Global Employer Handbook Chapter
Nova Scotia

INTRODUCTION

Canada has 10 provinces and three territories. Nova Scotia, which is located on the East Coast, has the largest population and economy of Canada's four Atlantic provinces (Nova Scotia; PEI; New Brunswick; Newfoundland and Labrador).[1] Overall, it is the sixth largest province with a population of about one million, 440,000 of whom live within the Halifax Regional Municipality (Halifax), which is the provincial capital. Since about 2016, Halifax has continually been one of the quickest growing cities in Canada. Sydney is the second largest community in Nova Scotia and the only other to be designated a city. There are several towns that act as regional economic hubs, such as Truro, Amherst, New Glasgow, Antigonish, Yarmouth, Bridgewater, and the Annapolis Valley.

Nova Scotia's public sector is quite robust; CFB Halifax is the largest military base in Canada and the province has eleven post secondary institutions. The hospitals in Halifax are the largest and most sophisticated in Atlantic Canada, and the Halifax Airport functions as a regional hub. These institutions provide Halifax, in particular, with a high economic floor.

Michelin Tires, Irving Shipbuilding, and the Halifax Port Authority are the largest private sector employers in the province. Some other major industries in Nova Scotia are as follows:

- Ocean seafoods;
- Ship building;
- Information technology (especially as it relates to military technology and to ocean industries);
- Mining;
- Agriculture;
- Tourism;
- Naval defence and aerospace;
- Forestry; and
- Business facing professional services.

Nova Scotia is represented federally by eleven members of parliament (MP's) and ten senators. Provincially, Nova Scotians are represented by fifty-five members of the legislative assembly (MLA's), who sit in the House of Assembly.

[1] Nova Scotia, New Brunswick and Prince Edward Island are commonly referred to collectively as the Maritimes.

Nova Scotia is predominantly English speaking with a very small French population. The Mi'kmaw smaller French community, mostly Acadians. There are 13 Mi'kmaq communities in Nova Scotia and the majority of the First Nation people are from the Mi'kmaq nation. Nova Scotia has a Gaelic-speaking community, which is taught in some schools.

Canada has a universal health-care system which is paid for through taxes. Canadian citizens and permanent residents may apply for public health insurance. Each province has its own health insurance plan. Most provinces have a waiting period before becoming eligible for government health insurance coverage. Each province will provide a health insurance card to eligible residents, and this card must be shown when accessing medical services. The federal government provides temporary health insurance for certain refugees; protected persons and refugee claimants until they are eligible for provincial health insurance.

NOVA SCOTIA LABOUR AND EMPLOYMENT LAW

Employment relationships in Nova Scotia are governed by constitutional law, legislation and common law. If the workplace is unionized, the employment relationship is also governed by a collective agreement.

Labour law falls under the jurisdiction of the provincial government, save for those industries which specifically fall under the purview of the federal government. Therefore, most employment-related cases are heard before provincial courts, boards, or tribunals (e.g., the Supreme Court of Nova Scotia, The Nova Scotia Court of Appeal, and the Nova Scotia Labour Board). The federal government retains jurisdiction in circumstances including specific works and undertakings within exclusive federal jurisdiction (e.g. shipping, air transportation, and banking, among others).[2] Employers operating within federal jurisdiction are subject to federal legislation and will have matters heard before the Federal Court of Canada or the Canada Industrial Relations Board.

I. HIRING

A. Basics of Entering an Employment Relationship

Employment relationships in Nova Scotia are not "at will". Except for fixed-term employment contracts, the presumption is that an employer and an employee intend the employment contract to remain in force indefinitely until it is ended by way of reasonable notice or just cause.

The rules governing employment relationships arise from three sources: (a) common law; (b) legislation (statutes and regulations); and (c) in unionized workplaces, the collective agreement between the employer and the union. The application of these rules depends on a variety of factors.

[2] See *Constitution Act*, 1867, 30 & 31 Vict, c 3, at s. 91

- *Common Law*

The employment relationship is regulated by rules derived from case law, jurisprudence, and other precedents. That body of law is referred to as the "common law." Some of these concepts go back to pre-confederation but are constantly being changed and adjusted as the courts hand out new decisions.

As new cases and decisions are released, they become part of the common law. As such, the common law is continually being modified by the courts. Those new cases and decisions can result in significant changes to existing legal rules, or they may serve to reaffirm existing rules. Trends in certain decisions, or decisions from higher courts such as the Supreme Court of Canada, play a significant role in articulating this body of law. It is important to note-up or research the law when applying common law rules. This ensures that the common law rules as applied are accurate and reflect current legal principles.

- *Statutory Law*

A significant number of rules regarding employment in Nova Scotia are outlined in the *Labour Standards Code*, R.S.N.S. 1989, c. 246, s. 1 (the "*Labour Standards Code*") and the corresponding regulations. The *Labour Standards Code* generally applies to all employees, however certain types of employees are excluded. The *Labour Standards Code* establishes the minimum standards for employment in Nova Scotia, such as the rules relating to hours of work, vacation, public holidays, wages, and leaves of absence.

While an employer can provide an employee with rights that are greater than the minimums articulated in the *Labour Standards Code*, they are not entitled to impose anything that falls below those statutory minimums. If an employment contract purports to give an employee rights that are less than those articulated in the *Labour Standards Code*, then those provisions of the contract will be declared void as they are against public policy. Depending on the circumstances, there is case law to suggest that attempting to provide less than those articulated minimums could result in the entire contract being declared void.

In addition to the *Labour Standards Code*, there are other provincial laws that are relevant to the employment relationship, including: the *Trade Union Act*, RSNS 1989, c 475 (the "*Trade Union Act*"), the *Pension Benefits Act*, RSNS 1989, c 340, (the "*Pension Benefits Act*") the *Nova Scotia Human Rights Act*, RSNS 1989, c 214 (the "*Human Rights Act*"), the *Occupational Health and Safety Act*, SNS 1996, c 7 (the "*Occupational Health and Safety Act*"), the *Workers' Compensation Act*, SNS 1994-95, c 10 (the "*Workers Compensation Act*") the *Pay Equity Act*, RSNS 1989, c 337 (the "*Pay Equity Act*"), the *Apprenticeship and Trades Qualifications Act*, SNS 2003, c 1, and the *Arbitration Act*, RSNS 1989, c 19. Employers are also subject to the regulations accompanying these Acts. The relevance of these laws will be addressed in more detail below.

Depending on the industry in which the employer operates, there may be additional legislation that the employer is subject to which is specific to that industry.

B. Discrimination (in the Hiring Process)

The Nova Scotia *Human Rights Act* prohibits employers from eliciting information, directly or indirectly, about any of the protected characteristics with respect to employment and pre-employment activities such as recruitment and hiring. (See the list of protected characteristics in section IV(A))

C. Employment Applications

The protections described in the Nova Scotia *Human Rights Act* also cover employment applications. Employers should avoid questions related to any of the prohibited grounds identified in the Nova Scotia *Human Rights Act*. Asking such questions could lead to a discrimination complaint from a prospective employee, particularly if that person does not receive an offer of employment. Questions that an employer is prohibited from asking applicants during the recruitment and interview process include questions about:

- Physical characteristics such as eye or hair colour, weight, or height (including requests for photographs);
- Race or ethnicity;
- Gender;
- Religious affiliations, places of worship attended, or customs observed;
- Citizenship – although an employer can ask if the applicant is legally entitled to work in Canada;
- Sex or family status, including "maiden" or "birth" names, marital status, childcare arrangements, or about an applicant's spouse or partner;
- Health, physical or mental illness, medical history, workers' compensation claims, or accommodation of disability-related needs.

Certain questions that invite information that would otherwise be discriminatory may be asked once an applicant is hired for a position, and the employer has a legitimate need for requesting the information. For example, certain questions may be required for the application and administration of insurance or benefit plans, taxation purposes, or where the employer must make an assessment on an employee's accommodation needs.

D. Use of Employment Contracts

An employment contract exists in all employment relationships, whether it is reduced to writing or not. As a result, it is not necessary for an employment contract to be in writing – it can be oral or implied. However, any limitation on a common law or legal write must be made out in writing to be given effective consideration by the courts. In creating an employment contract, the parties negotiate the terms for matters such as the duration of employment, compensation, and the parties' obligations arising out of termination.

Employers should take the appropriate care and due diligence when creating employment contracts. This includes carefully drafting a written agreement for every employee. Employment contracts typically include a description of the duties of employment, hours of

work, compensation, and benefits. They may contain confidentiality clauses and non-compete provisions.

The contract should accurately define and limit an employee's entitlements upon termination. Failure to do so exposes an employer to uncertain and expensive risks that could result from a future termination. Where notice of termination provisions are properly drafted and satisfy the minimum statutory obligations arising out of the Nova Scotia *Labour Standards Code*, the employment contract is more likely to prevail, notwithstanding what the employee may have been entitled to under common law.

Courts for the most part will strictly interpret an employment contract. The terms of agreement are typically upheld unless an employee establishes that the contract was made under duress or that the terms are so unfair that it would be unconscionable to uphold. For example, a non-compete clause that prohibits an employee who worked only in Nova Scotia from working in the same field in any other Canadian province for an extended period of time would likely be found unconscionable and unenforceable.

Most employees are hired on an indefinite contracts of employment, those being contract which do not specify a termination date. In the case of all indefinite contracts, reasonable notice of termination must be provided unless there is just cause for termination. A definite term contract is a contract for a fixed term with a specific end date. A definite term contract that does not set out mutual options of extension expires at the end of the term, and no further remedy is available to an employee following discharge at the end of the term.

If a definite term contract continues beyond the expiry date, and the parties continue in their normal employment relationship, the relationship is deemed to be employment of an indefinite term, terminable on reasonable notice. Where an employee hired on a definite term contract is dismissed before the contract expires, unless there is a term providing for dismissal of the employee, the employee can sue for all reasonable losses incurred based on the remainder of the term.

In an effort to minimize the risk of future litigation, employers should consult with an employment and labour lawyer when preparing employment contracts.

E. Advertising/Recruitment

The Nova Scotia *Human Rights Act* restricts employers from publishing or broadcasting any advertisement of an employment opportunity in a manner that is discriminatory, based on the prohibited grounds identified in section 5 of the Nova Scotia *Human Rights Act*.

F. Background Checks/ Employment References

There is no legal impediment that prohibits employers from asking applicants or prospective candidates to provide the names of employment references and permission to contact them. Difficulty contacting referees or policies against providing references may still create challenges for employers seeking references.

Reference checks are useful to employers as they provide qualitative information about a person's performance, skills, and suitability for the position in question. Reference checks are distinct from employment verification. The latter merely confirms the accuracy of information provided by an applicant about matters including employment dates, job title, and salary.

In completing a reference or background check, employers should use caution to avoid soliciting information about any of the prohibited grounds of discrimination identified in the Nova Scotia *Human Rights Act*. Where a background check elicits information about a prohibited ground, an employer could risk an allegation that they were seeking the information for an illegal or discriminatory purpose. Unlike in other provinces in Canada, employers in Nova Scotia can require candidates to disclose whether they have a criminal record and to carry out criminal background checks. However, if they do carry out such practices, they must do so consistently.

Employers are encouraged to conduct reference and background checks on prospective employees to verify the quality and suitability of applicants to the workplace. The information helps employers feel more confident that their hiring decisions are the right fit for their needs.

II. COMPENSATION

A. Minimum Wage

Minimum wage rates are implemented individually through the orders. There are three minimum wage orders under the Nova Scotia *Labour Standards Code*: the *Minimum Wage Order (General)*, NS Reg 5/99, Sch A; the *Minimum Wage Order (Construction and Property Maintenance)*, NS Reg 13/2020and *Minimum Wage Order (Logging and Forest Operations)*, NS Reg 5/99, Sch C. Only the *Minimum Wage Order (General*) is discussed here.

Certain categories of employees are exempt from the *Minimum Wage Order (General)*, including:

- Some farm employees;
- Apprentices employed under the terms of an apprenticeship agreement under the *Apprenticeship and Trades Qualification Act*;
- Anyone receiving training under government sponsored and approved plans;
- Anyone employed at a non-profit playground or summer camp;
- Real estate and care salespeople;
- Commissioned salespeople who work outside the employer's premises but not those with established routes;
- Insurance agents licensed under the *Insurance Act*, RSNS 1989, c 231;
- Employees who work on a fishing boat;
- Employees who fall under the minimum wage orders concerning Logging and Forest Operations and Construction and Property Maintenance;

- Employees who provide domestic service for, or give personal care to, an immediate family member in a private home and are working for the householder;
- Employees who provide domestic service for, or give personal care in, a private home and are working for the householder for 24 hours or less per week; and
- Athletes while engaged in activities related to their athletic endeavor.

The minimum wage rates are subject to change from time to time and vary according to specific regulated occupations and an employee's level of experience. The rates set the least amount of money an employer must pay an employee for each hour of work. Increases in minimum wage occur on April 1st of every year, with notification of the increase occurring in January of the same year.

As of April 1, 2024, the minimum wage rate for employees is $15.20 per hour.

In addition, many employers in Nova Scotia pay employees by the amount they produce and not by the hour. This arrangement is called "piecework." The *Minimum Wage Order (General)* mandates that an employer cannot pay an employee less for piecework than that employee would have earned at the minimum wage for the number of hours worked. This rule does not apply to employees employed on a farm whose work is directly related to harvesting fruit, vegetables, and tobacco.

B. Wage Payments & Deductions

The Nova Scotia *Labour Standards Code* requires that employees be paid for their work. In most cases they must earn a minimum hourly rate as set by the Nova Scotia *Labour Standards Code*'s minimum wage orders. Pay includes wages (i.e. hourly, salary, commissions, or piecework), holiday pay, overtime pay, and vacation pay. Pay does not include tips and gratuities, and these are not protected by the Nova Scotia *Labour Standards Code*. The Nova Scotia *Labour Standards Code* also provides strict rules about the types of deductions employers can make from employees' pay.

- ***Deductions from Pay***

Employers make deductions from pay for various reasons. Lawful deductions include:

- Statutory deductions (income tax, CPP, and EI);
- Court ordered deductions (e.g. garnishment for child support);
- Employee benefits (e.g. health plans);
- Charges for board and lodging as authorized by the *Minimum Wage Orders;*
- Recovery of pay advances or overpayments;
- Deductions for employee purchases from the employer's business on account, if there is a clear agreement between the employee and the employer that these can be deducted; and
- Deductions for dry cleaning of woolen or other heavy material uniforms.

These deductions can be made even if they bring the employee's wages below the minimum wage.

If an employer makes a deduction for losses incurred while the employee is working, it must be authorized by a clear, written agreement between the employer and the employee. If the deduction is for losses caused by a customer leaving without paying for goods or services, the employer may only take a deduction from the employee where they can show the loss is the fault of the employee. The authorization should be made in advance, ideally when the employee is hired. Authorizations made after the loss occurs will be open to challenge. The authorization should specify the kind and amount of deductions that will be made. These types of deductions must not take the employee's gross wages below minimum wage.

- *Deductions for Board and Lodging*

The *Minimum Wage Order (General)* dictates how much employers may deduct from an employee's minimum wage for board and lodging that the employer provides. These amounts are:

- For board and lodging (per week): $68.20 or less
- for board only (per week): $55.55
- For lodging only (per week): $15.45 or less
- For a single meal: $3.65 or less

An employer cannot charge an employee for a meal not received.

- *Deductions for Uniforms*

If an employer requires employees to wear uniforms, aprons, or smocks, the employer may not take the cost of purchasing or laundering the uniform from the employees' wages if doing so will take their hourly rate below the minimum wage (except as set out below).

The employer may take from an employee's wages the cost of dry cleaning a uniform that is made of wool or a heavy material. The employer may do this even if the employee's wages then fall below the minimum wage.

C. Minimum Age/Child Labor

The Nova Scotia *Labour Standards Code* has rules about when persons under 16 years of age may be employed. The Nova Scotia *Labour Standards Code* further divides children into two groups: those under 14 and those under 16. Employers are not permitted to employ a child under the age of 16 in certain types of work, such as: mining; manufacturing; construction; forestry; work in garages and automobile service stations; work in hotels; or work in billiard rooms, pool rooms, bowling alleys or theatres.

Employers may employee children aged 14 and 15 to work in restaurants provided they make sure these employees are:

- not operating cooking equipment;
- provided with safety training on all equipment; and
- provided with adequate supervision.

These rules for restaurants do not apply to a situation where an employer employs a 14- or 15-year-old member of his or her own family.

Employers shall not pay wages to a child under the age of 14 to do work that:

- Is likely to be unwholesome or harmful to the child's health or normal development; or
- Is likely to keep the child out of school or make it hard for the child to learn at school.

Employers shall not employ a child under 14 to do work:

- For more than 8 hours a day;
- For more than 3 hours on a school day unless a certificate has been issued under the *Education Act*, SNS 1995-96, c 1 to allow the child to work;
- For any time during the day when that time plus the time the child is in school adds up to more than 8 hours; or
- Between the hours of 10pm of any day and 6am of the next day.

D. Overtime Requirements

The Nova Scotia *Labour Standards Code* establishes that subject to certain exceptions, employees are entitled to receive one and a half times their regular wage for each hour they are required to work beyond 48 hours per week. A week is defined as a seven-day period. This rule also applies to some salaried employees.

Certain industries characterized by irregular working hours and conditions do not follow this general rule. For example, in the construction industry, overtime commences after an employee has worked in excess of 110 hours within a consecutive 14-day period.

Some employers and employees may be permitted to use fixed cycle averaging agreements if certain criteria set out in the Nova Scotia *Labour Standards Code* are met. Under such an agreement the employee's hour of work are averaged over a number of weeks – where there is a pre-determined, fixed cycle of work that repeats over a specific period of time and provides for extended time off. Under this type of agreement, the overtime would be based on the total number of hours the employee worked in the cycle, rather than on an individual week.

Other industries are not covered by the Nova Scotia *Labour Standards Code*'s overtime rules at all. Employers should consult the applicable wage orders under the Nova Scotia *Labour Standards Code* and seek legal advice to determine how overtime rules may apply to their workforce.

E. Workday/Workweek/Work hours

There is no set limit on the hours of work per day or week under the Nova Scotia *Labour Standards Code*. That said, under normal circumstances, employers must grant employees a rest period of at least 24 consecutive hours in every seven-day period. See also limitations on work hours for children as set out in section IV(A), and requirements to provide rest periods and breaks in section VIII(D)

The day of rest rules do not apply to the following classes of employees:

- Most farm employees;
- Commissioned salespeople who work outside the employer's place of business;
- Employees who work on a fishing boat;
- Practitioners or students in training for architecture, dentistry, law, medicine, chiropody, professional engineering, public or chartered accounting, psychology, surveying, or veterinary science;
- Employees who provide domestic service for, or give personal care to, an immediate family member in a private home and are working for the householder;
- Employees who provide domestic service for, or give personal care in, a private home and are working for the householder for 24 hours or less per week;
- Employees employed in offshore oil and gas work while under the jurisdiction of the Canada-Nova Scotia Offshore Petroleum Board; and
- Athletes while engaged in activities related to their athletic endeavor.

Employers operating in unionized environments should consult the applicable collective agreement to determine any restrictions in place regarding the scheduling of hours of work.

In emergency situations, such as when an accident has occurred or urgent work on machinery is necessary, an employer can require more than six days of work in a row. In such emergency situations, the employer can only require as much work as is needed to avoid serious interference with the ordinary operation of the workplace. Employers are still obligated to follow the Nova Scotia *Labour Standards Code* rules respecting breaks and overtime during emergency work.

Employers can apply to the Director of Labour Standards under limited circumstances for a temporary exemption, known as a variance, from the period of rest rule. Even if a variance is granted, the employer must still follow the Nova Scotia *Labour Standards Code* rules respecting breaks and overtime. In deciding whether to grant an exemption, the Director will consider the following:

- If the request is due to a special project or undertaking;
- If the exemption is temporary in nature;
- If the employer is proposing an alternative period of rest arrangement in which the number of rest days employees are entitled to following a work period is equal to at least one day off for each seven-day period;

- If the majority of employees support the proposed alternative period of rest arrangement;
- If the workplace is unionized, whether the union supports the employer's request; and
- If there are any health and safety concerns.

Employers have a general duty to provide a safe workplace for their employees. Requiring hours of work that could create an unsafe workplace may attract scrutiny under the *Occupational Health and Safety Act*, SNS 1996, c 7.

- *Calling an Employee In*

Generally, if an employee is called in to work outside his or her regular hours of work, the employer must pay the employee for at least three hours of work at the minimum wage rate. This applies even if the employee works only one or two hours, and if the employee's regular hourly rate is more than minimum wage.

- *Waiting for Work*

Employees must be paid at least minimum wage for all time spent at the workplace, at the request of the employer, waiting to perform work.

F. Benefits/Health Insurance

There is no statutory requirement for an employer in Nova Scotia to provide health insurance to their employees. Employers may opt to provide health, dental, and/or vision, long-term disability, short-term disability, or other types of insurance benefits to their employees, but there is no legal obligation to do so.

If an employer provides these types of benefits to employees, they may be obligated to continue these benefits through the statutory notice period under the *Labour Standards Code*, and any common law notice period the employee may be entitled to upon termination of employment.

III. TIME OFF/LEAVES OF ABSENCE

The Nova Scotia *Labour Standards Code* establishes a variety of leaves of absence that employers must permit employees to take without retaliation from the employer.

For the most part, these are unpaid leaves, however employers should note that in some industries or in particular circumstances, it may be customary for the employer to offer paid leave for some portion of the leaves of absence. In addition, under several types of leaves of absence, an employee may qualify for benefits under the federal government's Employment Insurance (EI) program.

During a leave of absence, an employee leaves the job with the intention to return. The intent is to provide job protection so an employee can take time off from his or her job for the leave. Employees can qualify for multiple leaves under the *Labour Standards Code*. While on one type of leave, an employee may still qualify for other types of leave.

Generally, with job-protected leaves of absence the employer must:

- Allow the employee to keep up, at his or her own expense, any benefit plans to which the employee belongs – note that the employer must give 10 days' written notice before the option to keep up employee benefits is no longer in effect;
- Accept the employee back to the same position held by the employee immediately before the leave began, or, where that position is not available, in a comparable position with no loss of seniority or benefits when the employee returns from the leave.

Employers are not permitted to fire, lay off, or discriminate in any way against an employee who has taken, has said that he or she intends to take, or who the employer believes may take, a leave of absence that the Nova Scotia *Labour Standards Code* indicates an employee should be able to take. In some cases, there may be an assumption that a termination in these circumstances is discriminatory, and an employee may be entitled to re-instatement with back-pay.

A. Paid Time Off

- *Vacation Time*

Under the Nova Scotia *Labour Standards Code*, employers must give employees vacation time of two weeks after each period of twelve months of employment. This increases to three weeks once an employee has completed eight years of service with the employer. An employee earns his or her vacation time during the first twelve months of work and every twelve months after that. The employer must give the employee his or her vacation time within the ten months following the twelve-month earning period.

Employers decide when employees will take their vacation time. Employers must tell employees when their vacation will begin at least one week before it begins. Many employers let their employees choose when to take vacation time, however the employer has the final say. If the employer and employee agree, the vacation time may be broken into two or more vacation periods, as long as the employee receives his or her full allotment of vacation time and receives at least one unbroken week of vacation.

Employees who work full time must take vacation time. Employees who work less than ninety percent of the employer's regular working hours during the twelve months when they earned vacation can give up vacation time and just collect their vacation pay. An employee must tell his or her employer in writing that he or she is giving up vacation time. In such a case, the employer must pay the employee his or her vacation pay no later than one month after the date that the twelve-month earning period ends.

- *Vacation Pay*

Vacation pay is different than wages. Employers must pay employees, whether full-time, part-time, or seasonal, vacation pay of at least four percent of gross wages. This increases to six percent of gross wages once the employee has completed eight years of service with the employer. An employee earns vacation pay during the first twelve months of work for an employer and every twelve months after that.

Employees do not earn wages when they take vacation time. Vacation pay is intended to be the employee's pay during his or her vacation time, even if the employee receives vacation pay on each pay.

An employer can pay vacation pay by:

- Accumulating the vacation pay over the twelve month earning period and paying it out to employees at least one day before they take their vacation time – note that an employee can request accumulated vacation pay earlier but the employer does not have to provide it until one day before the employee's vacation;
- Adding vacation pay to each cheque; or
- Including the vacation pay in with the employee's hourly rate, which would be paid in every pay cheque (in this case, the employer must ensure that the employee's rate of pay is at least minimum wage plus four percent, or six percent for employees after eight years of service).

An employer must make it clear to each employee how they are being paid their vacation pay. If an employee's job ends and the employee has accumulated vacation pay, the employer must pay the accumulated vacation pay within 10 business days after the employment ends.

The Nova Scotia *Labour Standards Code* provisions regarding vacation time and vacation pay do not apply to the following categories of employees:

- Real estate and car salespeople;
- Commissioned salespeople who work outside the employer's place of business, but not those with an established route;
- A salesperson who sells mobile homes;
- Employees who work on a fishing boat;
- Employees who provide domestic service for, or give personal care to, an immediate family member in a private home and are working for the householder;
- Employees who provide domestic service for, or give personal care in, a private home and are working for the householder for 24 hours or less per week; and
- Athletes while engaged in activities related to their athletic endeavor.

- *Holidays*

The Nova Scotia *Labour Standards Code* gives six holidays with pay each year to those employees who qualify. If an employee does not qualify to have these holidays off with pay, they are still entitled to take the holiday off without pay. If the holiday falls on an employee's regular day off, the employee is entitled to another day off with pay. These holidays are:

- New Year's Day;
- Nova Scotia Heritage Day;
- Good Friday;
- Canada Day;
- Labour Day; and
- Christmas Day.

In addition, the Nova Scotia *Remembrance Day Act*, RSNS 1989, c 396, determines whether Remembrance Day is given as a holiday, and whether any pay is owed employees.

- *Holiday Pay*

To qualify for a day off with pay for holidays under the Nova Scotia *Labour Standards Code*, an employee must:

- Be entitled to receive pay for at least 15 of the 30 calendar days before the holiday; and
- Have worked on his or her last scheduled shift or day before the holiday and on the first scheduled shift or day after the holiday.

The employee is not required to have worked 15 out of the 30 calendar days before the holiday. He or she is only required to have been entitled to receive pay. This means that if an employee was sick and the employer has a paid sick time policy, or if the employee is attending a course and is being paid wages for attending, that employee may still qualify for the paid holiday.

The second requirement does not mean that the employee must work on the day after the holiday to be paid for the holiday. He or she need only to work on the first scheduled day to work after the holiday. If for example the day after the holiday is one when the employee is not scheduled to work, then he or she may still qualify for the paid holiday.

If an employer tells an employee not to report for work on his or her last scheduled workday immediately before the holiday, or the next scheduled workday after the holiday, then the employee is still entitled to receive holiday pay if he or she meets the first qualification.

An employee who works on Remembrance Day and who is entitled to receive wages for at least 15 of the 30 calendar days immediately before Remembrance Day may be entitled to receive another day off with pay. That day with pay may be taken at the end of the employee's vacation or any other day the employee and employer may agree upon.

If an employee qualifies for the holiday and is given the day off, the employer must pay a regular day's pay for that holiday. If the employee's hours of work change from day to day, or

if wages change from pay to pay, the employer should average hours or wages over 30 days to calculate what to pay the employee for the holiday.

An employee who works on a holiday and who qualifies to be paid holiday pay is entitled to receive both:

- The amount the employee would have normally received for that day; and
- One and one-half times the employee's regular rate of wages for the number of hours worked on that holiday.

Employees who work in a continuous operation can be paid for holidays in a different way. A continuous operation is:

- Any industrial establishment in which production continues without stopping;
- Any service that runs trucks and other vehicles;
- Any telephone or other communications service; and
- Any service or production in which employees normally work on Sundays or public holidays.

In a continuous operation, the employer can pay for holidays worked in one of two ways:

- According to the calculation already described; or
- By paying straight time for the hours worked and giving the employee another day off with pay.

An employee in a continuous operation will not be entitled to holiday pay if he or she does not report for work on the holiday after being called upon to work that day.

The holiday pay rules do not apply to the following categories of employees:

- Employees who work under a collective agreement;
- Most farm employees;
- Real estate and car salespeople;
- Commissioned salespeople who make sales at locations other than at the employer's premises, except those with an established route;
- Employees who work on a fishing boat;
- Employees who work in the manufacturing or refining processes of the petrochemical industry;
- Employees who provide domestic service for, or give personal care to, an immediate family member in a private home and are working for the householder;
- Employees who provide domestic service for, or give personal care in, a private home and are working for the householder for 24 hours or less per week; and
- Athletes while engaged in activities related to their athletic endeavour.

- *Domestic Violence Leave*

Domestic violence leave can be taken by an employee who has been employed for at least three months, who is experiencing domestic violence, or whose minor child is experiencing domestic violence. The employee may take 10 intermittent or consecutive days in one calendar year, and/or 16 consecutive weeks in one calendar year. **Up to three days' leave must be paid by the employer.**

Domestic violence is broadly defined and includes an act of abuse that is physical, sexual, emotional, or psychological. It includes coercion, stalking, harassment or financial control, and includes threats.

The leave applies to situations of abuse involving the following relationships:

An employee who is abused by:

- their current or former intimate partner
- their child
- a person under 18 years who lives with them, or
- an adult who lives with them and is related to them by blood, marriage, adoption or foster care

An employee whose child is abused by:

- the child's current or former intimate partner, or
- a person who lives with the child

B. Family and Other Medical Leaves

- ***Sick Leave***

The Nova Scotia *Labour Standards Code* states that an employee is entitled to a maximum of three days of unpaid leave per year where the leave is required:

- Due to the sickness of a child, parent, or family member; or
- For medical, dental, or other similar appointments during working hours.

The *Patient Access to Care Act* contains provisions under Schedule B, the Medical Certificates for Employee Absence Act, which limit the circumstances in which employers can require the employees to provide medical notes and broadens the scope of healthcare professionals who can provide them. This Act is administered by the Labour Standard Division. Under this Act, Employers cannot require Employees to provide medical notes unless:

- The Employee has missed more than five consecutive working days due to sickness or injury, or

- The Employee already had at least two non-consecutive absences of five or fewer days due to sickness or injury in the preceding 12-month period.

- *Bereavement Leave*

An employee can take unpaid leave of up to five consecutive working days if his or her spouse, parent, guardian, child / child under his or her care, grandparent, grandchild, sister, brother, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, or brother-in-law dies. Employees must give their employers as much notice as possible that they will take this leave.

- *Compassionate Care Leave*

Compassionate care leave is an unpaid, 28-week leave for an employee who has worked with the same employer for a period of at least three months and who needs to provide care or support for a seriously ill family member. A family member includes a spouse or common-law partner of the employee, a child of the employee or a child of the employee's spouse or common-law partner, or a parent of the employee or a spouse or common-law partner of the parent.

A legally qualified medical practitioner must issue a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks from the day the certificate is issued or, where the leave began before the certificate was issued, the day the leave began. The period of leave begins with the first day of the week in which the certificate is issued, or where the leave began before the certificate was issued, the first day of the week in which the leave began if the certificate is valid from any day in that week. The period of leave ends either when the family member dies, or the period of 52 weeks following the first day of the week in which the leave began.

For compassionate care leave to be taken after the end of the period of 26 weeks, it is not necessary for a legally qualified medical practitioner to issue an additional certificate. Compassionate care leave may only be taken in periods of not less than one week but can occur sporadically during the leave entitlement period. The employee must inform the employer as soon as possible of any intention to take compassionate care leave. Where requested in writing by the employer, the employee must provide the employer with a copy of the certificate.

Employees who take a compassionate care leave may qualify for a compassionate care leave benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

- *Critically Ill Child Care Leave*

Critically ill childcare leave is an unpaid leave that allows parents and guardians, who have worked with the same employer for at least three months, to take time off work to provide care and support to their critically ill or injured child under the age of 18 years old. A qualified medical practitioner must issue a medical certificate stating that the child has a

critical illness and the period of time for which the child needs care. The employer can ask in writing for a copy of the medical certificate.

The employee can take up to 37 weeks' leave within a 52-week period. The leave can be broken up into several periods of at least one week in duration during the 52-week time frame. The 52-week time frame begins on the first day of the week in which the child became critically ill.

The leave ends when the number of weeks in the period specified in a medical certificate has been taken (if the certificate sets out a period of less than 37 weeks), when 37 weeks of leave has been taken, or when the employee ceases to provide care to the child. An employee can return to work earlier than intended by giving the employer at least 14 days' notice.

Under some circumstances, an employee can extend his or her leave or take a new leave during the 52-week time frame. The employee may also be able to take consecutive critically ill childcare leaves.

The employee must give the employer written notice of his or her intention to take the leave. Where the leave must begin before written notice can be given, the employee must advise the employer of the leave as soon as possible. The employee must also provide the employer with a plan setting out how the leave will be taken, since the leave can be broken up into more than one period over the 52-week time frame. This leave plan can be changed during the leave with the employer's agreement or by providing the employer with reasonable notice.

Employees who take a critically ill childcare leave may qualify for a benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

- *Critically Ill Adult Leave*

Critically ill adult care leave is an unpaid leave that allows an employee to take time off to provide care and support to a critically ill or injured adult who is a family member (or a person like family). Critically ill adult is defined in the federal *Employment Insurance Act* regulations. A critically ill adult is a person 18 or older who has a life-threatening illness or injury. To qualify, the employee must have worked for the employer for at least three months and must provide a medical certificate from a qualified medical practitioner which states that the adult has a critical illness and the required period of care.

The employee may take up to 16 weeks' leave in a 52-week period, which may be broken up into periods of at least one week in length. The 52-week period begins when the adult became critically ill.

The leave ends when the required period of care expires, the employee stops providing care, or the 16 weeks' leave period ends. If the original leave period requested was less than 16

weeks, additional leave periods may be granted. An employee may choose to return to work early by giving 14 days' notice to the employer.

Employees who take a critically ill adult leave may qualify for a benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

- *Crime-Related Child Death or Disappearance Leave*

Crime-related death or disappearance leave is an unpaid leave for parents and guardians who have worked with the same employer for at least three months and are facing the death or disappearance of their child under 18 years of age resulting from a probable crime. An employer is entitled to request reasonable evidence of a crime-related death or disappearance of a child from an employee. The employee is not entitled to the leave if charged with the crime.

An employee can take up to 52 consecutive weeks of unpaid leave if his or her child has disappeared and up to 104 consecutive weeks if his or her child has died. Where a missing child is found alive during the 52-week leave period, the employee can continue the leave for another 14 days. If the child is found dead, the disappearance leave ends immediately, and the employee can start up to 104 consecutive weeks of leave related to the death of the child.

Where a death or disappearance no longer seems to be the result of a crime, an employee can continue the leave for another 14 days and must give the employer written notice of his or her return to work as soon as possible. An employee can end the leave early by giving the employer 14 days' written notice.

An employee must let his or her employer know in writing as soon as possible of his or her intention to take the leave. Where the leave must begin before written notice can be given, an employee must advise the employer of the leave as soon as possible.

An employee must also give his or her employer a written plan outlining the period that he or she will take the leave, which can be changed during the leave period with the employer's agreement or by giving the employer four weeks' written notice.

C. Disability Leave

There is no disability leave prescribed by the *Nova Scotia Labour Standards Code* beyond sick leave. However, employers are obligated to accommodate disabled employees under the *Human Rights Act*. As a result, employers generally cannot terminate or otherwise discriminate against employees who are unable to attend work regularly or for prolonged periods of time due to illness or disability unless such an accommodation would cause undue hardship. This is a complex issue, and employers who have employees who are unable to attend work due to a ground protected by the *Human Rights Act* should seek legal advice specific to their situation.

D. Pregnancy Leave/Parental Leave

- ***Maternity Leave:***

There is both pregnancy and parental leave in Nova Scotia. Pregnancy leave is an unpaid leave for pregnant employees. An employee who has worked with the same employer for at least one day (or in certain circumstances for less than a day) may qualify for this leave. It can last up to 16 weeks. The employee can start the leave up to 16 weeks before the expected date of delivery.

The Nova Scotia *Labour Standards Code* also allows parents to take parental leave to care for their newborn or newly adopted children. This unpaid leave is up to 77 weeks and is available to every parent who qualifies, regardless of gender. If an employee has taken pregnancy leave, they are entitled to a total of 77 weeks of combined pregnancy (16 weeks) and parental (61 weeks) leave. There is no qualifying period for pregnancy or parental leaves, and it is available to employees who become a parent to the child through birth or adoption. A parental leave must commence no earlier than the date the child is born or arrives in the home.

To take pregnancy or parental leave, an employee must give his or her employer at least four weeks' notice of both the date on which the leave will start and, if the employee plans to return early, the planned date of return to work. If the employee cannot give four weeks' notice of leave because the baby is born early, because of a medical condition, or because of an unexpected adoption placement, the employee must give as much notice as possible.

An employer is entitled to request proof of entitlement for pregnancy or parental leave. This can include a certificate from the employee's medical practitioner or adoption worker. An employer can require that an employee take an unpaid leave of absence if her pregnancy interferes with her work. There are times when the *Human Rights Act* or the employee's contract may prevent this.

If a newly arrived child must go into hospital for more than one week, the employee can return to work and use the rest of the parental leave after the child comes out of hospital.

Employees who take pregnancy and/or parental leave may qualify for maternity benefits and/or parental leave benefits under the federal government's Employment Insurance program. For more detail on these benefits, contact Service Canada.

- ***Protected Leave for End of Pregnancy***

As of January 1, 2023, Bill. No. 203, or Ruby's Law, amends the Nova Scotia *Labour Standards Code* to include protected leave for employees who experience a pregnancy that

does not result in a live birth. Eligible employees can receive up to 5 consecutive days of unpaid leave if a pregnancy ends without a live birth before 19 weeks, and 16 weeks of unpaid leave if such a pregnancy ends after 19 weeks. Eligible employees include pregnant employees, employees whose spouses were pregnant, biological parents, intended adoptive parents, and those using surrogacy.

E. Other Leaves

- *Reservists' Leave*

The Nova Scotia *Labour Standards Code* provides for leaves of absence for Canadian Forces Reservists to engage in training or to accept deployment either within or outside of Canada including related activities. To qualify for the leave, reservists must have worked with the same employer for at least three months. Eligible employees can take up to 24 months in a 60-month period of Reservist leave. They make take more leave if required to do so as a result of a national emergency under the Federal *Emergencies Act*.

Employees must return from the leave of absence no later than four weeks after the deployment or service period ends. If the leave was taken for training, employees must return to work on their next regularly scheduled shift following the training.

To take Reservist leave employees must give at least four weeks' notice of the anticipated start and end date for the leave, or as much notice as is reasonably possible in the circumstances. Employers may ask for a certificate from the Reserves confirming membership in the Reserves and the specific period of training or deployment.

- *Emergency Leave*

The Nova Scotia *Labour Standards Code* allows an employee to take an unpaid emergency leave if he or she is unable to work because:

- A government agency declares an emergency (including for weather, natural disaster, or public health);
- A medical officer of health issues a directive or order telling an employee to stay off work; or
- The employee needs to care for a family member who is affected by one of the above noted emergency situations.

The leave continues until the emergency ends or it ceases to prevent the employee from performing their work. For example, if an employee can work from home during the emergency, the leave would not apply. This leave does not apply to personal emergencies or illnesses that are not part of a declared emergency. An employee must provide his or her employer with as much notice as reasonably possible of his or her intention to take emergency leave. An employer is entitled to request evidence that is reasonable in the circumstances to support an employee's entitlement to the leave.

- *Court Leave*

Employees can take unpaid leave if they must serve on a jury or the court says that they must appear as a witness. An employee must give his or her employer as much notice as possible that he or she will take court leave.

- *Citizenship Ceremony Leave*

Employees are entitled to take an unpaid leave of absence of up to one day, or less if the employee chooses, to attend his or her citizenship ceremony. If possible, the employee must give 14 days' notice to his or her employer that he or she plans to take the leave. If this is not possible, he or she must give as much notice as is reasonably possible. The employer can ask for evidence that the employee is attending a citizenship ceremony on a particular day, such as the Notice to Appear sent by Citizenship and Immigration Canada.

IV. DISCRIMINATION & HARASSMENT

A. Discrimination

The Nova Scotia *Human Rights Act* makes it illegal to discriminate against someone or treat him or her unfairly because they possess any of the listed protected characteristics. The Nova Scotia *Human Rights Act* applies to all businesses that are within provincial jurisdiction. It prohibits discrimination and harassment based on any protected characteristics and prohibits sexual harassment in all areas of public life. The protection includes discrimination or unfair treatment in combination with:

- Employment;
- Volunteer public service;
- Housing or accommodation;
- Provision of services and facilities;
- Publication, broadcasting, or advertisement; and
- Membership in a professional, business, or trade association, or employers' or employees' organization.

The prohibited grounds of discrimination under Nova Scotia's *Act* are:

- Age;
- Race;
- Colour;
- Religion;
- Creed;
- Ethnic, national or aboriginal origin;
- Sex (including pregnancy);
- Sexual orientation;

- Physical or mental disability;
- Family status;
- Marital status;
- Source of income;
- Irrational fear of contracting an illness or disease;
- Association with protected groups or individuals;
- Political belief, affiliation, or activity;
- Gender identity or gender expression; and
- Retaliation.

The Nova Scotia *Human Rights Act* defines discrimination as a situation where a person makes a distinction, whether intentional or not, based on any of the above characteristics, or perceived characteristics, that has the effect of imposing burdens, obligations, or disadvantages on an individual or class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits, and advantages available to other individuals or classes of individuals in society.

There are exceptions to employment discrimination based on a protected ground. For example, these protected grounds do not preclude ameliorative programs that aim to improve conditions for individuals or classes of individuals who are disadvantaged because of a protected ground. As well, the protected grounds do not apply to employees in a domestic setting and living in a single family home, employees engaged by an exclusively religious organization to perform religious duties, or individuals employed by an exclusively religious or ethnic not-for-profit organization operated to foster the welfare of a religious or ethnic group.

Employers are prohibited from discriminating based on a protected ground unless the employer can prove that there is a *bona fide* occupational requirement or qualification (BFORQ) to do so. The BFORQ defense excuses discrimination on a prohibited ground when it is done in good faith and for a legitimate business reason.

Employers must use caution before using a BFORQ to justify an otherwise discriminatory decision. Employers have a "duty to accommodate", meaning that the employer must do what is reasonable to allow a person to get, or keep, a job. Employers must first try to accommodate the needs of an employee up to the point of undue hardship. The duty to accommodate is not an exercise in perfection, but it does require an employer to make reasonable efforts. What is reasonable depends on a number of factors, including the size of the organization, role of the employee within the organization, cost to the employer, health and safety implications, and workplace morale.

- *Discrimination Claims through the Nova Scotia Human Rights Commission*

In addition to employees pursuing a claim of discrimination in court, the Nova Scotia *Human Rights Act* can be enforced either through a complaint mechanism or by an investigation initiated by the Nova Scotia Human Rights Commission (the "Commission"). The Commission uses one of two approaches for dispute resolution once a complaint is received. The Commission has expressed a strong commitment to the use of restorative

approaches and introduced the resolution conference approach as a result. Alternatively, a traditional investigation approach is used if Commission staff determines that a resolution conference is not appropriate in the circumstances.

The resolution conference is not optional. Once a complaint is accepted by the Commission, the parties must participate if a resolution conference is deemed appropriate. The Commission staff are responsible for informing the parties to the complaint and scheduling the resolution conference. The resolution conference is an "on-the-record" resolution, and Commission staff will gather information during the process. If the situation is not resolved in the resolution conference, a traditional investigation will follow.

Under the investigation approach, a Commission staff (human rights officer) will conduct the investigation. This includes interviewing all parties involved, gathering evidence, and writing an investigation report. Investigators have broad powers to require any person to provide information or records that may be necessary to further the investigation or process, and to enter at all reasonable times the premises to which a complaint or other process refers.

The investigation report compares the information gathered to the Nova Scotia *Human Rights Act* and makes a recommendation. The recommendation is usually either to dismiss the matter because of insufficient evidence, or to refer the matter to a Board of Inquiry ("BOI") to determine if discrimination has occurred.

The report itself will not decide whether discrimination has occurred. Once prepared, the report is sent to the parties for comment. The report and any comments are then sent to the Commissioners of the Commission. These are persons who are appointed by government and are not Commission staff. The Commissioners will review the report and make a decision to either dismiss the complaint or refer the matter to a Board of Inquiry (BOI).

The Nova Scotia *Human Rights Act* gives the Commission the power to appoint a BOI at any stage after a complaint is filed. Once appointed, the BOI will hold a public hearing and will have all the powers and privileges of a commissioner under the *Public Inquiries Act*, RSNS 1989, c 372. Such powers include the ability to enforce the attendance of persons as witnesses and to compel them to give evidence on oath or affirmation orally or in writing, and to produce documents and things that the BOI deems necessary to the investigation. The purpose of the hearing is to determine whether or not a right was infringed, who infringed the right, and the appropriate remedy.

The traditional BOI process closely resembles a civil trial. Parties are often represented by legal counsel. As an alternative, a Restorative BOI process may be used. A Restorative BOI requires the consent of both parties. It is a forward looking and fluid process where the participants share their perspectives in a non-adversarial setting and collaborate on a plan to move forward.

A BOI has the power to order any party who has contravened the *Act* to do any act or thing that constitutes full compliance with the *Act*, and to rectify any injury caused to a person or class of persons or to make compensation for the injury. A BOI also has the power to make an order as to costs against a party, other than the complainant, as it considers appropriate.

Non-monetary remedies can be ordered by a BOI. Such remedies can include orders to offer a job to the complainant, consider the complainant for the next suitable job, implement an affirmative action program, attend seminars on discrimination, review all employer policies and documents to ensure compliance with the Nova Scotia *Human Rights Act*, provide a reference or apology to the complainant, or post a written declaration of the employer's intention to abide by the *Human Rights Act*.

F. Harassment and Bullying

- *Harassment*

The Nova Scotia *Human Rights Act* protects employees against certain kinds of harassment in and away from the workplace. Harassment occurs when someone is subjected to unwelcome verbal or physical conduct. Harassment is prohibited under the *Human Rights Act* if it is based on a protected ground enumerated in the *Human Rights Act* as discussed in Section IV - Discrimination. It is a violation of the *Human Rights Act* to harass another person in an establishment, such as a workplace, based on a prohibited ground of discrimination.

In addition, the Nova Scotia *Occupational Health and Safety Act* provides that employers must maintain a safe workplace for employees, which may be interpreted to include a harassment-free workplace. This may include harassment on grounds other than those enumerated by the *Human Rights Act*. As well, employees may make a claim for constructive dismissal based on workplace harassment or a poisoned work environment. Depending on the effect on an employee of harassment in a proven case, employers may be subject to additional damages for harm caused to employees.

It is prudent for employers to have a good policy dealing with harassment and sexual harassment which provides a procedure for how harassment will be addressed in the workplace, and for employers to follow any such policy to avoid liabilities.

- *Sexual Harassment*

The Nova Scotia *Human Rights Act* prohibits sexual harassment in all areas of public life. Sexual harassment occurs when an employee is subject to:

- A course of vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome;
- Sexual solicitation or advance made to an employee by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the employee to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- A reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.

V. TERMINATION/DISMISSAL ISSUES

A. Overview

Where there is no just cause for termination, an employee is entitled to notice of termination both under the Nova Scotia *Labour Standards Code*, and potentially through common law entitlements. Under the Nova Scotia *Labour Standards Code*, notice must be provided in writing. An employer typically has two options when providing notice: working notice or pay in lieu of notice.

With working notice, an employer can require an employee to continue working through the end of the applicable notice period but must provide the employee with reasonable time to find other employment. During the working notice period, an employee is entitled to receive his or her normal compensation and benefits. An employee is not entitled to any further compensation at the end of the working notice period. If an employee resigns during the working notice period, he or she is not entitled to any further compensation.

With payment in lieu of notice, the employment relationship ends immediately. The employer pays an employee an amount equivalent to the wages and applicable benefits an employee would have received if he or she was required to work through the notice period. The payment may be provided by the employer through either a lump sum or by way salary continuance method.

The following table provides the appropriate notice periods required under the *Labour Standards Code* where there is no just cause for dismissal:

If the Employee has a period of employment of:	The Employer must give:
Less than 3 months, set term less than 12 months	No notice required
3 months or more but less than 2 years	1 week (or pay in lieu)
2 years or more but less than 5 years	2 weeks (or pay in lieu)
5 years of more but less than 10 years	4 weeks (or pay in lieu)
10 years or more	8 weeks (or pay in lieu)

Where an employee is terminated without just cause or reasonable notice, the employee is entitled to wrongful dismissal damages. An action for wrongful dismissal may include a claim for both statutory and common law notice. A court cannot order reinstatement of the employee in an action for wrongful dismissal unless the employee has over 10 years' service with the same employer. Barring this, or if reinstatement of a 10-year service employee is not appropriate in the circumstances, damages are the only available remedy.

Wrongful dismissal damages are designed to compensate the employee for the employer's breach of the implied term in the employment contract to provide reasonable notice of termination. A claim for damages is not limited to the wage or salary an employee would have received if proper notice was given. A wrongful dismissal is a breach of contract,

meaning that all damages flowing from the breach are recoverable. An award of damages could include compensation for loss of bonuses, stock options, club dues, pension, insurance, medical plans, moving expenses, vacation pay, and other benefits which the employee would reasonably expect had employment continued through the period of notice.

- *Additional Damages*

A duty of good faith and fair dealing only applies to the manner of termination of the employment relationship. An employer is not required to provide good faith reasons for termination. Bad faith conduct by an employer in terms of the manner of termination may be compensable as damages. Such damages, are calculated in a manner that reflects the actual damages incurred, not through an extension of the notice period. This means that an employee must prove some element of malicious intent on the part of the employer which resulted in actual damages to the employee to receive an award for such damages.

A recent decision of the Supreme Court of Canada, *Bhasin v Hrynew,* 2014 SCC 71 [*Bhasin*] identified a new legal doctrine – a duty of honest performance – which requires parties to be honest with each other in relation to the performance of their contractual obligations. While the full impact of this duty remains to be clarified by courts and arbitrators, it will inevitably impact employment law. Every employment relationship is a contract, so the duty of honest performance would apply. The duty as articulated in *Bhasin* applies more expansively than the duty of good faith and fair dealing, which only applies to the manner of termination. Under the duty of honest performance, both the employer and employee have an obligation not to lie or mislead the other party about one's contractual performance, especially where the other party may rely or act to its detriment as a result of being lied to or misled.

- *Statutory Protection from Dismissal*

As discussed above, employees with over 10-years' service in Nova Scotia are entitled to reinstatement if they are dismissed or suspended from employment without cause. There are a few exceptions:

- A lay-off that is either temporary or indefinite due to lack of work, or elimination of position
- A lay-off due to a reason beyond the control of the employer i.e. catastrophic event such as a plant destruction, breakdown of machinery, accident, weather etc.
- Where an employer has offered reasonable other employment to such employee
- Reached the age of retirement established by the employer on the basis of a *bona fide* occupational requirement for the position
- Persons employed in the construction industry or otherwise exempt in regulation.

In addition to the 10-year rule, employees in Nova Scotia are protected from dismissal for exercising certain rights provided for in the Nova Scotia *Labour Standards Code*. Employers are prohibited from discriminating against, discharging, laying off, suspending, intimidating, penalizing, or disciplining in any manner an employee who has:

- Had or may have garnishment proceedings taken against him or her;

- Made or assisted another person in making a complaint pursuant to the Nova Scotia *Labour Standards Code*;
- Initiated an inquiry, investigation, or proceeding or has assisted with the initiation of an inquiry, investigation, or proceeding pursuant to the Nova Scotia *Labour Standards Code*;
- Testified or is about to testify, or the employer believes that the employee may testify in any proceeding pursuant to the Nova Scotia *Labour Standards Code*;
- Participated or is about to participate, or the employer believes that the employee may participate in any proceeding pursuant to the Nova Scotia *Labour Standards Code*;
- Made or is about to make an inquiry about his or her rights or the rights of another person pursuant to the Nova Scotia *Labour Standards Code*;
- Made or is about to make any disclosure that that employee is required or permitted to make by the Nova Scotia *Labour Standards Code*;
- Made or is about to make a statement or provide information to the Director of Labour Standards or an officer that that employee is required or permitted to make or provide by the Nova Scotia *Labour Standards Code*;
- Asked or required the employer to comply with the *Code* and its regulations;
- Taken or has evidenced an intention to take, or the employer believes that that employee may take, a leave of absence to which that employee was or will be entitled pursuant to the Nova Scotia *Labour Standards Code* at the time of any such leave of absence; or
- Refused or attempted to refuse work on a uniform closing day in a retail business or refuses to sign a contract of employment or agreement that requires that person to work in a retail business on a uniform closing day if the employee is not required to work on a uniform closing day by or pursuant to the Nova Scotia *Labour Standards Code*.

An employer who violates any of these provisions is guilty of an offence. An order may be made against the employer to pay wages, vacation pay, public holiday pay, or pay in lieu of notice of termination. When an employer is found guilty of an offence under the Nova Scotia *Labour Standards Code*, it may be liable on summary conviction to a fine of not more than $25,000 and, for a second or subsequent offence, may be liable to an additional fine of not more than $25,000 or imprisonment for a term of three months, or to both. A proceeding or prosecution for violation of any of the above cannot occur unless the failure to comply with the Nova Scotia *Labour Standards Code* occurred within the six months before the complaint is received, or an inquiry is initiated by, the Director of Labour Standards.

- ***Employee's Duty to Mitigate***

A terminated employee has a duty to mitigate their losses by taking all reasonable steps to secure comparable alternative employment. Income earned during the notice period from such employment, including self-employment, is deducted from any notice damages the employee is entitled to receive for that period. A court may deduct an amount from an award of damages to an employee if the employer establishes that the employee failed to take reasonable steps to mitigate.

The employer has the onus to prove an employee's failure to mitigate and that he or she could have found alternative employment. Employers should note that their refusal to provide a letter of reference to a terminated employee makes it more difficult for an employer to establish a failure to mitigate.

G. Justification for Dismissal

In Canada there is no such thing as "employment at will." The common law entitles non-unionized employees to reasonable notice, or pay in lieu of notice, upon termination of their employment, unless there is just cause for termination. Where just cause exists, the employer may dismiss the employee without notice. The onus of proof for just cause dismissal rests with the employer. There is a notable exception to an employer's ability to terminate employees in Nova Scotia. As discussed above, the Nova Scotia *Labour Standards Code* prohibits a dismissal without just cause for employees who are employed for 10 years or more.

Dismissal for just cause is an exception and is reserved for incidents of serious employee misconduct or for a fundamental breach of the employment relationship. The common law recognizes an employer's right to summarily dismiss an employee for serious misconduct, habitual neglect of duty, incompetence, conduct incompatible with his or her duties or prejudicial to the employer's business, or willful disobedience of the employer's orders in a matter of substance.

The Nova Scotia *Labour Standards Code* does not provide examples of misconduct or performance issues that are just cause for dismissal but states that generally, notice must be given unless "the employee has been guilty of willful misconduct or disobedience or neglect of duty that has not been condoned by the employer". Just cause for dismissal must be established with regards to the terms of employment and circumstances unique to the particular employee. It is based on an objective, real, and substantial cause that necessitates dismissal.

Generally, a single incident of insubordination or minor misconduct is insufficient to support dismissal for just cause. If an employer condones the misconduct or does not warn an employee that failure to correct performance may lead to termination, the employer may not establish just cause. Given the analysis required to establish just cause, employers should obtain legal advice before they decide to dismiss an employee.

For less serious misconduct or performance issues, an employer should apply progressive discipline. Progressive discipline uses a graduated range of responses to employee performance issues or misconduct. Responses may include coaching or verbal warnings for less severe issues, written warnings or suspensions (with or without pay) for more severe issues, before progressing to dismissal. The goal is to focus on rehabilitation of the employee. Progressive discipline should make an employee aware of the unacceptable conduct and motivate the employee to make a positive effort to improve his or her performance.

Dismissal is still available under progressive discipline. An employer may terminate an employee for a particularly egregious performance issue, or for a culminating incident if the employer gave the employee clear notice that his or her employment was in jeopardy prior to the incident. Justifying dismissal depends on the unique circumstances in question. For example, dismissal of a long-term employee may require a more serious degree of misconduct than a more junior employee.

H. Mandatory Separation Pay

The Nova Scotia *Labour Standards Code* establishes minimum standards for notice that employers must respect, unless the employee is guilty of willful misconduct, disobedience, or neglect of duty that was not condoned by the employer, establishing just cause for termination. The notice of termination periods varies depending on an employee's length of service.

The Nova Scotia *Labour Standards Code* provides for situations that may either extend the notice period or exempt an employer from the minimum standards. For example, the notice required increases where ten or more employees are laid off within a given time-period. However, where an employee is laid off for a reason beyond the control of the employer, such as the destruction of a plant, the notice requirements do not apply. Unionized employees are exempt from the benefit of the *Labour Standards Code* notice of termination provisions.

The Nova Scotia *Labour Standards Code* establishes the following notice entitlements for non-union employees based on their length of service:

- One week of notice for three months to two years of service;
- Two weeks of notice for between two and five years of service;
- Four weeks of notice for between five , but less than ten years of service; and
- Eight weeks of notice for ten or more years of service.

The Nova Scotia *Labour Standards Code* contains a successor rights provision that deems a continuous period of employment for employees when there is a transfer or sale of a business.

The Nova Scotia *Labour Standards Code* provides that an employee is not entitled to the statutory notice of termination provisions if they were:

- Employed for less than three months;
- Employed for a definite term or task for a period not exceeding twelve months;
- Laid off or suspended for a period not exceeding six consecutive days;
- Discharged or laid off for any reason beyond the control of the employer, and the employer has exercised due diligence to foresee and avoid the cause of discharge or lay-off;
- Offered reasonable other employment by the employer;

- Reached the age of retirement established by the employer on the basis of a *bona fide* occupational requirement for the position; or
- Employed in the construction industry.

Non-unionized employees may also be entitled to common law notice of termination. Common law notice differs from statutory notice. At common law an employee is entitled to "reasonable notice" under circumstances where an employer does not have just cause to terminate the employee.

Reasonable notice is a term used by the courts. It is intended to be a very rough estimate of how long an employee will take to find comparable alternate employment. What is considered reasonable notice depends on a range of well-established factors which were first recognized the 1960 decision *Bardal v Globe & Mail Ltd.*, (1960), 24 DLR (2d) 140 (Ont HCJ), (*Bardal* factors). In *Bardal* the court recognized that there can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the:

- Character of the employment;
- Length of service;
- Age of the employee; and
- The availability of similar employment, having regard to the experience, training, and qualifications of the employee.

Case law subsequent to the *Bardal* decision interpreted these factors to further include regard for the:

- Employee's compensation;
- Particular customs in the specific industry;
- Employee's category of position and responsibilities;
- Presence of employee inducement or employer promise of job security; and
- Ability to secure reasonable, alternate employment.

There is no firm rule regarding how each of these factors impacts the calculation of common law notice. However, court decisions show a tendency to award greater common law notice to those terminated from more senior-level positions and to those who are older, have fewer skills, or were employed on a long-term basis. An employee terminated without notice can typically expect to receive no more than 24 months of notice or pay in lieu thereof, except in exceptional circumstances.

I. Use of Severance Agreements and Releases

An employer and a departing employee may enter into a separation agreement outlining the terms of the employee's departure. This typically includes a release of all claims, which is generally agreed to when the parties have resolved outstanding issues. These agreements, like any other contract, must include an offer, acceptance, and consideration.

Separation agreements are generally enforceable in Nova Scotia provided that the agreement is not signed under duress and is not so unfair as to be considered unconscionable. To be enforceable, employers must ensure that there is consideration given for having the employee sign the agreement and release the employer from future liability.

The consideration must be something in addition to the statutory notice entitlement and any severance entitlement which the employee is already entitled to either through statute or their employment agreement. Employers should encourage an employee to obtain independent legal advice before signing the agreement to avoid claims that the agreement was signed under duress.

J. Legal Challenges to Dismissal

- *Constructive Dismissal*

The conduct of an employer may give an employee the right to treat the contract as at an end. Where an employer repudiates the essential obligations imposed by a contract of employment, even though the employee is not dismissed from employment, such an action may give rise to constructive dismissal at common law. Any breach of a fundamental term of the employment relationship allows the employee to take the position that he or she was constructively dismissed.

What is considered a fundamental breach depends on the circumstances in a particular case. The breach may be established through a single unilateral act by the employer that breaches an essential term of the employment contract, or a series of acts by the employer that, taken together, show the employer no longer intends to be bound by the contract. A minor or incidental change in a term or condition of employment does not give rise to constructive dismissal.

As a result, an employer cannot impose a unilateral change to a fundamental term of the contract unless there is a contractual right to do so, or the employer provides reasonable notice equivalent to common law notice. Where there is no contractual right or reasonable notice is not provided, an employee may either resign and sue for constructive dismissal or remain in the employment and sue for the reduction in income or value of benefits as damages. If an employee does not object to the changes, and either explicitly or implicitly accepts them, then he or she is precluded from taking action in the future.

- *Dispute Resolution Process /Forums*

If an employee disagrees with the termination of the employment relationship, there are several avenues of recourse available to the employee. The most common types of recourse sought by employees is to either commence a civil claim in court or apply to Labour Standards for relief.

Both the Nova Scotia Small Claims Court and the Supreme Court of Nova Scotia have jurisdiction to adjudicate wrongful dismissal claims. The Small Claims Court has the power to hear civil actions where the monetary claim does not exceed $25,000. The Supreme

Court of Nova Scotia has jurisdiction over all matters, or where other relief, such as an injunction, is sought.

In addition to court proceedings, an employee may bring an application or file a complaint with the Nova Scotia Labour Standards Division of the Labour Board, which is the administrative body responsible for the administration of the *Labour Standards Code* and its regulations. An employee has six months in most cases to file a complaint alleging that an employer failed to comply with the *Labour Standards Code*. A Labour Standards Officer has the authority to investigate and can issue an order to comply with the *Labour Standards Code*. The decision of a Labour Standards Officer can be appealed to the Labour Board, and those decisions can be reviewed by the Supreme Court of Nova Scotia.

In unionized workplaces governed by a collective agreement, an employee's options for recourse are based in the grievance process as outlined in the Collective Agreement. The grievance process involves a forum where termination-related issues are grieved and resolved before an arbitrator. As the grievance process may vary from one collective agreement to another, employers operating in unionized workplaces should be familiar with the relevant provisions and requirements of any collective agreement before taking action.

As discussed in Section IV, the *Human Rights Act* protects employees from discrimination or harassment in the workplace. Employees may not be discriminated against in the workplace, including during the termination of their employment. If an employee is discriminated against during employment or in their termination, they may advance a complaint under the *Human Rights Act*.

K. Employment References

There is no statutory or common law obligation for an employer to prepare a confirmation of employment letter or to provide an employment reference for a terminated employee. However, refusing to do so may increase the notice period. Courts have recognized that an employer's refusal to provide a reference makes it more difficult for an employee to find alternate employment.

If the employer chooses to provide references, at a minimum, the references should confirm employment and length of service. Employers should never provide a reference that they are unable to support. Further comments should only be provided where the employer conducts a thorough investigation to ensure the accuracy of the contents. Unsupported or untrue negative comments that affect an employee's reputation may attract liabilities for an employer upon dismissal.

VI. LAYOFFS/WORK FORCE REDUCTIONS/REDUNDANCIES/COLLECTIVE DISMISSALS

A. Overview

Lay-offs or redundancies are treated similarly to any dismissal without cause. The exception being that 10- year service employees who are normally entitled to re-instatement may be dismissed pursuant to a *bone fide* lay-off due to lack of work or elimination of position.

B. Procedure

When an employer terminates 10 or more employees in a period of four weeks or less, for any reason, the employer has additional obligations under the *Labour Standard Code*. An employer must give notice of the termination to the Minister of Labour and Advanced Education in writing, and the notice entitlements are increased and based on the number of employees being dismissed rather than length of employment:

- Eight weeks of notice when 10 – 99 employees are terminated;
- 12 weeks of notice when 100 – 299 employees are terminated; and
- 16 weeks of notice when 300 or more employees are terminated.

There are special statutory requirements under the *Industry Closing Act*, RSNS 1989, c.226, regarding the timing of when notice must be given to the Minister of Industry, Trade and Technology (and what may happen during the notice period) if more than fifty (50) employees in an industry are going to be affected where an employer is closing down, discontinuing or abandoning an industry (or part of an industry).

VII. UNFAIR COMPETITION/COVENANTS NOT TO COMPETE

A. Trade Secrets

Absent an agreement to the contrary, an employer has copyright in the works made by its employees during the course of their employment. The work must be made 'during the course of employment'. As a result, if a work is made by the employee on his or her own time, and outside the scope of employment, copyright will not pass to the employer.

If an employee makes an invention while employed, the invention belongs to the employee. The only exception to this presumption is where there is an express contract to the contrary, or where the employee is employed for the express purpose of inventing or innovating.

B. Covenants Not to Compete and Solicitation of Customers & Employees

Employers usually desire protection of their goodwill, trade secrets, or market share. Some employers may attempt to protect their position by insisting that employees sign a contract to restrict their ability to compete or assist others to compete against the employer in the future. When employers seek to enforce such covenants, the courts must balance the freedom to contract with the protection of the public interest by discouraging restraint of trade.

There are three types of covenants that are designed to restrict employees both during and after their term of employment. These restrictive covenants include:

- Confidentiality or non-disclosure clauses to protect against the disclosure of trade secrets and other confidential information;
- Non-solicitation clauses to limit a former employee's ability to solicit customers, and/or employees of the former employer for a specific length of time; and
- Non-competition clauses to enjoin employees from competing against the employer both during and after termination.

Generally speaking, a non-competition clause prevents an employee from working in the same industry as the employer at all, while a non-solicitation clause prevents an employee from contacting and/or soliciting the clients and/or other employees of the former employer.

Courts will typically not enforce a covenant that seeks to restrain trade unless there is good reason to do so. Such covenants are prima facie void and unenforceable, with the burden on the employer to justify such restrictions as no more than is reasonable between the parties. For a post-employment restrictive covenant to be enforced, the courts require the restraint to have the following characteristics:

- It protects a legitimate proprietary interest of the employer;
- It is reasonable between the parties in terms of:
    - Temporal length;
    - Geographic area covered;
    - Nature of activities prohibited; and
    - Overall fairness;
- Its terms are clear, certain, and not vague; and
- It is reasonable in terms of the public interest.

Non-competition covenants are the most restrictive, and therefore the most difficult to enforce. Non-competition covenants are unlikely to be enforced where a less restrictive covenant would protect the legitimate interests of the employer.

Contracts containing non-solicitation covenants are more readily enforceable in Canada, as they are less restrictive in nature. However, the courts will still examine a non-solicitation covenant to assess the reasonableness of the geographical area, length of time, and scope of the restriction. Non-solicitation covenants that are too broad and go beyond what is reasonable to protect the employer's interest or unduly impact an employee's ability to earn a living will be unenforceable.

Non-competition covenants in the employment context are of a personal nature, and therefore cannot be assigned. This means that if an organization signed a non-competition or non-solicitation covenant with an employee, a subsequent purchaser of that organization is unable to enforce the covenant if the legal identity of the employer changes. As with all employment agreements, an employee signing a restrictive covenant without additional new consideration will render the covenant unenforceable.

C. Wage-Fixing and No-Poaching Agreements

In June of 2022, the federal government passed Bill C-19, amending the *Canada Competition Act*. The amendment makes it a criminal offense for unaffiliated employers to agree to fix employees' wages, or to establish that they (the employers) will not solicit or hire one another's employees. The law came into force on June 23rd, 2023, and will carry a hefty penalty of up to 14 years in prison and/or a fine deemed appropriate by the court. The Competition Act applies to all employers, whether they are subject to federal or provincial jurisdiction.

The Competition Bureau has found that the *Competition Act* does not apply to agreements formed by way of collective bargaining. As such, employers should not be concerned about any provision that was lawfully negotiated with a trade union.

D. Breach of Duty of Loyalty/Breach of Fiduciary Responsibility

- *Fiduciary Obligations*

A fiduciary is a person who receives some form of discretionary power on the condition that he or she receives it with a duty to use that power in the best interests of another. When an employee is found to be a fiduciary, it can significantly impact the rights and obligations of that individual. A breach of a fiduciary duty is cause for dismissal of an existing employee and is grounds for an action against an existing or former employee.

Employers should be aware of the potential fiduciary obligations that an employee may owe to a previous employer. Fiduciary obligations continue after employment ends and do not cease merely because of resignation or dismissal by the employer. If an employee breaches his or her fiduciary obligations owed to a previous employer, the present employer may be vicariously liable for such breach. A breach is actionable even if the former employer has not suffered damages.

The status of being an employee does not in itself render an employee to be a fiduciary. To determine if an employee is a fiduciary, courts will look at the position occupied by the employee and whether or not it is a key position. This includes consideration as to the ability of the employee's position to direct and guide the affairs of the company.

A fiduciary employee must refrain from injuring his or her employer by acting in self-interest or by participating in a scheme to obtain the corporation's future business. Ventures or transactions in which the fiduciary is involved that would actually or potentially conflict with the interests of the employer will place the employee in breach of his or her fiduciary obligations.

- *Duty of Good Faith and Fidelity*

All employees owe their employers a general duty of good faith and fidelity, regardless if they are fiduciaries or not. This duty prevents employees from competing against their employer

during the employment relationship. Competing against one's employer is cause for dismissal and may result in damages against the employee for breach of the duty of fidelity.

For non-fiduciary employees, there is a distinction in the nature of the general duty of good faith owed during the employment relationship versus after termination of employment. The duty of good faith will not be breached by a non-fiduciary former employee who:

- Seeks employment elsewhere;
- Takes to the new position skills and general knowledge acquired in the course of his or her former employment; or
- Solicits those customers he or she can remember without the aid of the former employer's materials.

Such freedom is driven by the policy of fair competition and employee mobility being in the public interest.

The duties of non-fiduciaries only consist of:

- Respect for trade secrets and confidential information;
- The requirement to not take physical property of the employer with them; and
- A prohibition against the improper use of intellectual property such as computer programs.

Trade secrets may consist of a plan, process, tool, mechanism, pattern, device, compound, or compilation of information which is used in an employer's business, and which gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Confidential information consists of information that is not public property or public knowledge. The use of information that would put an employee afoul of the duty of good faith and fidelity during the employment relationship can be used after the employment relationship, provided the information is not a trade secret or "confidential" in the equitable sense of the word.

A prospective and competing employer does not have a duty to avoid employing another company's former employee, nor can an employer prevent an employee from working for a competitor. However, a new employer can be held directly liable for inducement of breach of contract when new employees have breached their duty of good faith and fidelity. The new employer will also be vicariously liable for torts committed by departing employees related to unfair competition which are committed in the new employment.

- *Confidentiality*

Employees have an equitable duty of confidence apart from any fiduciary obligations and the duty of good faith and fidelity. The equitable duty of confidence exists both during and after the employment relationship. Such duty allows an employer to prevent former employees from divulging trade secrets and confidential information, and from putting them to their own use after the employment relationship ends. An employer may recover damages for

breach of confidence for loss of profit because of the breach, or it may elect to obtain an accounting of profits by the employee for wrongful use of information.

The obligation not to disclose or improperly use confidential information is independent of the employment contract. An equitable action for breach of confidence requires that the information conveyed be confidential, communicated in confidence, and misused by the party to whom it was communicated. Equity does not permit an employer to classify information and knowledge as confidential or trade secret in an effort to prevent an employee from using information that is public knowledge, or enjoin an employee from using the general skill, knowledge, and experience in the trade or profession learned in the course of employment.

VIII. PERSONNEL ADMINISTRATION

A. Payroll Requirements

The *Labour Standards Code* requires employers to pay employees at least two times each month. Additionally, employees must receive their wages within five working days after the end of each pay period. If an employee is not at work on the day they would normally be paid, or is not paid for any other reason, then that employee must be paid on demand any time thereafter during regular working hours. An employer is permitted to pay employees at intervals less frequent than bi-monthly or within a period longer than the five working days mentioned above, if the payments are made in accordance with the terms of an existing practice, collective agreement, or order granted by the Director of Labour Standards.

L. Required Posting

The *Labour Standards Code* requires an employer to whom the minimum wage regulations apply to post and keep posted a copy of the regulations in a conspicuous place where employees are engaged in their duties.

Under the *Occupational Health and Safety Act*, all employers must post a copy of the *Occupational Health and Safety Act*, a telephone number for reporting occupational health or safety concerns to the Occupational Health and Safety Division, name of a trained first aid provider and a first aid kit appropriate to the size of the workplace, and a posted copy of the workplace violence prevention statement if applicable, in a prominent place or places at the place of employment where they are most likely to come to the attention of the employees. Employers with more than five employees are required to post a written Health and Safety Policy and the name and contact information of the assigned Health and Safety representative. Employers with more than twenty employees must assign a Joint Occupational Health and Safety Committee and post the names and contact information for members of the committee and post minutes of their meetings.

There are several other posting requirements that are applicable in certain circumstances and in certain industries.

M. Required Training

Under the *Occupational Health and Safety Act*, employers have a general duty to ensure that workers are adequately trained to perform their duties safely. There are more specific training requirements or the requirement for certificates or certain levels of training required of employees mandated by regulation under the *Occupational Health and Safety Act* in certain industries (ie/ Mining, Occupational Diving etc.) and in certain safety sensitive workplaces (ie/ workplaces where blasting is occurring, where employees are working at a height etc.)

N. Meal and Rest Periods

Employees are entitled to one unbroken half-hour break so that they are never working more than five consecutive hours without a break. Employers are generally not required to pay employees for breaks. However, if an employee is required to remain at the job site, under the control of the employer and to be available to work if necessary, during the break, then this will likely be considered work. In such a case, the employee must be paid for this time. Employers are not required to give a break if it is impractical because of an accident, urgent work that is necessary or required because of unforeseeable or unpreventable circumstances, or because it is unreasonable for an employee to take a meal break. In such circumstances, an employee must be able to eat at work unless to do so is unsafe or unreasonable. In certain circumstances employers will be required to provide additional breaks for medical reasons as an accommodation.

The rest or eating break rules do not apply to employees who work under a collective agreement, or to athletes while engaged in activities related to their athletic endeavour.

O. Payment Upon Discharge or Resignation

All wages an employee is entitled to receive must be paid within 5 working days of the last day after the end of the pay period in which the final wages were earned. Accumulated vacation pay must be paid within 10 days of employment ending. It is important to note that vacation pay continues to accrue during the statutory notice period.

P. Personnel Records

The *Labour Standards Code* sets out requirements for employers with regards to the preparation and retention of records about their employees. Every employer is required to keep and maintain at their principal place of business for at least 36 months after the work was performed, records from which it can be ascertained whether or not the employer is complying with the *Labour Standards Code*. Employees have no statutory right to access their records. Such records must include:

- Each employee's name, address, date of birth, and social insurance number;
- The date that each employee's employment began and ended, if applicable;
- The number of hours worked by each employee for each day and each week;

- Each employee's wage rate, gross earnings, amount of deductions, including their purpose, and net earnings for each pay period;
- Any period during which an employee was on vacation;
- Any vacation or general holiday pay due or paid to an employee;
- Any leave of absence, including the reason and applicable documentation, taken by an employee;
- Dates of all discharges or layoffs of an employee and the dates of all notices thereof; and
- The name and address of any person to whom the person recruiting the individual made a payment for engaging in the recruitment, and the date and amount of the payment.

The Director of Labour Standards has the right to inspect and examine all records of an employer that in any way relate to the employment of employees or the recruitment of individuals, including foreign workers. The Director can require an employer or recruiter to verify such records by statutory declaration and can take extracts from or make copies of such records. The records must be open for inspection at all reasonable times.

IX. PRIVACY

Under the federal *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 ("PIPEDA"), personal information of employees of federally regulated organizations is protected. Personal information does not include the name, title, business address or telephone number of an employee of an organization. Nova Scotia's *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5 only applies to public bodies. Nova Scotia does not have specific privacy legislation for organizations operating in the private sector.

PIPEDA only applies to Nova Scotia private sector employers in commercial use of personal information. It does not apply to provincially regulated private sector employers in regard to information collected used or disclosed for the purposes of the employer-employee relationship.

The *Personal Information International Disclosure Protection Act.* 2006, c. 3, s.1 provides additional protection to personal information held by public sector bodies and municipalities in the Province. It also provides privacy protection where a service provider acts on their behalf. It does not relate to personal information held by individuals, or businesses and organizations in the private sector, unless they are doing work on behalf of a public sector body or municipality.

The common law right to privacy is still developing across Canada. Courts in Canada have recognized the tort of intrusion upon seclusion. In such cases, the tort recognized that one who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his or her privacy, if the invasion would be highly offensive to a reasonable person. That being said, the courts have recognized that there is no free-standing right to dignity or privacy under the Charter or at common law.

A. Drug and Alcohol Testing

The law on drug and alcohol testing policies in Canada continues to evolve. Alcohol or drug testing is an extraordinary measure, which, in order to be justified, must be intended to address more than mere deterrence or behaviour modification. The testing must be designed to address a genuine belief that the safety of the workplace is threatened to a reasonable or probable degree. As a result, only employees in safety sensitive positions are normally subject to testing. Whether or not an employer can lawfully test for the use of drugs and alcohol in the workplace will depend on the nature of the workplace, the types of substances the employers wish to test for, the position the employee occupies and the circumstances under which such testing occurs.

In Nova Scotia, alcohol or drug dependency is considered a disability which is protected under the Nova Scotia *Human Rights Act*. As a result, any drug or alcohol testing policy or program should adequately address situations where employees are suffering from an alcohol or drug dependency and should be reviewed by legal counsel to ensure that it is compliant with the *Human Rights Act*.

The legal threshold for an employer to unilaterally implement random drug and alcohol testing is very high. Even where a workplace can be considered "safety sensitive" or "inherently dangerous", an employer must establish through real evidence that there is a substantial substance abuse problem in the workplace in order to justify the intrusion on employee privacy.

Non-random testing in certain circumstances is somewhat less controversial. In a workplace that is safety sensitive or inherently dangerous, it is generally accepted that an employer may require an employee in a safety sensitive position to undergo testing for impairment when:

- Reasonable cause exists to believe that the employee is under the influence or alcohol or drugs while in the workplace; or
- The employee was involved in a workplace accident or near-miss incident.

Depending on the circumstances, alcohol or drug testing may be permissible in safety sensitive or inherently dangerous workplaces at the outset of employment, but before the employee begins work. Employers must use caution and ensure that such testing is not administered in a discriminatory manner. Failure of a test should not result in automatic disqualification or dismissal.

It is difficult to justify alcohol or drug testing in workplaces that are not considered safety sensitive or inherently dangerous, or for employees who do not occupy safety sensitive positions. Random alcohol or drug testing in these workplaces is essentially prohibited. It may be justified in situations for an individual employee who returns to work after treatment for substance abuse, or who agrees to random testing in connection with a workplace accommodation related to a substance abuse treatment plan.

In workplaces that are neither safety sensitive nor inherently dangerous, alcohol or drug testing based on reasonable cause or following a workplace incident may be justified if the employer can demonstrate that such testing achieves a purpose rationally connected to the work, is imposed in good faith to achieve that purpose, and is reasonably necessary in the circumstances. The employer must be able to demonstrate that obtaining a positive or negative test result is legitimately the only reasonable way to investigate and resolve the workplace problem in question. Without such justification, such testing could lead to a discrimination complaint on the basis that those who test positive may be subject to adverse employment consequences on the basis of a real or perceived disability.

Before an employer implements an alcohol or drug testing policy, it must evaluate the circumstances unique to its workplace and employees. Alcohol or drug testing should only be implemented as part of a well-planned and carefully considered policy. Important factors in creating a policy include:

- A careful assessment to determine if the workplace is truly safety sensitive or inherently dangerous;
- A clear understanding regarding the specific circumstances under which testing will occur and what such testing is expected to achieve; and
- Where testing is required, the testing should endeavour to minimize the intrusion on employee privacy and to respect employee dignity and confidentiality.
- Make sure any policy is compliant with the Nova Scotia *Human Rights Act*.

B. Off-Duty Conduct

Generally, an employer has no right to direct an employee's off-duty behaviour or activities in matters which do not affect work performance or the employer. An employer cannot discipline an employee for off-duty behaviour which does not interfere with an employee's performance in the workplace.

To some extent, an employee's duty to act in the employer's best interests continues during off-duty hours. Employers have a legitimate concern to protect their reputations and profits. Off-duty conduct may therefore, in appropriate circumstances, justify employee discipline. This justification will depend on the factors unique to the employee and employment relationship in question. If the employer can establish at least one of the following, employee discipline for off-duty conduct may be justified:

- The conduct of the employee harms the employer's reputation or profits;
- The employee's behaviour renders the employee unable to perform his or her duties satisfactorily;
- The employee's behaviour leads to the refusal, reluctance, or inability of other employees to work with him or her;
- The employee is guilty of a serious breach of the *Criminal Code* which renders his or her conduct injurious to the reputation of the employer and its employees; or
- The employee actually places difficulty in the way of the employer properly carrying out its function of efficiently managing its works and directing its workforce.

C. Medical Information

Employers should take steps to maintain privacy and confidentiality in the collection, use, and disclosure of medical information. Employers must limit their request, use, and disclosure to only that which is necessary.

Typically, medical information comes into the employer's possession in situations where an employee requires an accommodation in the workplace. An employer is only entitled to sufficient medical information to allow it to fulfill the objective in seeking the information, for example to confirm an employee's absence, accommodation needs, or ability to perform his or her job duties and responsibilities. Rarely is it appropriate for an employer to need a diagnosis of an employee's medical condition. Employers should take steps to ensure that employee medical information is only shared on a need-to-know basis with identifiable employer representatives, to fulfill the purpose for which it was obtained, or as required by law.

D. Searches

In Nova Scotia, there are no statutory restrictions on employers searching employee storage lockers or employee property brought on the employer's premises. However, when searches do occur, they must comply with obligations under the Nova Scotia *Human Rights Act*. An employer must not discriminate based on a protected ground when deciding which employees will be subject to a search.

Employees are also entitled to a reasonable expectation of privacy in the workplace. There must be a balance between the employee's privacy interests against the employer's concerns with security and safety in the workplace. The degree of privacy to which a person is entitled in any given situation will vary depending on all the circumstances and the nature of the employer's worksite and industry.

In unionized workplaces, the collective agreement may restrict or prohibit employee searches.

E. Lie Detector Tests and Fingerprints

Unlike some other jurisdictions, there are no statutory provisions in Nova Scotia that prohibit an employer from requiring employees to take a lie detector test or submit fingerprints. However, employers should ensure that they consider the reasonableness of requesting this from employees. However, information about an individual's blood type, fingerprints or other hereditary characteristics is considered personal information and should be treated as such, including compliance with privacy legislation such as *PIPEDA*. Courts will consider if the request is reasonable when balancing an individual employee's right to privacy against an employer's reason for intrusion.

Fingerprints are also biological characteristics, the collection of which has given rise to issues of alleged discrimination in some jurisdictions in Canada. Any requests for

fingerprints should be reasonable and consider the balance between an employee's privacy interests and the employer's legitimate needs to justify such an intrusion of privacy.

F. Social Security Numbers

Under the *Labour Standards Code*, employers are required to ask for and record an employee's Social Insurance Number ("SIN") upon hiring the employee in accordance with federal legislation related to verifying an employee's legal status to work in Canada and the withholding and remittance of statutory deductions and income tax. Employers are prohibited from distributing SINs to non-government third parties without consent from their employees.

G. Surveillance and Monitoring

As with lie detector tests and fingerprints, there are no statutory provisions in Nova Scotia that explicitly prohibit an employer from conducting surveillance of its employees, including the monitoring of computer and email use.

The courts will look to the reasonableness of the surveillance and monitoring in an attempt to balance an employee's right to privacy with an employer's need for such intrusion. Arbitral jurisprudence in unionized workplaces has established the principle that for monitoring and surveillance in the workplace to be permitted, the employer must have a reasonable apprehension of abuse by the employee to justify the introduction of surveillance.

Before an employer implements monitoring of its employees, it should first establish that a pressing need exists in the workplace and set parameters to ensure that the surveillance is not overly intrusive. For example, placing surveillance cameras in locker rooms or other areas where employees have a reasonable expectation of privacy would likely be found unnecessarily broad and unjustifiable.

With regards to email and computer use, employers should implement an acceptable computer and email use policy and ensure that such policy is communicated to and understood by employees. The policy should outline the employer's expectations for appropriate computer and email use, as well as explicitly state the employer's right to monitor, search, or police the use of such assets owned by the employer. This is particularly important where an employer anticipates using violations of such a policy to justify the progressive discipline of its employees.

In unionized workplaces, the collective agreement may restrict or prohibit employee surveillance and monitoring.

H. Cannabis (medical and recreational use)

On October 17, 2018, the *Cannabis Act*, S.C. 2018, c 16 made Canada the second country in the world to legalize recreational cannabis and create a national cannabis market. The *Smoke-free Places Act*, SNS 2002, c 12, places restrictions on where cannabis and other products can in smoked in public places, including many workplaces.

The Duty to Accommodate an employee's use of cannabis under the *Human Rights Act* may be triggered through "disability." This could be the case if an employee has a disabling dependency, or if they are using cannabis as a treatment for a medical condition. Employees should be made to understand that they may not self-medicate with marijuana during work hours and they may be obligated to notify their employer about their use of prescribed marijuana if it is impairing. Employers should address cannabis usage as they would other unacceptable substances in the workplace (i.e. alcohol). They should maintain up to date internal workplace drug and alcohol and occupational health and safety policies that clearly reflect what is and is not acceptable in the workplace. Also see Section IX(A) regarding drug testing in the workplace.

Canadian employers operating in both Canada and the U.S. should take particular care to ensure that employees crossing the border as part of their job responsibilities are aware of the US federal prohibition on cannabis and the heightened awareness of legal cannabis at the border and strict enforcement of federal law by US Customs and Border Protection.

I. Social Media

Employees can be disciplined for the inappropriate use of social media. Please see Section IX.B – Off Duty Conduct for more information on how an employee's off-duty conduct, including social media posts can affect the employment relationship.

Employers should develop a social media policy that addresses acceptable use of social media on and off duty, expectation of privacy issues, and consequences for failing to follow the policy.

J. Weapons/Workplace Violence Policy

Workplace Violence is an occupational health and safety issue, addressed by the *Occupational Health and Safety Act* and its regulations. Although all employers are encouraged to address the potential for workplace violence, certain employers are required to comply with workplace violence prevention regulations. These include:

- Healthcare and related workplaces,
- educational settings,
- places where correctional or security services are in use,
- service sector businesses where money is exchanged or liquor is sold or consumed, and
- other situations where employees interact with the public,

These employers must complete a workplace violence assessment and develop a workplace violence prevention plan which addresses the specific risks in the workplace. There are additional posting and training requirements that employers are obligated to comply with as well.

Weapons possession and use is strictly regulated in Canada and failing to comply can amount to a criminal offence. Employers who intend to utilize weapons in the course of business should consult the *Criminal Code of Canada* and the *Firearms Act*. Such a business will need to be licensed to possess firearms and must ensure that every employee of the business who, in the course of their duties of employment would handle firearms is a holder of the applicable firearms license. In almost all circumstances, it is illegal for individuals to carry concealed weapons in Canada.

X. EMPLOYEE INJURIES AND WORKERS COMPENSATION

A. Work-Related Injuries

The *Workers' Compensation Act* establishes the Workers' Compensation Board of Nova Scotia (the "WCB"), which pursuant to the *Workers' Compensation Act* is the province's provider of workplace injury insurance. Workplace injury insurance is to compensate workers injured as the result of a workplace accident or occupational hazard arising out of the course of their employment. Compensation is funded through payroll assessments of the employers who are required to participate in the regime. The purpose of the WCB is to promote healthy workplaces and facilitate the recovery and return to work of injured workers.

The legislation and corresponding required participation in the WCB regime apply to most employers, with some exceptions. Generally, registration is mandatory for an employer that:

- Conducts business in a mandatory industry (including hotels, restaurants, supermarkets, fishing, transportation, construction, manufacturing and a variety of manual labour services); and
- Has three or more workers at one time.

If coverage is not mandatory for an employer, they can still purchase workplace injury insurance in the form of special protection coverage or voluntary coverage. Special protection coverage is available for proprietors and partners of a business or firm, and family members of an employer (proprietor, partner, or officer / director of an incorporation) living in the employer's household. Voluntary coverage is also available for employers not in a mandatory industry and for employers with less than three workers.

The *Workers' Compensation Act* requires employers participating in the regime to provide the WCB with an estimate of the employer's payroll for the remainder of the current year and for the following year, together with any other information that the WCB may require within 10 days of becoming an employer.

Workplace injury insurance operates on a "no-fault" basis. Regardless of who is at fault, an employee cannot sue his or her employer if the employer has workplace injury insurance coverage. In return, employees receive insurance benefits for workplace injuries. Workplace injury insurance benefits are based on an earnings-loss system. An injured employee is paid a percentage of the wages they lose as a result of a workplace injury. An earnings-loss is the

difference between what an employee was earning before his or her injury and what he or she is able to earn after the injury.

The WCB also provides other health care benefits and services to employees to prepare them to return to work. This includes wage assistance for employers who hire injured employees, assistance with workplace modifications, and financial assistance for the accommodation and retraining of an employee to perform a new job with the employer.

The *Workers' Compensation Act* prohibits employers from discriminating or taking disciplinary action against an employee who reports an accident or makes a claim for or receives compensation pursuant to the *Workers' Compensation Act*.

Subject to exemptions for employers in particular industries and those who regularly employ less than 20 employees, an employer has a duty to offer re-employment to an injured worker, where the worker has been unable to work because of the injury, and was employed by the employer at the date of the injury, for at least twelve continuous months. In so doing, an employer has a duty to modify the work or the workplace to the needs of the worker who requires accommodation as a result of the injury to the extent that the accommodation does not cause the employer undue hardship. This duty persists until the earlier of the day that is two years after the date of the injury to the worker, or the worker attains the age of sixty-five years.

Psychological Workplace Injury

Effective September 1, 2024, a work-related psychological injury due to significant stressors that happen over time (bullying or harassment, for example) will be compensable under Nova Scotia's WCB regime.

The Worker will first require a diagnosis by a mental health professional, confirming their psychological injury. Moreover, to be eligible for compensation, the injury must:

1. Arise out of, and in the course of employment;

2. Are wholly predominantly caused by one or more (or a cumulative series) of significant work-related stressors; and

3. The work-related stressors causing such stress must be identifiable.

Further information for Employers about this new compensable injury is available at (https://www.wcb.ns.ca/Claims/Gradual-Onset-Psychological-Injury/GPI-Q-As-Employers).

B. Nonwork-related injuries

In accordance with human rights principles, employers have a duty to accommodate an injured employee to the extent that the accommodation does not cause the employer undue hardship. This includes employees who were injured while off-duty. The employer and employee must attempt to identify employment at the workplace that is consistent with the

employee's functional abilities, and that will restore the employee's pre-injury earnings to the extent possible. Please see Section IV(A) – Discrimination for more information.

XI. UNEMPLOYMENT COMPENSATION

A. Eligibility

Employment Insurance (EI) benefits are provided by the Federal Government under the *Employment Insurance Act*, SC (1996) c 23 and administered through Service Canada. EI provides regular benefits to individuals who lose their jobs through no fault of their own (for example, due to shortage of work, seasonal, or mass lay-offs) and are available to work but cannot find a job.

An individual is qualified to receive EI benefits if he or she accumulates a certain amount of employment hours, prior to becoming unemployed, based on regional rates of employment.

B. Procedure

Employers in Nova Scotia are obligated to cooperate with Service Canada and meet their responsibilities, which include:

- Issuing Records of Employment (ROEs) when employees stop working;
- Accurately recording the reason for separation of the employment relationship, hours worked, gross earnings, and any money paid or payable on separation;
- Giving a copy of the ROE to its employees and retaining a copy for six years if the employer issues paper ROEs. The six year retention period is not required if the employer issues ROEs electronically;
- Advising employees to register for EI benefits as soon as possible after they stop working;
- Responding promptly to all requests for information from Service Canada officials; and
- Contacting Service Canada if they offer work to an EI claimant who does not accept it, or if they are required to pay an arbitration award or similar type of settlement to an employee.

XII. HEALTH AND SAFETY

A. Overview

The purpose of the Nova Scotia *Occupational Health and Safety Act* is to protect the health and safety of Nova Scotia workers. The *Occupational Health and Safety Act* is based on the principle that employers, contractors, constructors, employees, and self-employed persons at a workplace, as well as the owner of a workplace, a supplier of goods or services to a workplace, or an architect or professional engineer, share the responsibility for the health

and safety of persons at a workplace. The *Occupational Health and Safety Act* applies to all matters within the legislative jurisdiction of the Province.

B. Regulatory Requirements

- *Duties of the Employer*

Employers have a general duty to maintain a safe workplace and to ensure that measures and procedures prescribed by the *Occupational Health and Safety Act* are followed. This includes a duty to provide such information, instruction, training, supervision, and facilities as are necessary to the health and safety of its employees. Additional training may be required for particular industries or occupations as per the *Occupational Health and Safety Act*'s regulations. Specific requirements for employers under the *Occupational Health and Safety Act* include:

- Ensuring compliance with the *Occupational Health and Safety Act* and regulations at the workplace;
- Provision and maintenance of equipment, machines, materials, or things that are properly equipped with safety devices;
- Ensuring that employees, particularly supervisors, are made familiar with any health and safety hazards that may be encountered at the workplace;
- Ensuring that employees are made familiar with, provided, and use the proper devices, equipment, and clothing required for their protection;
- Instructing and supervising employees with respect to health and safety issues;
- Consulting and co-operating with the joint occupational health and safety committee or the health and safety representative selected at the workplace;
- Providing for any additional training of such committee members or representative as required;
- Co-operating with any person performing a duty imposed or exercising a power conferred by the *Occupational Health and Safety Act* and its regulations; and
- Establishing an occupational health and safety policy or program as required.

- *Enforcement*

Under the *Occupational Health and Safety Act*, occupational health and safety officers are authorized to enter a workplace at all reasonable hours of the day or night to inspect a workplace, conduct tests and make examinations to ensure compliance with the *Occupational Health and Safety Act*. Such entry does not require a warrant or advance notice. Officers are also authorized to demand production of records and other documents, and to make copies of such, that are in the employer's possession that relate to the workplace or the health and safety of employees or other persons at the workplace. In the course of inspecting the workplace, an officer can take photographs or recordings, inspect or conduct tests of materials, products, tools, equipment, or machines, and examine a person who may be relevant to an ongoing investigation or inquiry.

If an officer identifies a violation of the *Occupational Health and Safety Act* that presents a danger or hazard to the health and safety of the workplace, the office has the power to give an order orally or in writing to require that the danger or hazard be remedied. Such orders may dictate that:

- Any place, equipment, or material not be used until the order is complied with;
- A stoppage of work occurs until the order to stop work is withdrawn or cancelled; or
- The workplace be cleared of persons and isolated until the danger or hazard is removed.

Any person who contravenes or fails to comply with a provision of the *Occupational Health and Safety Act* or an order issued by an officer is guilty of an offence and liable on summary conviction to a fine of not more than $250,000 for a first offence (or where the offence resulted in a fatality not more than $500,000), or $500,000 for a second or subsequent offence within five years, or imprisonment for a term of not more than two years, or both, in addition to a fine not exceeding $25,000 for each additional day which the offence continues.

An employer also has a legal obligation under the *Criminal Code of Canada*, RS 1985, c C-16, to take reasonable steps to prevent bodily harm to persons arising from work or assigned tasks. Section 217.1 of the *Criminal Code of Canada* sets out that everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

An employer's failure to uphold this legal duty could result in an allegation or charge of criminal negligence against the employer and/or its directors. To establish criminal negligence under this section of the *Criminal Code of Canada*, a Crown prosecutor must prove "beyond a reasonable doubt" that the accused breached its duty to take reasonable steps to prevent bodily harm arising from work or assigned tasks. Once fault is established, the accused may defend against liability by demonstrating that it took all reasonable precautions in the circumstances to prevent the workplace accident or injury. The *Criminal Code of Canada* does not supersede the jurisdiction of the *Occupational Health and Safety Act*, and proceedings could be brought separately under both.

- ***Right to Refuse Work***

Any employee in a workplace covered by the *Occupational Health and Safety Act* has the right to refuse to do any act at his or her place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the health or safety of the employee or any other person. In exercising his or her right to refuse, the employee must immediately report the hazard to his or her supervisor. Where the matter is not remedied to the employee's satisfaction, then the employee must report it to the health and safety committee or representative.

The right to refuse persists until the employer has taken remedial action to the satisfaction of the employee, the committee has investigated the matter and unanimously advised the

employee to return to work, or an officer has investigated the matter and advised the employee to return to work. Employers are not permitted to discipline an employee who exercises his or her right to refuse.

- *Reporting a Workplace Accident or Injury*

An employer is under an obligation to send written notice to the Provincial Executive Director of Occupational Health and Safety on the occurrence of certain types of workplace accidents. Specifically, the employer must provide notice of:

- A fire or an accident at the workplace that causes serious injury to an employee, within 24 hours of its occurrence;
- An accidental explosion at the workplace, whether any person is injured or not, within 24 hours of its occurrence; and
- Where at the workplace, a person is killed from any cause, or is injured from any cause in a manner likely to prove fatal, immediately.

C. Social Elections

Nova Scotia does not have any laws or statutes that address this issue. For more information, please reach out to us.

D. Works Councils

Nova Scotia does not have any laws or statutes that address this issue. For more information, please reach out to us.

E. Health and Safety Committee

For information on an employer's obligation to establish a Joint Occupational Health and Safety Committee, see Sections XII(A) and VIII(D) above.

XIII. TRADE UNIONS – INDUSTRIAL RELATIONS

A. Overview

If a workplace is unionized and employees are members of a bargaining unit, the collective agreement will govern the terms and conditions of employment. Collective agreements in Nova Scotia for most private businesses are governed by the *Trade Union Act* if the employer is subject to provincial jurisdiction, or by the Canada Labour Code, if the employer is subject to federal jurisdiction.

Nova Scotia's *Trade Union Act* regulates provincial trade union activities and labour relations. This statute is administered by the Labour and Employment Board (the "Board") which is the independent and impartial tribunal responsible for the day-to-day administration of Nova Scotia's labour laws. The *Trade Union Act* governs both the process by which a trade

union acquires bargaining rights and the collective bargaining procedures between trade unions and employers.

The *Trade Union Act* provides the mechanism for union and employer (or management) relations in provincially regulated workplaces. It governs the relationship between unionized employees, unions, and employers, sets a framework for proper conduct in the union-management relationship, and sets out timelines relating to bargaining rights in order to enhance stability. The *Trade Union Act* does not apply to employees who are working in federally regulated unionized workplaces where federal legislation, namely the *Canada Labour Code*, would apply.

- *Favored/Disfavored by Government*

Under the *Trade Union Act* every employee has the right to be a member of a trade union and to participate in the lawful activities thereof, and Employers are not permitted to participate in or interfere with the formation, selection or administration of a trade union, nor may they contribute financial support.

- *Prevalence of Trade Unions*

In Canada, the unionization rate fell steadily from 38% through the 1980s and 1990s, then remained relatively stable through the 2000s, with data up to 2012 at around 30%. In 2015, the share of union dues-paying workers comprised 31.8% of all employees in Canada, an increase of 0.3 percentage points from 2014.

From 1981 to 2012, unionization declined in all provinces, but the largest declines took place in British Columbia, -13 percentage points, and New Brunswick, -11 percentage points.

In Canada, unions can be divided into four main types: (1) national; (2) international; (3) independent local organization; and (4) directly chartered local. A strong majority (69.7%) of unionized workers were affiliated with national unions in 2015. International unions accounted for almost 25% of unionized workers, followed by independent local organizations (3.9%) and directly chartered locals (1.5%). Compared to 2014, there was little change in representation by type of organization. In 2015, national and international unions represented almost 95% of unionized workers but accounted for 30.5% of the total number of unions in Canada. Directly chartered locals and independent local organizations made up the majority of unions (69.6%).

Information sourced from "Long term trends in unionization," Statistics Canada, by Diane Galarneau and Thao Sohn, and "Labour Organizations in Canada 2015," Employment and Social Development Canada.

- *Special Requirements (e.g. US-Right to Work)*

Nova Scotia does not have right to work laws. Potential employees can be compelled, as a condition of employment, to join and pay dues to a labour union that represents that

employment unit. Please see Section XII(C) - Managing the Workplace Collective Bargaining for more information.

- *Works Council*

The European concept of Works Councils is not a practice that exists in Nova Scotia. If you have questions on this topic, please reach out to us at 1 (902) 377-2233.

- *Challenges for a Unionized Business*

Implications of managing a unionized business include:

- A decreased ability to communicate directly with employees about all work-related matters or negotiate individually;
- higher labour costs;
- decreased flexibility as employers must adhere to concessions made in collective bargaining, often affecting the right to contract out work, require overtime, determine the size and mix of the workforce, leave temporary vacancies unfilled, discipline employees without significant challenges and terminate employees without cause;
- a risk of developing a "we/they" type atmosphere;
- additional expenses related to addressing grievances and arbitration costs;
- increased time commitment, particularly around collective bargaining;
- the risk of work stoppage.

B. Right to Organize/Process of Unionization

The *Trade Union Act* regulates provincial union activities in Nova Scotia. The *Trade Union Act* governs both the process by which unions acquire bargaining rights and the procedures for collective bargaining between unions and employers. A trade union, or union, is an organization of employees formed for purposes that include regulating relations between employers and employees through collective bargaining and obtaining a collective agreement. A collective agreement is a signed agreement between an employer and a certified bargaining agent of its employees that contains terms or conditions of employment with reference to rates of pay and hours of work.

The *Trade Union Act* gives every employee the right to be a member of a union and to participate in its activities. It also gives every employer the right to be a member of an employers' organization and to participate in its activities. An employer cannot interfere with an employee's decision to join a union.

For the purpose of the *Trade Union Act*, no person shall be deemed to be an employee who is a manager, superintendent, or any other person who is employed in a confidential capacity in matters relating to the labour relations or who exercises management functions. Persons who are members of the medical, dental, architectural, engineering, or legal professions qualified to practice under the laws of a province and employed in that capacity are also exempt from being considered an employee under the *Trade Union Act*.

Except with the consent of the employer, unions are not permitted to solicit membership at an employer's workplace during working hours. They can however solicit membership during break times.

- *Union Certification*

There are different requirements for union certification in Nova Scotia depending on whether or not the workplace is part of the construction industry. For workplaces other than those in the construction industry, the *Trade Union Act* requires that a union have as members in good standing not less than 40 percent of employees of one or more employers in an appropriate bargaining unit before it can apply for certification. In the construction industry, the requirement for members in good standing is reduced to 35 percent. Once the membership threshold is achieved, a union can apply for certification when:

- There is no certified trade union or collective agreement in place with the employer;
- There was a certification, but no collective agreement is in force between the parties 12 months after the date of certification;
- There is an agreement in force for a term of not more than three years, a union may apply following the commencement of the last three months of the operation of that agreement; or
- There is an agreement in force and it is for a term of greater than three years, a union may apply after the commencement of the 34th month and before the commencement of the 37th month of its operation, during the last three months of each year that the agreement continues to operate after the third year, or after the commencement of the last three months of operation.

A bargaining unit simply means a group of two or more employees. A bargaining unit appropriate for collective bargaining, with reference to a unit, means a unit that is appropriate for such purposes, whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether or not the employees in such a unit are employed by one or more employers. In determining whether a unit is appropriate for collective bargaining, the Labour Board may decide to include additional employees or exclude employees from the unit.

Once a union submits its certification application to the Labour Board, the working conditions at the workplace become frozen. This means that an employer cannot alter wage rates, terms of employment, or any other employment privilege during this period. The freeze remains in effect until the Board provides its decision on the application, or in the case where the Board certifies the union, until notice to commence collective bargaining is provided. If notice to commence collective bargaining is provided, a second, virtually identical freeze is imposed until a new collective agreement is concluded, or the bargaining agent and the employer or representatives authorized by them in that behalf, have bargained collectively but have failed to conclude a collective agreement.

If the Labour Board is not satisfied that a union is entitled to be certified, it will reject the application. In rejecting an application for certification, the Board may designate a length of time that must elapse before a new application will be considered by the same applicant.

Where in the Board's opinion an employer commits an unfair labour practice that contravenes the *Trade Union Act* in such a way that the representation vote of the employees does not reflect the true wishes of the employees in the appropriate bargaining unit, and if the applicant union had the requisite percentage of members in good standing, the Board may use its discretion to certify the trade union as a bargaining agent of the employees in that unit.

C. Managing a Unionized Workforce

- *Collective Bargaining*

Collective Bargaining means negotiating in good faith with a view to the conclusion of a collective agreement or the renewal or revision thereof. The *Trade Union Act* imposes strict timelines in bargaining and should be referred to carefully to ensure compliance.

When appropriate notice to bargain has been given under the terms of the *Trade Union Act*, the parties must meet without delay and commence bargaining collectively and make every reasonable effort to conclude a renewal, revision or new agreement.

Typically, collective agreements contain provisions concerning union recognition and the scope of the collective agreement. Additionally, a collective agreement often includes language regarding the deduction and remittance of union dues, and the applicable arbitration and grievance procedures. Other provisions typically found in collective agreements include those relating to progressive discipline and termination; union membership eligibility; seniority; layoff and recall; contracting out; hours of work and scheduling; pay and benefits; management rights; discrimination; and other rules specific to the workplace. Collective agreements usually address issues such as hours of work, work schedules, management rights, wages, hiring, discipline, layoffs, and termination.
Not all collective agreements will contain the same provisions. The employer may be subject to several collective agreements depending on the makeup of the workforce. Consequently, it is important for an employer to review any applicable collective agreements before taking steps in relation to a position or an employee that is within the scope of a collective agreement. Failing to comply with the terms of a collective agreement could result in a union initiating grievance proceedings which, in turn, could lead to an award being issued against the employer.

Once concluded, the *Trade Union Act* provides that the collective agreement is binding on the parties to it or affected by it. This includes the bargaining agent and the employees in the unit of employees that the bargaining agent represents, and an employers' organization and employer who has entered into the agreement or on whose behalf the agreement has been entered.

A collective agreement, certification, application, notice, or entitlement to give notice continues in force, and is binding on the purchaser, lessee, trustee, or the person otherwise acquiring an employer's business. This is true whether the employer sells, leases, or transfers, or otherwise disposes of, or agrees to sell, lease, transfer, or otherwise dispose of

his or her business or the operations of the business, or a part of either, unless the Board directs otherwise.

- *Dispute Resolution*

During the period in which a collective agreement is in place, employees are prohibited from going on strike. Unions are also prohibited from declaring or authorizing a strike. At the same time, employer is prohibited from declaring or causing a lockout with respect to any employee bound by the collective agreement.

Strikes and lockouts are permissible during collective bargaining. All employees defined in a bargaining unit represented by a trade union may legally strike or be locked out by an employer, except those employees who do not have the right to strike.

- *Impact on Management Rights*

Where the Board has certified a trade union as a bargaining agent of employees, the bargaining agent may, on behalf of the employees in the unit, by notice in writing, require the employer to commence collective bargaining.

Certain actions under the *Trade Union Act*, such as an application to certify or notice to bargain, trigger restrictions on the Employer's management rights such as a prohibition on altering the terms and conditions of employment without the consent of the trade union.
Once a collective agreement is in place, it is binding on both parties. Failure to comply with the provisions of the agreement can lead to awards against the Employer.

When interpreting collective agreements, arbitrators and courts read in a requirement of "reasonableness" to the exercise of management rights. In other words, management decisions are subject to external scrutiny to determine that they were not discriminatory, arbitrary or in bad faith. Decisions that do not meet that standard can be found to be a breach of the collective agreement. For more information, see Section XIII(A) Challenges for a Unionized Business.

The *Trade Union Act* provides a variety of examples of employer behaviours that would be considered unfair labour practices. Such practices include:

- Participating in or interfering with the formation or administration of a union or the representation of employees by a union;
- Contributing financial or other support to a trade union;
- Refusing to employ, continue employing, or otherwise discriminate against any person with regards to employment because of the person's membership or involvement with a union, participation in a proceeding under the *Act*, making of a disclosure as required under the *Trade Union Act*, or participation in a strike or exercise of his or her rights under the *Trade Union Act;*
- Imposing conditions in a contract of employment that restrains an employee from exercising any right conferred by the *Trade Union Act*;

- Suspending, discharging, or imposing any other penalty or discipline on an employee by reason of his or her refusal to perform the duties of another employee who is participating in a strike;
- Denying pension rights or accrued benefits to which an employee would be entitled but for the cessation of work due to a strike or lockout, or the dismissal of an employee contrary to the *Trade Union Act*;
- Threatening or intimidating an employee into refraining from becoming or ceasing to be a member of a union;
- Suspending, discharging, or imposing any other penalty on an employee for reason of that employee refusing to perform an act prohibited by the *Trade Union Act*; or
- Bargaining collectively for the purpose of entering a collective agreement or entering into a collective agreement with a union in respect of a bargaining unit if another union is the bargaining agent for that unit.

XIV. IMMIGRATION / LABOUR MIGRATION

Temporary and permanent immigration to Canada is governed by federal legislation--the *Immigration and Refugees Protection Act, S.C. 2001, c. 27* ("IRPA") and the *Immigration and Refugee Protection Regulations, SOR/2002-227* ("IRPR"). In recent years, many Canadian provinces, including Nova Scotia, have enacted specific foreign worker protection legislation to supplement the general employment standards that apply to everyone. These measures recognize that foreign workers can be particularly vulnerable, especially when their status in Canada is tied to a single employer by virtue of the terms and conditions of their work permit.

Nova Scotia's *Labour Standards Code* now includes protections for individuals, including foreign workers recruited for employment in Nova Scotia and prescribes a regime under which employers must register with the Province to employ some foreign workers and recruiters must be licensed to recruit foreign workers for employment in Nova Scotia, subject to some exceptions.

A. Overview Business Immigration Policy

International business travel to Canada and the temporary employment of international talent (foreign workers) in Canada is governed by IRPA, IRPR and Canadian immigration policy. Foreign nationals must hold a work permit that properly authorizes the activities they will perform in Canada, or be eligible for one of the work permit exemptions that permit certain foreign nationals to work in Canada without a work permit in certain situations.

- *Work Permits and Exemptions*

The standard process to obtain a work permit involves two steps. First, an employer must obtain a Labour Market Impact Assessment ("LMIA") to confirm, among other things, that employing a foreign national in a particular role will likely have a positive or neutral impact on the Canadian labour market. In most cases, employers seeking LMIA confirmation must test the domestic labour market by conducting a robust recruitment campaign to

demonstrate there are no qualified and available Canadians or permanent residents for the role.

Once LMIA confirmation is in place, the foreign national is then able to apply for an employer-specific work permit to authorize their employment in Canada. Foreign nationals who do not require a temporary resident visa ("TRV") to enter Canada, can apply for an LMIA-based work permit at the port of entry, upon arrival in Canada. Foreign nationals who require a TRV to enter Canada must apply for their work permit online (and their application must be approved) before travelling to Canada. Work permit processing times vary throughout the year and from one Canadian visa office to another, but generally speaking applying for a work permit from overseas adds anywhere from two weeks to several months to the process.

Since it can also be cumbersome and time consuming to obtain an LMIA, employers who wish to hire a foreign national in Canada are advised to consider whether any of the facilitative work permit categories exempt from the LMIA requirement (or a work permit exemption) apply given the candidate and position in question before engaging the LMIA process. Various LMIA-exempt work permit categories are available pursuant to public policies, international agreements to which Canada is a signatory and IRPR. As an example, LMIA-exempt work permits are available for eligible intra-company transferees, certain professionals under the *Canada-United States-Mexico Agreement* (and other free trade agreements), and highly specialized international resources whose work in Canada will create or maintain significant benefits or opportunities for Canadians and permanent residents of Canada. These LMIA exemptions are only a few of the many facilitative work permit options available.

The eligibility requirements for various LMIA-exempt work permit categories are informed by Canadian immigration policy and are flushed out by Immigration, Refugees and Citizenship Canada ("IRCC") in their program delivery instructions published online for Temporary Workers.

B. Protocol for business visitors to obtain temporary entry for non-employment purposes

Pursuant to subsection 186(a) and section 187 of IRPR, international business travelers coming to Canada to perform activities that do not constitute direct entry into the Canadian labour market are eligible to work in Canada without a work permit as business visitors. Those seeking admission to Canada as a business visitor must be prepared to demonstrate their eligibility for this work permit exemption with documentary evidence.

Depending on their nationality, a foreign national may require a TRV to authorize their admission to Canada. Except for American citizens, foreign nationals from visa-exempt countries must obtain an electronic Travel Authorization ("eTA") to enter Canada by air.

C. Visa options for the temporary employment of professional/management foreign nationals

Unless eligible for a specific work permit exemption, a foreign national requires a work permit to authorize their employment in Canada in professional and managerial positions. An applicant's eligibility for an LMIA-exempt work permit is fact-specific and must be assessed on an individual basis.

There is a short-duration work permit exemption available for foreign nationals coming to Canada to perform managerial or professional activities for a maximum of 15 consecutive days (available once every 6 months), or for a maximum of 30 consecutive days (available once per year).

D. Visa options for the temporary employment of non-professional employees

With some limited exceptions, most notably for after-sales service providers coming to Canada to provide proprietary or product-specific assistance and support for the installation, configuration, start-up and commissioning or repair of specialized commercial or industrial equipment or software purchased or leased outside of Canada, foreign nationals coming to Canada to perform work that is not professional or managerial will require a work permit to properly authorize their activities. Moreover, some highly specialized high- and semi-skilled foreign nationals qualify for LMIA-exempt work permits, but generally temporary foreign workers contracted to work in Canada in non-professional and non-managerial roles will require an LMIA-based work permit to authorize their employment.

E. Visa options for foreign entrepreneurs and/or business investors

- *Start-up Visa Program*

Canada offers a start-up visa program for entrepreneurs who possess the necessary skills and potential to build innovative businesses in Canada that will create jobs for Canadians and permanent residents of Canada and compete on a global scale. To apply to the start-up visa program, an applicant's business idea or venture must first be supported by one or more designated organization.

The start-up visa program is a permanent immigration pathway which eventually leads to permanent residence status in Canada. However, while a start-up visa application for permanent residence is processed by IRCC, the applicant can apply for a work permit that will allow them to come to Canada and start their business in the meantime.

- *Self-employed/entrepreneur work permit*

This LMIA-exempt work permit category is available for self-employed foreign nationals seeking to come to Canada temporarily, usually on a seasonal basis, to operate a business that will create significant social, cultural, or economic benefits or opportunities for Canadians and permanent residents. This facilitative work permit category is also available to foreign nationals whose immigration to Canada has been nominated by a province under a provincial nominee program entrepreneurial stream.

F. Permanent residency based on employment

There are many pathways through which a foreign national can apply for permanent resident status in Canada. The permanent residence programs available in Canada can be classified under the three main categories or classes: (1) Economic Classes, (2) Family Class and (3) Refugee Class. It is much easier to immigrate to Canada under an Economic Class program with the support of a Canadian employer with whom the applicant has accepted an offer of employment or is currently employed. Having one or more years of Canadian work experience also enhances a foreign national's eligibility for permanent residence and/or the likelihood they will be invited to apply for permanent residence status in Canada.

Eligibility for permanent residence in Canada must be assessed on a case-by-case basis. For more information or assistance developing a strategy for an employee to become a permanent resident of Canada, please reach out to the Immigration Law Team at Barteaux Labour and Employment Lawyers Inc. by contacting Andrea Baldwin at (902) 536-3109 or abaldwin@barteauxlawyers.com.

G. Citizenship for foreign nationals

To become a naturalized citizen of Canada, it is necessary to first become a permanent resident. To be eligible for Canadian citizenship, a permanent resident must accumulate at least 1,095 days of physical presence in Canada within five-years. Another important requirement for Canadian citizenship is to file Canadian income tax returns (if required) for three out of five years, matching the physical presence requirement.

Subject to some exemptions, citizenship applicants must pass a test to demonstrate knowledge of Canada's history and heritage and the rights and responsibilities of being a Canadian citizen. Most citizenship applicants are also required to demonstrate adequate language skills in English or French.

H. Compliance concerns for employers of foreign nationals

- *Consequences of Unauthorized Employment (and Work) in Canada*

It is an offence contrary to section 124 of IRPA to employ a foreign national in Canada without proper authorization. This offence is punishable by a fine of up to $50,000 and/or imprisonment for up to two years. Employers must exercise due diligence to determine whether a foreign national is properly authorized to work in Canada. An employer who fails to exercise due diligence to confirm that a foreign national is properly authorized to work for them in Canada is deemed to have known the employment was not authorized.

Foreign nationals who work in Canada without proper authorization open themselves to many risks including potential removal from Canada, a six-month ban against working in Canada and being found inadmissible to Canada for non-compliance. The risks faced by foreign nationals who work in Canada without proper authorization can also impact employers whose operations depend on key international resources to fill labour shortages and skills gaps in Canada.

- *Conditions Imposed on Employers of Foreign Nationals*

Various conditions are imposed on employers of foreign nationals in Canada pursuant to sections 209.2 to 209.4 of IRPR including, but not limited to, providing a foreign worker with the same occupation and substantially the same (but not less favourable) wages and working conditions as those set out in their offer of employment; complying with the applicable federal and provincial laws that regulate employment and the recruitment of employees; and making reasonable efforts to provide an abuse-free workplace.

An employer's compliance with the regulatory conditions imposed on their employment of foreign nationals is monitored by the Government of Canada through employer compliance inspections. Non-compliance discovered during an inspection that cannot be justified constitutes a violation that is subject to one or more of the following sanctions:

- a warning;
- a period of ineligibility from hiring foreign workers;
- inclusion of the employer's information on a public website of ineligible employers; and
- an administrative monetary penalty.

I. Regional, Federal, or state/province specific immigration or compliance issues

- *Provincial Foreign Worker Protection Legislation*

In 2011, several new protections specifically applicable to foreign workers were added to Nova Scotia's *Labour Standards Code*. These additions, found in sections 89B to 89Z of the Code, codified the following foreign worker protections:

Recruiter Licensing

- To recruit most foreign nationals for employment in Nova Scotia, a third-party recruiter must be licensed. The eligibility criteria for becoming a licensed foreign worker recruiter in Nova Scotia are quite strict. Most professional recruiters do not hold the credentials necessary to become licensed to recruit foreign nationals to work in Nova Scotia. Only Canadian lawyers and regulated Canadian immigration consultants in good standing can apply for a foreign worker recruiter license.

- In general, employers who wish to use the services of an external recruiter or employment agency to recruit foreign nationals for employment in Nova Scotia must use a licensed recruiter. Following the enactment of foreign worker protections in Nova Scotia, some limited exemptions were carved out such that in some circumstances recruiters are not required to hold a license to recruit foreign nationals for employment in Nova Scotia directly or indirectly.

- Employers do not require a license to engage in the recruitment of foreign workers for employment in Nova Scotia if it is in their organization.

Employer Registration

- Subject to certain exemptions, employers must hold an employer registration certificate ("ERC") issued by Labour Standards to recruit and hire foreign workers for employment in Nova Scotia. ERCs are valid for one year.

- Employers are expected to hold an ERC to apply for LMIA confirmation related to a foreign national's employment in Nova Scotia, to support an employer-specific Nova Scotia Nominee Program application, and to sponsor an application for endorsement under the Atlantic Immigration Program.

Other Foreign Worker Protections

- Employers are prohibited from charging and recovering recruitment fees and costs from foreign workers and cannot hold a foreign worker's property, such as their passport or work permit, without consent.

- Subject to some limited exceptions, the terms and conditions of employment of a foreign worker cannot be reduced or eliminated even with the employee's consent.

- *Provincial Nomination*

Under Canada's constitution, responsibility for immigration is shared between the federal and provincial/territorial governments. Historically the selection of immigrants was done at the federal level. Beginning in the late 1990s, however, the selection of some permanent resident candidates was shifted to the provinces and territories when the Government of Canada negotiating initial agreements with each to establish provincial and territorial nomination programs under which provinces/territories were allowed to nominate skilled individuals to meet their specific economic and industrial development needs. Robust agreements on immigration are now in place between Canada and the provinces/ territories outlining how each party will share responsibility for immigration. Each agreement is negotiated separately to address the unique needs and priorities of the province or territory in question.

The *Agreement for Canada-Nova Scotia Co-operation on Immigration* was signed on September 19, 2007. It is a comprehensive agreement that covers a wide range of immigration issues and includes an Annex on provincial nomination that allows Nova Scotia to nominate immigrants to meet its specific labour market needs. More recently, the was signed to address regional labour market needs through the Atlantic Immigration Program.

Nova Scotia Nominee Program

Through the Nova Scotia Nominee Program ("NSNP"), prospective immigrants with the skills and experience targeted by Nova Scotia can be nominated for immigration to Canada. Provincial nomination is a preferred pathway for obtaining permanent residency in Canada for many foreign nationals because of the flexibility built into many nomination streams.

Currently, the following nomination streams are available under the NSNP:

- The **Labour Market Priorities Stream** invites candidates to apply for nomination who have a profile in the federal Express Entry pool and satisfy the criteria established for the draw in question based on Nova Scotia's labour market needs identified at that point in time.

- The **Labour Market Priorities for Physicians Stream** selects physicians to apply for nomination who have a profile in the federal Express Entry pool and an approved opportunity with Nova Scotia Health Authority or the IWK Health Centre.

- The **Physician** stream helps Nova Scotia's public health authorities to hire general practitioners, family physicians and specialists to work in Nova Scotia. The stream helps to recruit and retain physicians with the required skills for positions that have not been easy to fill with Canadians or permanent residents.

- The **Entrepreneur** stream is for experienced business owners or senior business managers who want to live in Nova Scotia. Applicants are required to start a new business or buy an existing business in which they actively participate in the day-to-day management. The business must be operated for a year before the applicant can apply to be nominated for permanent resident status.

- The **International Graduate Entrepreneur** stream is for recent graduates of a Nova Scotia university or the Nova Scotia Community College who have started or purchased a business in Nova Scotia and operated it for at least a year.

- The **International Graduates in Demand** stream targets recent international graduates who completed at least half of their program in Nova Scotia and have the skills and education required to work in one of the in-demand occupations identified for this stream. Applicants are also required to have a full-time permanent job offer from a Nova Scotia employer in the same occupation.

- The **Skilled Worker** stream is an employer-driver stream through which employers can hire foreign workers and recently graduated international students with skills and experience needed in Nova Scotia.

- The **Occupations in Demand** stream targets specific high-skilled, semi-skilled and low-skilled occupations that are in high demand in Nova Scotia. The eligible occupations identified for this stream change from time to time based on labour market information.

- The **Experience: Express Entry** stream selects highly skilled individuals who wish to live in Nova Scotia permanently and have at least one year of experience working in Nova Scotia in a managerial, professional or high-skilled occupation.

- The **Critical Construction Worker Pilot** is for candidates with a permanent, full-time offer from a Nova Scotia employer in the construction sector in an approved construction occupation.
- **Healthcare Professionals Immigration Pilot (Letter of Interest)** is a pathway for permanent residency under a non-Express Entry stream of the Nova Scotia Nominee Program or the Atlantic Immigration Program. The pilot targets specific healthcare professionals, by issuing Letters of Interest ("LOIs") to candidates with a profile in the Express Entry pool and experience in the targeted occupation. To date, LOIs have been issued to podiatrists, pharmacists and pharmacy technicians inviting them to submit an expression of interest in obtaining employment in their field in Nova Scotia. Those who receive a conditional job offer from a Nova Scotia healthcare employer may then apply to have their immigration to Canada nominated by Nova Scotia or endorsed under the Atlantic Immigration Program.

XV. ADDITIONAL INFORMATION

For more information about labour and employment law in Nova Scotia please contact **Nancy Barteaux, K.C.** or **Michelle Lahey**.

For more information about Canadian immigration law, please contact **Andrea Baldwin** or **Lana Roberts**.

Law Firm: Barteaux Labour & Employment Lawyers Inc.

Address: 1701 Hollis Street, Suite L106, Halifax Nova Scotia, Canada B3J 3M8

Email: nbarteaux@barteauxlawyers.com; mlahey@barteauxlawyers.com;

abaldwin@barteauxlawyers.com; lroberts@barteauxlawyers.com

Phone: +1 (902) 377-2233