Newsletter **March 2019**

Membership

Welcome to Nick Chapleau, the C.E.O. of **Starchup** as a new allied trade member. He will be speaking at our upcoming conference in October on Building Route Sales..

Congratulations to Thomas Ferris of Tillson Cleaners who successfully completed the Drycleaning Fundamentals Course by DLI. The interesting thing is that he completed the course while he was in and out of hospital. Our best wishes for a full recovery to Thomas. He will be going to the Clean Show.

Boiler Inspection Information

I have had a few complaints from members regarding inspection by TSSA. In order to clear up some of the confusion, Mike Adams has apprised me of the following:

Some plants have serious safety valve issues arriving from a previous inspection. As a result, it was changed to a high-risk plant, to be inspected every 6 months. Continued clean inspections will see the plant go back to an annual inspection, and if it continues to have clean inspections, then it would go to an inspection every 2 years. If it was a 2-year plant, he would only have 1 inspection report every 2 years. Regardless of the amount of time that the inspector spends in your plant, the minimum fee for and OE inspection is 1.5 hours. I will email out the pricing schedule separately to everyone.

Manage your risks to ensure your company's long-term success

It is impossible to completely eliminate the risks that can threaten a company's success, but we can manage and minimize them by implementing a risk management process.

The main risk categories are:

- Strategic: Related to running the business, including industry developments
- Operational: Related to the company's operational and administrative procedures
- Financial: Related to the company's financial structure and external factors such as interest rates
- Conformity: Related to the obligation to comply with Environmental And Employee laws and regulations
- Other: Related to reputational and human risk

The risks a company faces are constantly changing. They change based on the market (new competitor, new services), the organization (acquisition of another company), products (service obsolescence), etc. As such, risks must be re-evaluated regularly according to changes within the company, the business sector, or regulations, for example.

According to a study on the state of enterprise risk management in Canada conducted in 2015, 61% of respondents confirmed that their organization did not have a chief risk officer or equivalent. With no

designated manager for risk assessment, it is hard to plan and adjust strategies before threats arise. As a result, companies end up encountering emergency situations, and they often do not have the time to evaluate possible solutions, leading to less-informed decision-making and sometimes the wrong decision.

A risk management process is therefore the solution for being proactive and managing threats faced by your company.

What about you?

- Do you have a risk management process?
- When was your most recent risk assessment?
- Are front-line employees as aware of the company's risks as upper management and the board of directors?

Aspects of the risk management process

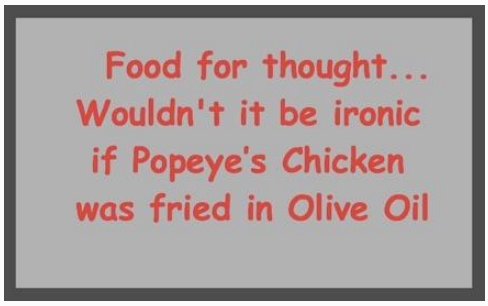
The risk management process involves five steps:

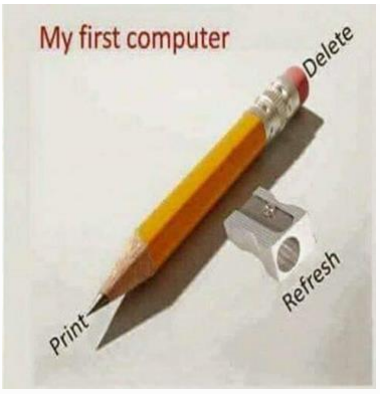
1. Risk identification
2. Risk assessment
3. Strategy development for addressing risks
4. Implementation of strategies
5. Follow-up and re-assessment, as necessary

After risks are fully identified, they must be assessed. This allows you to determine the probability that the risk will arise, as well as the company's tolerance for each risk, so a strategy can be established for each one.

A company might decide to accept, transfer, minimize, or eliminate the risk.

Strategies might be as simple as periodic maintenance of machines to prevent damage that would have a major impact on production (operational risk), obtaining an exchange rate contract to protect the company from a currency's volatility (financial risk), or even performing due diligence during acquisition of a new company (strategic risk).





The following companies and individuals again have indicated their sponsorship of the upcoming conference in October 2019:
Fabricare Cleaning Centers (Clark McDaniel) – Luncheon on Saturday
GreenEarth Cleaning Canada (Robert Kuenzlen) – Coffee Breaks (2)
Willms & Shier Environmental Lawyers LLP – Saturday Night Cocktail Hour
Harco – Saturday night Cocktail Party
SPOT Business Solutions – Friday night Cocktail Party
Sparkle Solutions – Saturday morning Breakfast
Sparkle Solutions – Speakers Gifts

The following events need sponsors or co-sponsors:
Saturday night wine at dinner
Sunday morning workshops
Gift Certificates
Overall Conference support

If you would like to participate as a sponsor, please contact Sid Chelsky to reserve your choice of sponsorship.

The following companies and individuals have reserved a Table Top for the upcoming conference in October 2019:
Extox Industries (Artur Keyes)
Green Earth Cleaning Canada (Robert Kuenzlen)
Harco (Rob Jackson)
Sparkle Solutions (Bruce Miller)
Ontario Laundry Systems (Craig Gibson);
A.L. Wilson Chemicals (Bob Edwards)
Starchup

Canada: You Asked, We Answered: Top Workplace Law Issues
Last Updated: January 25 2019, Article by **Michael F. Horvat**, **Aird & Berlis LLP**

Q. What is the obligation of the employer to obtain updated medical information from an employee who is absent on long-term disability and has been approved for benefits by the insurer?

A. A determination made by an insurer as to an employee's entitlement under a long-term disability income replacement policy (i.e. does that employee meet the definition of "totally disabled") cannot be exclusively relied upon by the employer. First, the insurer will not (and often legally cannot) provide to the employer any medical information it has received without the consent of the employee. Second, the medical information analyzed by the insurer's medical staff is directed at determining whether the employee qualifies for insured benefits as defined by the insurance policy, not in respect of the employee's accommodation and prognosis for return to work. Finally, the insurer is under no legal obligation to consider accommodation options within the workplace (and will typically not engage in this analysis). Therefore, an insurer's determination that an employee is "disabled" is only reflective of whether that employee meets the threshold for the payment of benefits under the policy, and does not indicate whether that employee will be able to return to work in a reasonable time period, or what options (if any) relating to accommodation could be effective to facilitate that employee's return. This analysis, legally and practically, must be independently conducted by the employer.

The employer has an independent obligation to review and consider not only the employee's prognosis (will the employee return to work?), but also to consider the employee's physical/mental restrictions (can the employee be accommodated at work?). As the legal obligation to determine accommodation is placed upon the employer, rather than the insurer, the employer should request, obtain and review such medical information available to discharge that obligation (and defend the decision that is ultimately made). The employee is required to provide and disclose medical information that would assist in their own accommodation. As such, the employee must disclose his or her physical/mental restrictions and what the prognosis (or limit) of recovery is so that he or she can participate with the employer in any job/duties review and accommodation plan. It is only with this information that an employer can satisfy its procedural and substantive duty to consider options of accommodation.

Therefore, employers should regularly communicate with the employee during their absence to request, receive and review their restrictions and prognosis of their return to work (if possible with accommodation); remind absent employees of their continuing legal obligation to assist in the accommodation process and to disclose such information; and to warn employees of the employment consequences of their failure to respond and cooperate. Finally, in respect of long-term absences for which accommodation has not been (and will not be) possible and which are expected to continue for the foreseeable future, employers may draw an independent conclusion (based on an internal review and investigation) that the employment contract has become frustrated and accordingly pay ESA notice and severance, as applicable, upon termination.

Q. Under the new requirements for unpaid personal emergency leave provided by the *Employment Standards Act, 2000*, when can a company reasonably implement an attendance management process?

A. First, the focus of an attendance management process must be to counsel and improve attendance. It should not include punitive and/or disciplinary consequences, as such action by the employer could be found to constitute a reprisal or penalty against an employee who is only using the benefit afforded them by statute (or policy). The ESA (or applicable employer policy) effectively sets an accepted threshold of absence, at or below which is not (and would not be) considered unexpected or unreasonable. Consequently, application of an attendance management process should not begin until the employee's non-culpable rate of absence exceeds that established by the ESA (or such greater amount provided by the employer's own policy).

However, an attendance management policy which focuses on attendance improvement for non-culpable absences can also address culpable absences. Therefore, if the employee has engaged in policy breaches (for example, no-call/no-show; pattern absences; repeated lack of reasonable documentary support for claimed absence), these can be the subject of progressive discipline as culpable misconduct separate from the absence itself.

Q. How would the hours of work and overtime averaging process apply under the current proposals in Bill 66?

A. Under the proposed Bill 66 changes, Ontario businesses seeking to have their employees work excess hours or to apply overtime averaging (over a maximum four-week period) will only have to obtain the written approval from the affected employees or the union which represents them. The company will no longer additionally require approval from the Director of Employment Standards. The proposed legislative changes to the ESA will not limit the maximum permitted number of excess hours that can be agreed upon in a day or a work week. Under the new process, an employer would not have to limit the number of weekly hours to 60, for example, to obtain Director approval. However, Bill 66 does not change other long-standing ESA limits on the hours of work, such as the requirement that employees receive at least 11 hours free from work in a work day and a minimum of 24 or 48 consecutive hours off each week (or two) of work (depending on their schedule). Additionally, employers will still have to be mindful of safety considerations as they relate to continuous hours worked in a particular business with "open ended" weekly work hours.

Consistent with the existing ESA requirements for written agreement, Ontario employers will still have to secure an individual agreement with each employee upon whom they wish to apply the hours of work/overtime averaging limits. Only a union will be able to agree on behalf of their bargaining unit. Otherwise, each employee has an individual right to say yes or no. As the default under the ESA is not to have excess hours or overtime averaging, affected employees should not be subjected to a reprisal for failing to agree to any such agreement. Any refusal to accept a renewal of an overtime averaging agreement, or giving notice that they no longer agree to work excess hours, would not constitute cause for termination of employment.

Existing approved overtime averaging agreements will continue in force until their expiry. Businesses must continue to apply for and receive approval from the Director until the Bill 66 changes become law. Any company which has recently applied for overtime averaging or excess hours and has been denied a permit should review the reasons, continue to obtain written agreements with their employees and re-apply. Under the existing ESA process, the company would be entitled to apply the terms of the agreement if no refusal is received 30 days after filing with the Director. Once Bill 66 becomes law, employers will have their written agreements ready to implement their hours of work/overtime averaging policies.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Canada: Is It Safe To Give Honest Employment References For Former Employees?
Last Updated: January 24 2019
Article by **Hugh J.D. McPhail, Q.C.**; **McLennan Ross LLP**

Many employers now have a practice of not giving employment references at all. That can prevent future employers from finding out about very serious misconduct. It is arguably an excessive reaction to a concern about possible defamation claims by the departed employee. A recent Ontario case is weighty on this topic because the decision at trial was approved by the Ontario Court of Appeal and leave was denied by the Supreme Court of Canada.

In *Kanak v. Riggin*, an employee was hired subject to a positive reference check. When the new employer checked with the former manager, he said the following:

1. There was a lot of conflict between Ms. Kanak, her supervisor and other employees;
2. Ms. Kanak did not take directions well;
3. Ms. Kanak does not handle stress well; and
4. He would not re-hire Ms. Kanak in a project controls position, but would hire her in an autonomous financial position.

Based on that information, the new employer withdrew its offer and cancelled the hiring. That led to the employee suing her former manager for defaming her in the provision of the reference.

Ms. Kanak's claim was dismissed at trial. The court noted that the context of providing an employment reference is a situation of "qualified privilege" which under defamation law means that there is no liability unless the statements were not only false but malicious. The court adopted the following definition of "malice":

Actual or express malice includes:

1. Spite or ill will;
2. Any indirect motive or ulterior purpose which conflicts with the occasion;
3. Speaking dishonestly, or in knowing or reckless disregard for the truth.

The court concluded that the former manager did not act with malice. The claim was therefore dismissed. The decision was upheld by the Court of Appeal and leave to appeal to the Supreme Court of Canada was denied.

The case does not depart from past cases but it is a good reminder that it is very hard to win a lawsuit against someone for defamation when a negative reference is provided to prospective employers. Honesty is a defence. On the other hand, the history of the case is also a reminder that, regardless of how strong your defence is, you could still be dragged through expensive legal proceedings.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Canada: What Employers Can Do To Support Victims Of Domestic Violence

Last Updated: January 21 2019, Article by **Kathryn Marshall, MacDonald & Associates**

The #MeToo movement has put sexual harassment and violence in the workplace front and center. But what about violence that occurs in the personal lives of employees, such as domestic abuse and sexual violence?

Is this something that employers should be thinking about and create policies to help support employees who have experienced this type of abuse? The answer is yes.

In Ontario, domestic and sexual violence leave is now a job protected leave of absence in the workplace. Employees are legally entitled to up to ten full consecutive days of leave and in some situations up to fifteen weeks in a calendar year if the employee or the employee's child has experienced or been threatened with domestic violence or sexual abuse. The first five days of the leave are paid and the remaining days are unpaid.

Of note is the fact that Premier Doug Ford's recently announced changes to the Employment Standards Act do not impact that domestic and sexual violence leave provisions.

Other provinces, such as Saskatchewan and New Brunswick, have either already brought in similar legislation or are in the process of introducing it. Federally, the Government has amended the Canadian Labour Code to include five paid days of domestic violence leave and ten days of unpaid leave.

Domestic violence is a major problem in Canada and continues to be immensely prevalent. According to Statistics Canada 2015 data, in 2013, there were over 90,300 victims of police-reported domestic violence in Canada.

Sexual violence, which is often a component of domestic violence, is also widespread. Also according to Statistics Canada 2015 data, between 2009 and 2014, there were 117,238 police-reported sexual assaults in Canada.

While these numbers may seem high, the reality is that the majority of domestic abuse and sexual violence incidents go unreported to police. Therefore these statistics represent only the tip of the iceberg.

Abusive relationships often spill over into the workplace because control is a primary element of the abuse. The abuser will often try and gain access to the victim at work through excessive texting, phone calls, emails, accessing co-workers or even showing up at the workplace.

Here are some things that employers can do to support employees who are victims of domestic and sexual violence:

1. The employee should have access to resources such as helplines, trauma centers, shelters, counsellors, legal help and medical assistance. Put together a list of resources and support the employee in accessing help. Your local women's shelter usually has a list of resources, so that is a good place to start in preparing your own list.
2. Ensure the employee is not in immediate danger and encourage he or she to phone the police.
3. Ensure the employee has access to somewhere safe to stay and has alerted close friends and family members who may assist.
4. Ensure the office is safe. Access to the office should be restricted to employees. If the washroom is shared with other offices on the same floor, access to it should also be restricted to individuals who have a key or know the door passcode.
5. Be vigilant in protecting the privacy of the employee. The employee's home phone number/cell number should not be listed on the employer's website and should never be given out to individuals calling the office.
6. Be mindful that the abuser may be stalking the employer's social media accounts and website. For example, the employer may be hosting a holiday party or charity drive. If reference is made to the time and location of these events on the employer's social media accounts and websites, the abuser may show up. Therefore, keep information like this off the internet.
7. The employer should ensure it has a lock-down procedure in case the abuser shows up at the place of employment.
8. Human Resources staff should be trained in how to support victims of domestic and sexual violence. Consider inviting someone with expertise in the field to attend your office and conduct a training seminar to management.
9. Ensure that all employees know about their right to a leave of absence in the event of sexual or domestic abuse – this should be included in the company employee policy.
10. Have clear policies on what evidence, if any, you require from employees taking this leave. In addition, have clear policies on what, if any, notice you require.

Originally published by *Centre for Research & Education on Violence Against Women & Children*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Today's Chuckles

I just lost my job as a psychic. I did not see that coming.

My doctor told me I shouldn't work out until I'm in better shape.

Cold Winter

Its late fall and the Indians on a remote reservation in South Dakota asked their new chief if the coming winter was going to be cold or mild.
Since he was a chief in a modern society, he had never been taught the old secrets. When he looked at the sky, he couldn't tell what the winter was going to be like.

Nevertheless, to be on the safe side, he told his tribe that the winter was indeed going to be cold and that the members of the village should collect firewood to be prepared.
But, being a practical leader, after several days, he got an idea. He went to the phone booth, called the National Weather Service and asked, 'Is the coming winter going to be cold?'
'It looks like this winter is going to be quite cold,' the meteorologist at the weather service responded.

So the chief went back to his people and told them to collect even more firewood in order to be prepared.
A week later, he called the National Weather Service again. 'Does it still look like it is going to be a very cold winter?'
'Yes,' the man at National Weather Service again replied, 'it's going to be a very cold winter.'

The chief again went back to his people and ordered them to collect every scrap of firewood they could find.
Two weeks later, the chief called the National Weather Service again. 'Are you absolutely sure that the winter is going to be very cold?'
'Absolutely,' the man replied. 'It's looking more and more like it is going to be one of the coldest winters we've ever seen.'

'How can you be so sure?' the chief asked.
The weatherman replied, 'The Indians are collecting a whole lot of firewood'

Butch the Rooster

Sarah was in the fertilized egg business. She had several hundred young pullets and ten roosters to fertilize the eggs.

She kept records and any rooster not performing went into the soup pot and was replaced.

This took a lot of time, so she bought some tiny bells and attached them to her roosters. Each bell had a different tone, so she could tell from a distance which rooster was performing. Now, she

could sit on the porch and fill out an efficiency report by just listening to the bells.

Sarah's favourite rooster, old Butch, was a very fine specimen but, this morning she noticed old Butch's bell hadn't rung at all! When she went to investigate, she saw the other roosters were busy chasing pullets, bells-a-ringing, but the pullets hearing the roosters coming, would run for cover.

To Sarah's amazement, old Butch had his bell in his beak, so it couldn't ring. He'd sneak up on a pullet, do his job, and walk on to the next one.

Sarah was so proud of old Butch, she entered him in a Show and he became an overnight sensation among the judges.
The result was the judges not only awarded old Butch the "No Bell Piece Prize" they also awarded him the "Pulletsurprise" as well.

Clearly old Butch was a politician in the making. Who else but a politician could figure out how to win two of the most coveted awards on our planet by being the best at sneaking up on the unsuspecting populace and screwing them when they weren't paying attention?
Vote carefully in the next election. You can't always hear the bells.

No yolk!

A thief in Paris planned to steal some Paintings from the Louvre

After careful planning, he got past security, stole the paintings, and made it safely to his van. However, he was captured only two blocks away when his van ran out of gas.

When asked how he could mastermind such a crime and then make such an obvious error, he replied,

'Monsieur, that is the reason I stole the paintings.'

I had no Monet

To buy Degas

To make the Van Gogh.'

See if you have De Gaulle to send this on to someone else....

I sent it to you because I figured

I had nothing Toulouse.