



Canada and the U.S.:

Differences in Employment and Labour Law

- Canadian employment law is primarily governed by the law of contract, subject to minimum standards set by legislation. A written employment contract will govern if it is enforceable and does not violate a legislated minimum standard.
- Reasonable notice rather than employment at will - if there is no written contract of employment or if it is silent as to notice, the court will imply a term of reasonable notice. The common law reasonable notice period is based on length of service, age and other factors – usual range is 3 to 24 months notice or pay in lieu.
- Restrictive covenants are presumed unenforceable unless they protect a legitimate business interest and there is no other way of adequately protecting the interest.
- When an employer unilaterally changes a fundamental term of an employee's employment it may result in constructive dismissal.
- In Canada, there are many more government sponsored social programs such as health care, workers compensation, employment insurance, Canada/Quebec Pension Plan.
- Workplace alcohol and drug testing is much less prevalent - most mandatory testing is *prima facie* discriminatory and the employer will have to justify it as a *bona fide* occupational requirement.
- Details regarding unionization vary by jurisdiction - federal labour law applies to federal undertakings such as airlines and banks, provincial labour laws apply to all other employees.
- Quebec has a Civil Code while all the other Canadian jurisdictions are governed by common law.
- Be mindful of Canada's immigration laws.

- The federal government and some Canadian provinces have enacted privacy legislation that applies to personal information about employees and may prevent or limit transfer of personal information from a Canadian company to another company, including a related company in the United States.

For further information, please contact:

Hugh A. Christie

Toronto

(416) 369-7265

hugh.christie@gowlings.com