APSC 450

EMPLOYMENT LAW

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Why learn employment law?

- Most of you will be employees
- Employers don't always place nice (and others are unaware)
- Some of you will become employers, managers or entrepreneurs and will be in charge of hiring and firing
- You have many, many rights under employment laws and what you know can help you

Sources of Employment law

- Legislation
 - For federally regulated industries (e.g. banks, telcoms, airlines, Crown corps, all gov't departments): Canada Labour Code; Canadian Human Rights Act
 - For all other employees: BC Employment
 Standards Act & Regulations; BC Human Rights
 Code; and
- The Common Law

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BC Employment Standards Act: Minimum standards

- The Act says employees are entitled to minimum standards which cannot be contracted out of
 - Wages (\$13.85/hr in BC, 2019)
 - Hours and overtime (1.5x for >8hrs; 2x for >12hr)
 - Vacation (1-4 yrs: 2 weeks; 5+ yrs: 3 weeks)
 - Termination and Notice (1 week/yr of service)
 - Statutory holidays and pregnancy leave
- Does not apply to P.Eng or EIT! (but does apply all other "engineers" [but prob. not comp. sci])
- Higher standards in contract are permissible

Occupational Health and Safety

- WorkSafeBC is aimed at protecting workers and the public from severe H&S risks created by business activities
- Workers have 3 fundamental rights:
 - Right to participate
 - Right to know
 - Right to refuse unsafe work
- For a violation, employer can be investigated and fined or ordered to change behaviour
- If injured while working, cannot sue employer instead, compensation is through WorkSafeBC

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Human Rights

- Charter vs Human Rights legislation
- Charter, s. 15(1):
 - "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Employee or Independent Contractor?

- Employees are entitled to statutory minimum standards; independent contractors are not
- Tax deductions: employees cannot deduct expenses from their income, contractors can
- For the employer: employees cost far more and require much more administration

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Employee or Independent Contractor?

	Employee	Independent Contractor
Effect on employee/ contractor	-Entitled to statutory minimums (wages, vacation pay, etc) -Cannot deduct expenses -Cannot usually do work for other employers	-No entitlement to statutory minimums -Can deduct business expenses -Can set own hours of work -Can do work for other employers -More expensive: need to buy own equipment/tools
Effect on employer	-Must upload statutory minimums (wages, vacation pay, etc) -Must pay into a number of schemes: Employment insurance, Canada pension plan, Workers compensation -Must withhold employee taxes	-No need to pay vacation, minimum wage, termination notice, etcMuch easier to hire/fire -Less expensive, less administration -No need to pay into employment schemes ATAC LA

Employee or Independent Contractor?

- Distinguishing factors
 - Control
 - Can they do work for others/control their hours?
 - Ownership of tools
 - Do they have to buy their own equipment?
 - Chance of Profit/loss
 - Is there a chance they can lose money?
 - Integration
 - Is their function key to the business?



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Ending the employment relationship

- Employer can terminate employee with or without cause
- Most termination is <u>without cause</u>: employer has obligation to provide minimum notice, or payment in lieu of notice
- Where termination is with <u>just cause</u>: employer has no requirement to provide notice
- Where employee resigns, employee must give reasonable notice (usually 2 weeks)

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Termination: Just cause

- Termination with just cause is rare
- There must be serious misconduct:
 - eg. Theft; sexual harassment of subordinates;
 cruelty and offensiveness that breaks down the
 employment relationship; serious safety concerns
- Generally requires a formal warning first
- Consequence to the employee: no notice, no compensation

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Common Law and Employment

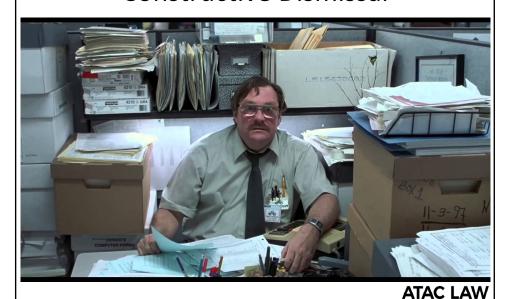
- Important principles not found in legislation:
 - Duty to mitigate damages
 - Enforceability of non-competition and nonsolicitation agreements
 - Constructive dismissal

Constructive Dismissal

- An employer can terminate the employment relationship through conduct by either
 - Breaching a fundamental term of the contract
 - Eg. 24 months notice unilaterally reduced to 8 months
 - Conducting itself in a way that makes continued employment intolerable
 - Relocating your office to the mechanical room
- Employee must notify employer of objections
- Employee can then sue employer for wrongful dismissal and obtain compensation in lieu of notice

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Constructive Dismissal



Duty to Mitigate

- Where employee is claiming wrongful dismissal because of termination or constructive dismissal, employee must seek other employment, otherwise claim may be denied
- Employee must make reasonable efforts
 - Can take some time off to get over shock
 - May have to travel or relocate, depending on circumstances

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Non-competition and Nonsolicitation agreements

- Restrictions on your actions that continue after employment ends
- Non-solicitation means you cannot talk to clients/customers of your former employer
- Non-competition means you cannot obtain business from clients of your former employer
- Court will only enforce what is reasonable as it does not wish to permit restraint of trade

An example

You are a software engineer working for Hewtsuite, a social media management company located in Vancouver. On the day of your 4-year anniversary at work, you are surprised to find an owl sitting in your boss's chair. The VP says that you will now report to the owl. This was not in your employment contract. In fact, your contract explicitly stated that you would report to a humanoid. Naturally, your performance suffers since you don't speak owl. After enduring two weeks of your boss's hoots, the VP tells you that you are being let go, immediately, for failing to perform. The VP mumbles something about just cause.

After 8 weeks of moping around eating ramen noodles, you apply for, and obtain immediately, a similar position at a competing bird-themed social media company, Tweeter, in San Francisco.

A clause in your contract with Hewtsuite states:
The Employee agrees that during the Employee's employment and for 24 months after termination of the Employee's employment, the Employee shall not code for social media companies anywhere on the West Coast.

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Other Real Life Examples

- The Terminated Mine Worker
- The Competing Engineer

THANK YOU

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