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Getting The Deal Through

# Employment: North America

## in Canada - Ontario



Littler® LLP

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## Canada - Ontario

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## STATE SNAPSHOT

### Key considerations

Which issues would you most highlight to someone new to your state?

In addition to their obligations to employees under Ontario's Employment Standards Act 2000 (ESA) and other statutes, employers have additional common law obligations.

The nature of an employer's business determines whether the federal government or a provincial government has jurisdiction. Most of Ontario's workforce is subject to provincial jurisdiction.

There is no "at will" employment. On termination without cause, employees are entitled to minimum ESA entitlements with minimum notice of one week (after three months) and maximum notice of eight weeks, depending on the length of employment.

Notice periods prescribed by the ESA are minimums. Absent a written agreement to the contrary, an employee under an indefinite-term contract is entitled to "reasonable notice" of termination and can bring an action for wrongful dismissal at common law. "Reasonable notice" is determined by age, length of service, position, responsibilities, and prospects for future employment. All forms of remuneration that the employee would have been entitled to during the reasonable notice period are taken into account.

Although it is presumed that on termination an employee is entitled to common law notice, it can be displaced when the employment contract provides only for minimum ESA entitlements and the parties' intention to displace common law notice is unambiguously expressed.

What do you consider unique to those doing business in your state?

Ontario has pay equity legislation for both the public and private sector. Ontario's Pay Equity Act applies to all employers in Ontario, except private sector employers with less than 10 employees. Its purpose is to remedy systemic gender discrimination in compensation for work performed by employees in "female job classes."

Ontario's Police Record and Checks Reform Act 2015 is the first legislation of its kind in Canada. It applies to police record checks conducted to determine suitability for employment and responds to concerns about barriers created by the inappropriate release of sensitive information. Under the statute, non-conviction information may be obtained only in relation to a vulnerable sector check and when stringent criteria for "exceptional disclosure" are met.

Employment statutes do not recognize the concept of paid time off, but establish specific employee entitlements for paid vacation, paid statutory holidays, and leaves of absence, most of which are unpaid.

Is there any general advice you would give in the labor/employment area?

Employers should limit their liability on termination of employment by hiring employees under well-drafted, written employment contracts, bonus plans, and stock options plans that explicitly limit the employer's termination obligations.

### Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

In 2018 Canada's Cannabis Act came into force, making it the first major world economy to establish a federal legal framework for the recreational use of cannabis by adults. Employers may establish policies prohibiting the use and possession of cannabis in the workplace. Under Ontario's Human Rights Code, employers have a duty to accommodate the use of cannabis by employees medically authorized to do so and those suffering from an addiction, unless such accommodation creates an undue hardship for the employer. In Ontario, it is illegal to obtain cannabis other than from the Ontario Cannabis Store or private, government-licensed retail stores. Under the Smoke-Free Ontario Act 2017, it is illegal to smoke or vape cannabis in an enclosed workplace.

### Proposals for reform

Are there any noteworthy proposals for reform in your state?

Ontario's Pay Transparency Act was scheduled to come into force on January 1, 2019, but it has been delayed. Its purpose is to "increase transparency in hiring processes and give women more information when negotiating compensation equal to their male peers." If the statute comes into force, Ontario will be the first province to pass such legislation.

Bill 40, the Human Rights Code Amendment Act (Genetic Characteristics) is now before Ontario's legislature. If enacted, it would include "genetic characteristics" as a prohibited ground of discrimination under Ontario's Human Rights Code, including in employment. If Bill 40 becomes law, Ontario will be the first province to prohibit discrimination because of genetic characteristics.

## EMPLOYMENT RELATIONSHIP

### State-specific laws

What state-specific laws govern the employment relationship?

In Ontario, approximately 90% of employees are subject to provincial (Ontario) statutes, while 10% (e.g., banks and airlines) are covered by federal (Canada) statutes.

Provincial
The most notable Ontario statutes which govern private employers are:

- the Accessibility for Ontarians with Disabilities Act 2005;
- the Agricultural Employees Protection Act 2002;
- the Employment Protection for Foreign Nationals Act (Live-In Care Givers) 2009;
- the Employment Standards Act 2000;
- the Human Rights Code;
- the Labour Relations Act 1995;
- the Occupational Health and Safety Act;
- the Ontarians with Disabilities Act 2001;
- the Ontario College of Trades and Apprenticeship Act 2009;

- the Ontario Labour Mobility Act 2009;
- the Pay Equity Act;
- the Retail Business Holidays Act;
- the Rights of Labour Act;
- the Smoke-Free Ontario Act;
- the Wages Act; and
- the Workplace Safety and Insurance Act 1997.

There are other statutes affecting the Ontario government (e.g., the Ontario Pubic Service Act) and the broader public sector (e.g., the Colleges Collective Bargaining Act).

Federal
There are separate statutes, including the Canada Labour Code, the Canadian Human Rights Act, the Personal Information and Protection of Electronics Documents Act, and the Accessible Canada Act. A bill that has received royal assent will enact a new federal Pay Equity Act effective on a date to be announced.

### Who do these cover, including categories of workers?

In general, both provincial and federal statutes cover employees. The definition of "employee" is not consistent from statute to statute, but is generally interpreted broadly. Depending on the statute and the facts, "employee" has been found to include independent contractors, employees of temporary help agencies, and consultants. Ontario recognizes a "dependent contractor" category. The Ontario Labour Relations Act 1995 defines "employee" to include a "dependent contractor;" therefore, dependent contractors can join a union and engage in collective bargaining. A broad approach to "employee" is also found in occupational health and safety so that self-employed individuals can be covered by that legislation.

## Misclassification

### Are there state-specific rules regarding employee/contractor misclassification?

Misclassification issues arise in several contexts, including wrongful dismissal and tax, the Canada Pension Plan, and employment insurance. There may be a difference in the rules or approach applied to addressing the misclassification issue depending on the specific statute. The Employment Standards Act 2000 specifically prohibits employers from treating workers as independent contractors if they are in fact employees.

## Contracts

### Must an employment contract be in writing?

No, but a written employment contract is strongly recommended, especially with respect to obligations on termination of employment. Absent a written contract, every employer-employee relationship is based on an oral contract which exists common law. Given the fluid nature of employment relationships, it is not unusual for an employment contract to be partly oral, partly written (e.g., policies), partly subject to common law implied terms, and partly determined by the parties' course of conduct. A written contract can be a simple hiring letter or a more formal employment agreement.

### Are any terms implied into employment contracts?

Yes. There are several terms implied at common law, affecting both employers (e.g., obligations to provide reasonable notice of termination where there is no just cause and a safe and healthy workplace) and employees (e.g., duty of loyalty).

### Are mandatory arbitration agreements enforceable?

Mandatory arbitration agreements were traditionally held to be enforceable if they were compliant with the Ontario Arbitration Act 1991. However, a recent ruling held that mandatory arbitration cannot apply to an employee's statutory claims for which they can choose to access a statutory complaint procedure. An appeal will be heard by the Supreme Court of Canada, likely in late 2019.

### How can employers make changes to existing employment agreements?

This is a difficult area. When an employer introduces a unilateral change to a fundamental term, the employee can:

- accept the change either expressly or implicitly, in which case employment will continue under altered terms;
- reject the change and sue for damages for constructive dismissal; or
- make it clear that the new terms are rejected. An employer may respond to this rejection by terminating the employee with reasonable notice at common law and offering re-employment on the new terms. If the employer does not take this course of action, it is acquiescing to the employee's rejection of the new terms.

An employment agreement may contain a provision which specifically addresses amendments. For any agreed amendments—especially material amendments—employers should provide consideration (continued employment is generally not consideration).

## HIRING

### Advertising

### What are the requirements relating to advertising open positions?

Advertisements for open positions must not be discriminatory. Employers must offer accommodation to those who have a disability.

### Background checks

### (a) Criminal records and arrests

There are three types of check that an employer can do in Ontario:

- criminal records checks;
- criminal records and judicial matters checks; and
- vulnerable sector checks.

The candidate must consent to the above checks. Any criminal record check should be conducted only following a conditional offer of employment. An employer cannot discriminate based on a criminal conviction for which a pardon has been granted or any provincial act offense.

## (b) Medical history

Medical history or diagnoses of conditions should not be collected in a background check, except to the extent that this is a bona fide occupational requirement. To the extent that this is relevant for the purposes of providing accommodation, information about work-related restrictions can be requested only after the employee raises an issue of accommodation or disability or an objective basis exists that requires the employer to make inquiries regarding the need for accommodation.

## (c) Drug screening

In general, pre-employment drug screening is not permitted, primarily because it does not determine whether an employee will come to work impaired by drugs.

Other types of testing are restricted, including as follows:

- Random drug testing is generally reserved for safety sensitive positions where there is evidence of a general problem with drug use in the workplace.
- Post-incident or for-cause testing is generally permitted only in safety sensitive workplaces and only as part of a larger rehabilitation program for employees.

## (d) Credit checks

To the extent that a credit check is required for the purposes relevant to the position, this can be requested and provided upon consent.

## (e) Immigration status

An employer can ask if a candidate is legally entitled to work in Canada. Anything further should not be requested since doing so may breach applicable human rights legislation.

## (f) Social media

An employer must be careful in collecting information available on social media without consent. Reliance on information that is inaccurate or touches upon prohibited grounds of discrimination may be actionable as against an employer or provide a basis for a privacy or human rights complaint.

### (g) Other

Not applicable.

## WAGE AND HOUR

### Pay

#### What are the main sources of wage and hour laws in your state?

Provincial
The provincial source of wage and hour laws is the Ontario Employment Standards Act 2000.

Federal
The federal source of wage and hour laws is the Canada Labour Code (Part III).

#### What is the minimum hourly wage?

The general minimum hourly wage is C$14 (there are specific exceptions, including for students and liquor servers). Commencing in October 2020, this amount will increase annually based on the cost of living.

#### What are the rules applicable to final pay and deductions from wages?

Provincial
Deductions from wages can be made if authorized by a court order or statute or with the employee's written authorization (which must refer to a specific amount or provide a formula for calculating that amount). There can be no deductions because of faulty work or because of a cash shortage or lost or stolen property where another employee had access to the cash or property.

Federal
No deductions are permitted, except as required by any statute or regulation, as authorized by a court order, collective agreement, or other document signed by a union, as authorized in writing by the employee, or for overpayments of wages.

### Hours and overtime

#### What are the requirements for meal and rest breaks?

Provincial
After five hours of work, a 30-minute unpaid meal break must be granted (but, if agreed to, this can be split into two 15-minute breaks), with no statutory "coffee breaks" beyond the required meal period. Most employees must receive at least 11 consecutive hours off work each day. Employees must receive at least eight hours off work between shifts (unless the total time on both shifts is less than 13 hours), and 24 consecutive hours off each work week or 48 consecutive hours every two consecutive weeks. Employers and employees may be able to vary some requirements with a written agreement and statutory information sheet.

Federal

After five hours of work, a 30-minute unpaid meal break must be granted, with no statutory “coffee breaks.” Between shifts, the minimum rest period is eight consecutive hours.

## What are the maximum hour rules?

Provincial

Forty-eight hours per week is the maximum with special rules in certain industries (e.g., construction). An employer and employee can enter into a written agreement (plus a statutory information sheet) to work excess hours. Further, in exceptional circumstances, the maximum weekly and daily hours can be exceeded. For most employees, the daily limit is eight work hours (or the regular workday if it is longer than eight hours).

Federal

Employees cannot work more than 48 hours per week, but an employer may apply for a permit to exceed those hours. Special rules apply in certain industries (e.g., railways and trucking).

## How should overtime be calculated?

Provincial

There is no daily overtime. All hours worked over 44 hours per week attract overtime at one and one-half times the employee’s regular rate. Certain industries have special rules. Employers and employees can enter into a written agreement averaging hours of work over a period up to four weeks for the determination of overtime entitlement.

Federal

All hours worked over 40 hours per week or eight hours per day (whichever is greater) attract overtime at one and one-half times the regular rate. Certain industries have special rules.

## What exemptions are there from overtime?

Provincial

The terms “exempt” and “non-exempt” are not generally used. Under the Ontario Employment Standards Act 2000, there are numerous exceptions from overtime obligations (including employees in supervisory or managerial roles, professionals (e.g., lawyers or doctors), certain commissioned salespersons and IT professionals), and special rules in certain industries (e.g., overtime applies to film and TV employees but not hours of work rules).

Federal

Overtime and hours of work do not apply to employees who are managers or superintendents or exercise management functions, or to professionals (e.g., lawyers or doctors). The test for managerial status is similar to the provincial test.

# Record keeping

## What payroll and payment records must be maintained?

Provincial

Record-keeping requirements include the following:

- the employee's name, address, and the date on which their employment began;
- the employee's date of birth, if the employee is a student under 18 years of age;
- the number of hours that the employee has worked each day and each week, unless the employee is paid a salary and overtime provisions do not apply or any excess hours are recorded;
- the dates and times that the employee worked;
- the information contained in each written statement given to the employee relating to wages, wages on termination, and vacation pay;
- any notices, certificates, correspondence, and other documents relating to employee leave (e.g., pregnancy, parental, emergency, family medical, or reservist);
- every agreement made permitting the employee to work excess hours;
- every overtime averaging agreement that the employer has made with the employee;
- vacation time and vacation pay records, including the amount of:
  - vacation time earned but not taken since the start of employment (if any);
  - vacation time earned in the year;
  - vacation time taken in the year;
  - vacation time earned but not taken at the end of the year;
  - vacation pay that the employee earned during the vacation entitlement year and how that amount was calculated;
  - vacation pay paid out during the year (subject to certain exceptions); and
  - wages on which vacation pay was calculated and the applicable time period (subject to certain exceptions); and

- the hours worked by employees of temporary help agencies that are assigned to the employer.

The retention period is generally three years from a specific date.

Federal
There are different extensive record-keeping requirements.

## DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

### What is the state law in relation to:

### Protected categories

(a) Age?

In Ontario, the Human Rights Code prohibits discrimination based on age. "Age" is defined in the statute as an age that is 18 years or more.

The Canadian Human Rights Act, which applies to federally regulated activities in the provinces (including Ontario)—such as banking, airline and rail transport, and radio and TV broadcasting—also prohibits discrimination based on age, but does not define this.

(b) Race?

Under both Ontario and federal human rights legislation, racial discrimination is prohibited.

## (c) Disability?

Ontario and federal human rights legislation prohibit employers from discriminating against employees who have a physical or mental disability or an addiction. The existence of a disability triggers an employer's duty to accommodate to the point of undue hardship for the employer. In deciding whether accommodation is to the point of undue hardship, cost, outside sources of funding, and health and safety requirements must be considered.

## (d) Gender?

In Ontario, discrimination based on gender identity and gender expression is prohibited. The federal statute also prohibits discrimination based on gender identity or expression.

## (e) Sexual orientation?

Both Ontario and federal human rights legislation prohibit discrimination based on sexual orientation.

## (f) Religion?

Ontario prohibits discrimination based on creed, and discrimination based on religion is prohibited federally.

## (g) Medical?

Under Ontario and federal human rights legislation, discrimination based on physical or mental disability or addiction is prohibited.

## (h) Other?

The Ontario Code prohibits discrimination based on:

- race;
- ancestry;
- place of origin;
- color;
- ethnic origin;
- citizenship;
- creed;
- sexual orientation;
- gender identity;
- gender expression;

- age;
- marital status;
- family status;
- disability;
- receipt of public assistance;
- record of offences; and
- sex, including because a woman is or may become pregnant.

A bill proposing to amend the Ontario Code , if passed, would add the following four new protected grounds of discrimination:

- immigration status;
- genetic characteristics;
- police records; and
- social condition.

Another proposed bill, if passed, would also add a new right to equal treatment provision, prohibiting discrimination "because a person refuses to undergo a genetic test or refuses to disclose, or authorize the disclosure of, the results of a genetic test."

Federal human rights legislation prohibits discrimination based on:

- race;
- national or ethnic origin;
- color;
- religion;
- age;
- sex;
- sexual orientation;
- gender identity or expression;
- marital status;
- family status;
- genetic characteristics;
- disability; and
- conviction for an offense for which a pardon has been granted or in respect of which a record suspension has been ordered.

## Harassment

### What is the state law in relation to harassment?

Both the Ontario and federal human rights statutes prohibit harassment based on or related to a protected ground.

Ontario's Occupational Health and Safety Act prohibits workplace violence and harassment, which includes workplace sexual harassment. Employers must develop and maintain a workplace harassment policy and program, which must:

- include an incident reporting mechanism;
- ensure the investigation of all complaints and allegations; and
- set out how complainants and respondents will be informed of the results of an investigation and any corrective action taken.

Ontario's Workplace Safety and Insurance Act 1997 allows individuals in Ontario who suffer from chronic mental stress in the workplace to make claims for Workplace Safety and Insurance Board benefits. Benefits for chronic mental stress are available if it is caused by a substantial work-related stressor arising out of and in the course of employment. In general, workplace harassment and bullying will be considered a substantial workplace stressor.

A new federal workplace violence and harassment regime is expected to come into force in 2020. It will expand the obligation of employers in federally regulated workplaces (e.g., banks and companies in the telecoms and transport industries) to investigate, record, report, prevent, and respond to workplace harassment and violence, including sexual harassment and sexual violence. Among other things, these employers will have to develop policies, conduct assessments, and implement training programs.

## Family and medical leave

### What is the state law in relation to family and medical leave?

The statutory leaves outlined below relate to provincially regulated businesses in Ontario. Minimum service requirements apply for some leaves listed. When an employee takes one protected leave, entitlement to other leaves is not reduced. All leaves are unpaid, except for domestic or sexual violence leave, which is paid for the first five days.

Different statutory leaves apply under federal law.

Pregnancy leave
Employees are entitled to up to 17 weeks' unpaid pregnancy leave.

Parental leave
A birth parent, adoptive parent, or a person in a relationship of some permanence with a parent of a child who plans to treat the child as their own is entitled to parental leave of up to 63 weeks, or up to 61 weeks if the employee has also taken pregnancy leave.

Family medical leave
Employees are entitled to up to 28 weeks' family medical leave to provide care or support to specified family members who are at significant risk of dying within 26 weeks.

Family caregiver leave
Employees are entitled to up to eight weeks' family caregiver leave per family member per year to care for an immediate family member with a serious medical condition.

Family responsibility leave
Employees are entitled to up to three days' leave per calendar year for illness, injury, medical emergency, or urgent matters that concern specified family members.

Critically ill childcare leave
Employees who are parents or guardians of children who are under 18 years old and have life-threatening injuries or illnesses are entitled to take up to 37 weeks' critically ill childcare leave.

Critically ill adult family member leave
Employees are entitled to up to 17 weeks' unpaid leave to provide care or support to a specified critically ill adult family member (18 years old or older).

Crime-related child death or disappearance leave
Employees who are parents or guardians of a child under 18 years old who dies or disappears as a result of a crime are entitled to 104 weeks' leave.

Organ donor leave

An employee who undergoes surgery for the purpose of organ donation is entitled to up to 13 weeks' organ donation leave. This can be extended for up to an additional 13 weeks if medically necessary.

Domestic or sexual violence leave

Employees are entitled to up to 10 days and up to 15 weeks' leave each calendar year if the employee or a child of the employee experiences domestic or sexual violence or a threat of domestic or sexual violence.

Although it is not entirely clear, it appears that the 10 days is intended for intermittent days off, while the 15 weeks is intended for continuous leave periods. The first five days of this leave taken in a calendar year is paid.

Sick leave

Employees are entitled to up to three days' leave per calendar year for personal illness, injury, or a medical emergency.

Bereavement leave

An employee is entitled to leave of up to two days' leave per calendar year because of the death of specified family members.

Reinstatement after taking statutory leave

Upon the conclusion of an employee's leave in Ontario, the employer must reinstate the employee to the position that they most recently held with the employer, if it still exists, or to a comparable position if it does not. The employee's wage rate on reinstatement must be equal to or the greater of:

- the rate that the employee most recently earned with the employer; and
- the rate that the employee would be earning had they not taken leave.

## PRIVACY IN THE WORKPLACE

### Privacy and monitoring

#### What are employees' rights with regard to privacy and monitoring?

Ontario does not have privacy legislation in place applicable to employees in the private sector for provincially regulated companies. However, there is a tort of privacy in Ontario called "intrusion upon seclusion" and to the extent that an employee's privacy is violated, they can commence an action against their employer for damages.

The Personal Information Protection and Electronic Documents Act (PIPEDA) applies to employees in federally regulated companies, and established case law under PIPEDA addresses the issue of surveillance in the workplace.

#### Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Provincially regulated employers should take note of the applicable human rights legislation which governs the inadvertent use of discriminatory information collected through social media.

Federally regulated companies should comply with PIPEDA and applicable human rights legislation in relation to potential privacy and discrimination issues.

### Bring your own device

### What is the latest position in relation to bring your own device?

Nothing prevents bring your own device policies and it is suggested that employers implement a bring your own device policy so that applicable workplace rules on the issue are clear.

## Off-duty

### To what extent can employers regulate off-duty conduct?

Employers have limited ability to regulate off-duty conduct, except to the extent that it affects their operations or is prejudicial to their business. Employees may be terminated from employment for these reasons, subject to possible notice of termination entitlements depending on whether it amounts to cause for termination.

## Gun rights

### Are there state rules protecting gun rights in the employment context?

There are no rules that protect gun rights in the employment context.

# TRADE SECRETS AND RESTRICTIVE COVENANTS

## Intellectual Property

### Who owns IP rights created by employees during the course of their employment?

In general, an employer owns the IP rights created by its employees during their employment. However, employers should include terms in their employment contracts that require the employees to assign any IP rights that arise during the course of their employment to the employer. Such contractual provisions should also include a waiver of the employees' moral rights in their work product.

## Restrictive covenants

### What types of restrictive covenants are recognized and enforceable?

The most commonly used restrictive covenants in the employment context are:

- confidentiality (or non-disclosure) clauses;
- non-solicitation clauses; and
- non-competition clauses.

While confidentiality clauses are typically held to be enforceable, non-solicitation and non-competition clauses are restrictive covenants in restraint of trade and accordingly are heavily scrutinized by the courts.

To be enforceable, restrictive covenants in employment contracts must be reasonable in reference to the interests of the parties and the public interest in discouraging restraints on trade. If a restrictive covenant in restraint of trade is ambiguous with respect to its prohibited activity or its temporal or geographic limits, the party seeking enforcement of the restrictive covenant will be unable to demonstrate reasonableness and therefore the restrictive covenant will not be enforceable.

If the clause is unambiguous, the employer must have a legitimate proprietary interest entitled to protection, and the covenant cannot be overly broad in the activity it prohibits and in its temporal and geographic scope. To be enforceable, the non-solicitation or the non-competition covenant must not go any further than necessary to protect the employer's proprietary interests.

Non-solicitation clauses must clearly identify to the employee which customers or clients cannot be solicited and should also be restricted to particular clients that the employee has worked with. As a general rule, the courts will not enforce a non-competition covenant where a non-solicitation clause would have been sufficient to protect the employer's ownership interests.

Distinguished from restrictive covenants given as consideration for the sale of a business, restrictive covenants found in employment contracts are subjected to greater scrutiny by the courts due to the inherent power imbalance in an employment relationship.

### Non-compete

Are there any special rules on non-competes for particular classes of employee?

No, there are no special rules on non-competition clauses for particular classes of employee. The analysis will follow the framework as set out above, and the clause should be tailored to the specific employment relationship. With respect to any class of employee:

- the employer must have a legitimate proprietary interest entitled to protection;
- the clause must be reasonable between the parties; and
- the clause must go no further than necessary to protect the employer's ownership interest.

Based on the above, non-competition clauses are generally held to be enforceable only in exceptional cases where the employee is particularly positioned to influence the employer's customers and undermine the employer's business.

## LABOR RELATIONS

### Right to work

Is the state a "right to work" state?

Once a union is certified under Ontario's Labour Relations Act, it acquires collective bargaining rights and becomes the voice of the employees in the "specified bargaining unit," most often defined as all employees of the employer, except those excluded under the statute (e.g., managers and supervisors). The first step in the certification process is an organizing drive to collect as many signed and dated union membership cards as possible from employees in the bargaining unit stating that they wish to be represented by the union. Signed cards on behalf of at least 40% of the members in the proposed bargaining unit must be filed with the Ontario Labour Relations Board. An application for certification must be served on the employer and filed with the board, and the employer must file a response within two business days. If the statutory criteria are met, the board orders a vote of affected employees on the fifth day after the application is filed. The vote will be successful if 50% + 1% of those voting vote in favor of the union.

The content of a collective agreement is subject to negotiation between the union and the employer. It may provide that union dues must be deducted from employees' wages but not require employees to become union members in order for them to be entitled to work in the unionized workplace. A collective agreement may also require union membership as a condition of employment, as well as the deduction of union dues.

### Unions and layoffs

#### Is the state (or a particular area) known to be heavily unionized?

Unionization rates have been declining in Canada since the 1980s, most significantly among young men. According to Statistics Canada, which has been measuring unionization rates since 1981, a union member in Canada today is slightly more likely to be a woman than a man. Since 1981, unionization rates have fallen in Canada from 37.6% in 1981 to 30.1% in 2018. In 2018 Ontario's unionization rate was close to the lowest in the country at 26.3%. In Canada, union density is most significant in the public sector (75.1% in 2018) and relatively insignificant in the private sector (15.9% in 2018). Further, in 2018 union density is most significant in Canada in education (75.2%), public administration (72%), utilities (63.1%), and health care and social assistance (54.1%).

#### What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

Each union's collective agreement has its own negotiated definition of what constitutes a layoff and its own rules that apply regarding the notice that an employer must give to employees when they are terminated pursuant to such a layoff.

Although a business' collective agreement may provide otherwise, in Ontario, the Employment Standards Act defines a "mass layoff" as the termination of 50 or more employees at the employer's establishment within four weeks. In addition, the Termination and Severance of Employment Regulation under the Employment Standards Act sets out the length of notice required in a mass layoff, determined by the size of the group affected, with every employee in the group entitled to the same notice. Specifically, it requires:

- an eight-week notice period if the employment of between 50 and 200 persons is to be terminated;
- 12 weeks' notice if the employment of between 200 and 500 employees is to be terminated; and
- 16 weeks' notice if the employment of 500 or more persons is to be terminated.

Several qualifications and exclusions apply. The employer must notify the director of employment standards before notices can be issued to employees.

Different legislative requirements apply to businesses in Ontario over which the federal government has authority, such as matters of an inter-provincial or national concern (e.g., banking, air and rail transport, and radio and TV broadcasting).

## DISCIPLINE AND TERMINATION

### State procedures

#### Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

In general, for non-union employees, statutes do not dictate such procedures; however, there may be circumstances where an employer has to conduct an investigation (e.g., harassment or sexual harassment under occupational health and safety legislation) and should satisfy the statutory investigation obligation before deciding on discipline or termination. At common law, a non-union employee can be terminated for just cause without notice or compensation in lieu of notice; however, before termination, case law generally requires just cause allegations to be investigated and the employee to be allowed an opportunity to explain or respond to allegations.

For unionized employees, the collective agreement terms determine discipline and grievance procedures. If the collective agreement does not contain a grievance procedure, the Ontario Labour Relations Act 1995 and the Canada Labour Code specify the grievance procedure that must be followed by the parties.

## At-will or notice

### At-will status and/or notice period?

Notice period—there is no at-will employment.

### What restrictions apply to the above?

The Ontario Employment Standards Act 2000 and the Canada Labour Code both dictate employer obligations for minimum notice of termination or pay in lieu, as well as minimum severance pay (in each case, subject to employee eligibility). Employer's common law obligation with respect to notice or pay in lieu is determined based on all relevant factors, including age, length of service, position, responsibilities, and availability of similar employment. An enforceable termination clause in an employment contract can displace an employer's common law obligation. Such a termination clause must satisfy the minimum statutory requirements.

## Final paychecks

### Are there state-specific rules on when final paychecks are due after termination?

Provincial
If employment ends, the employer must pay all outstanding final wages no later than seven days after employment ends or the day that would have been the employee's next pay date, whichever is later.

Federal
Final pay must be provided within 30 days.