalf of employees.
- Premiums determined by Employment Insurance Premium Tables issued by the Canada Revenue Agency.

# Provincial Employment and Labor Laws

## Overview:

- Each province in Canada has its own set of employment and labor laws.
- Provincial laws cover trade union relations, employment standards, workers' compensation, occupational health and safety, etc.

## Example: Alberta and Ontario:

- In Alberta, the Labour Relations Board administers employment standards and labor relations.
- In Ontario, the Labour Relations Act is administered by the Ontario Labour Relations Board, and employment standards are handled by the Ministry of Labour.

# Ontario Employment Standards Act, 2000

## Key Provisions:

- The Employment Standards Act, 2000, sets minimum terms and conditions of employment in Ontario.
- Areas covered include maximum hours of work, overtime pay, minimum wages, holidays, vacations, parental leave, notice of termination, and severance pay.

## Common Law vs. Act:

- The Act provides minimum requirements; common law may offer greater rights.
- For instance, common law may grant longer notice periods than the Act's minimum requirements.

# Workers' Compensation and Health Insurance

## **Workers' Compensation:**

- All Canadian provinces, including Ontario, have workers' compensation legislation.
- Features include tort replacement, no-fault insurance, employer funding, and benefits like income replacement and health care.

## **Health Insurance Act:**

- Ontario's Health Insurance Plan (OHIP) is funded by the Employer Health Tax.
- Tax rates vary among provinces, and Ontario's rate is 1.95% on payroll over \$400,000.

## **Example: Smoke-Free Ontario Act, 2017:**

- Prohibits smoking, including tobacco, cannabis, and vaping, in enclosed workplaces and public places.

# Human Rights, Accessibility Legislation, and Occupational Health and Safety

## **Human Rights and Accessibility Legislation:**

- Human Rights Code protects against discrimination in employment in Ontario.
- Accessibility for Ontarians with Disabilities Act (AODA) sets standards for accessibility.

## **Occupational Health and Safety Act:**

- Governs employee safety in Ontario, imposing duties on employers and workers.
- Health and safety committees, mandatory at most workplaces with 20 or more workers.

## **Criminal Code and Legal Consequences:**

- Criminal Code establishes legal duty for workplace safety.
- Organizations can face substantial fines and probation for safety violations.

## **Example: Elliot Lake Mall Collapse:**

- Tragic incident resulting in a Commission of Inquiry, emphasizing human failures.
- Criminal charges may be laid for wanton and reckless disregard for safety.



# Overview of Unions

- A labor union, also known as a trade union, is an organized association of workers or employees formed to protect and promote their collective interests, rights, and well-being in the workplace.
- Employees may seek union representation or unions may initiate organizing drives based on perceived benefits for employees.
- Once a union gains majority support, it demands recognition from the employer, who can either agree or request a certification election.

# Overview of Unions

- If the employer demands an election, it involves a democratic vote among employees to determine if the union should be certified as their representative.
- In some provinces, certification may occur without a vote if a significant majority (e.g., 55 percent) of employees has joined the union.

# Overview of Unions

- In industrial settings, a single union often represents all eligible employees, while the construction industry typically involves multiple unions, each representing a specific trade.
- Trades in construction, such as electricians and carpenters, have specialized tasks, leading to the need for careful coordination to avoid inefficiencies and project delays.
- Interdependence between trades can result in a single trade disrupting an entire construction project, leading to procedures to resolve disputes and prevent work stoppages.
- Jurisdictional disputes, where multiple unions claim the same work, are addressed through negotiation, and if necessary, resolution by labor boards, considering skills, industry practices, and agreements to prevent work stoppages.

# Work Stoppages

- Strikes and lockouts, though powerful in labor disputes, are costly for both employers and employees, with potential long-term consequences such as lost market share and unrecoverable wages.
- Strikes and lockouts typically occur during an impasse in negotiations, and as long as a collective agreement is in force, they are considered illegal.
- Some provinces prohibit employers from hiring replacement workers during a work stoppage, while others face practical challenges in continuing operations, such as convincing replacements to cross picket lines.
- Picketing is a protected form of free speech during work stoppages, but the public has the right to either respect or ignore picket lines. Construction strikes involve competing rights—the union's right to picket and disinterested parties' right to work without interference.

# Disputes and Grievances

- Disputes over collective agreement interpretation are common and are typically resolved through arbitration, specifically grievance arbitration, which differs from interest arbitration used in arriving at a collective agreement.
- Grievance arbitration addresses complaints made by either the union or the employer, alleging a breach of the collective agreement. Such disputes are anticipated in long-term agreements, and arbitration is mandated for resolution.
- An independent arbitrator, either named in the collective agreement or appointed later, acts as a judge and jury in determining the resolution of grievances.

# Seniority System

- A layoff is a temporary suspension of employment based on business needs, often regulated by clauses in collective agreements.
- Collective agreements typically require layoffs to follow seniority, with more senior employees being laid off last and rehired first when workforce size increases.
- In common law employment relationships without a union agreement, employers can terminate employment for just cause or provide reasonable notice or severance pay in the absence of just cause.
- In industrial settings with collective agreements, termination without just cause is often restricted, and employers may need to provide multiple warnings before terminating an employee, except in extreme cases. The union can file a grievance in response to employee discipline, and an arbitrator has a range of remedies, including reinstatement and changes to working conditions.

# Common Law/Implied Terms of Employment

- Certain obligations are implied in common law employment contracts unless there are express contrary terms.
- Implied terms include the duty to mitigate, duty of fidelity (loyalty), duty of competence, and the employer's duty to provide adequate notice or severance.

# Duty of Fidelity

- Employees, as agents of their employers, owe a duty of fidelity, including not disclosing or using confidential information.
- Trade secrets, encompassing valuable industry-specific information, are protected, and breaches may lead to legal consequences.
- Restrictive covenants are used to prevent departing employees from working for competitors and must meet criteria for enforceability.



# Duty of Competence and Termination

- Employees are expected to be competent in their work, and employer termination falls into two categories: for cause (just cause) or without cause.
- Just cause includes serious breaches that destroy trust, dishonesty, or theft, while termination without cause requires reasonable notice.
- Reasonable notice factors include employee age, length of service, position, and external factors. Termination must be done in a least traumatic manner, and failure to act fairly may result in legal consequences. Constructive dismissal occurs when an employer unilaterally changes the employment contract to the detriment of an employee who refuses to accept the changes.

# Hiring Third-Party Contractors

- Determining whether a person is an employee or an independent contractor is important for various legal aspects.
- Factors influencing the characterization include taxation treatment, vicarious liability, builders' lien holdback, insurance, workers' compensation coverage, and contractual limitation clauses.
- Courts consider multiple factors, including control, provision of equipment, hiring of helpers, financial risk, responsibility for investment, and profit opportunities, to determine the nature of the relationship.
- Generally, if a person provides services for more than one client or employer, it is more likely an independent contract relationship; conversely, providing services to only one party leans towards an employer-employee relationship.

# Terminations

- Terminated employees have various remedies, with options including common law, employment standards legislation, and human rights legislation.
- Common law remedies offer high damages for breach but are expensive to enforce and lack a reinstatement remedy. Employment standards legislation is cost-effective but provides lower damages and no reinstatement. Human rights legislation, while affordable, requires proving discrimination but offers the possibility of reinstatement.
- In Ontario, the entitlement of a terminated employee to severance pay is governed by both the Employment Standards Act, 2000 (ESA) and common law principles.

# Homework Before Next Class

- Complete assigned chapter readings in the Critical Path.
- Bookmark the various acts noted in the slides so you have quick access to them for future readings and activities.

# THANK YOU.



**WE ARE  
HUMBER**

# References

Marston, Donald L. 2019. *Law for Professional Engineers: Canadian and Global Insights*. 5th ed. New York: McGraw-Hill Education.