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EMPLOYMENT LAW NEWS

The Employment Law Group at Soloway Wright LLP specializes in wrongful dismissal litigation, Human Rights complaints, negotiating and structuring severance packages, drafting employment contracts and non-competition clauses, and advising on the legal implications of corporate re-organizations and lay offs. All its services are available in both English and French: *tous ces services sont disponibles en français et anglais, selon vos besoins.*

For more information contact one of the 3 professionals in our Employment Law Group:

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DID YOU KNOW THAT:

- If an employee is reassigned to a new job this may mean that he has been wrongfully dismissed.
- If an employee sexually harasses another employee, the employer may be held strictly liable for damages suffered by the victim, even though the employer had no idea that she was being harassed.
- Random drug or alcohol testing of employees is usually illegal.
- If an employee is demoted without just cause to a lower paying job, he may be obliged to

accept that position and sue for the salary difference.

- An employee may be fired without notice or financial compensation for a single incident of lying or falsifying a resume, but usually not for a single act of disobedience or rudeness.
- The older an employee, the longer she has worked for the employer or the more specialized she is, the more notice must be given to her before dismissing her.
- An employee who takes maternity leave is usually entitled to return to her former position upon her return, or to a comparable one, if it no longer exists. She cannot be forced to accept another position.
- In most circumstances, it is illegal to force an employee to retire at the age of 65.

WHAT EMPLOYERS SHOULD NOT DO WHEN DOWNSIZING THEIR WORK FORCE:

Many employers labour under serious misconceptions about what they can and cannot do when downsizing or re-organizing their work force. Some of the most frequently asked questions are:

Q: Do all employees have equal rights during a work force re-organization?

A: No. Definitely not. A senior employee who was hired into a position from outside the firm cannot be forced to take a job that is significantly different, whereas an employee

promoted up through the ranks within the firm may be obliged to do so. Female employees who are away on maternity leave are entitled to return to their former positions, on their return to work, whereas other employees who are on vacation or extended leaves of absence generally enjoy no such right.

Q: What happens if a woman's position is abolished in a re-organization while she is away on maternity leave?

A: The employer is obliged to find her a comparable position upon her return from maternity leave. If no comparable position exists, the employer must create one for her, if necessary, by laying off another employee. If the employer breaches this obligation, it may be liable to pay her thousands of dollars in damages.

Q: Can an employer wait until an employee returns from maternity leave and then lay her off?

A: No. An employee may not safely be laid off within the first month or so following her return from maternity leave, where it appears that the employer was simply delaying the lay-off until her return.

Q: If staff are laid off because there is not enough work for them, do they have to be paid severance?

A: Not necessarily. Severance need only be paid to employees who have worked for five years or more and then only if the employer's payroll exceeds \$2.5 million a year or if the employer is laying off 50 or more employees. However, the obligation to pay severance is separate, and distinct from the requirement to give notice.

Where the lay-off is indefinite, or for more than 13 weeks, employees who have more than three months' service must be given a minimum of approximately one week's notice of termination per year of service, or pay in lieu thereof. Actual entitlement may be greater.

Q: Instead of laying some employees off, can an employer reduce the wages and hours of work of all employees?

A: No. Not unless they consent to this. Significant reductions in salary or working hours can amount to constructive dismissal. In this situation, the employees may all be in a position to sue you for wrongful dismissal.

Q: Can an employer move an employee to a totally different position, so long as his salary is kept at the same level?

A: Not necessarily. If the new position has less responsibility, less security, is at a lower point in the organization, involves a loss of prestige, or a significant loss of potential for career advancement, and/or requires the employee to relocate to another city or region, the move may amount to constructive dismissal of the employee. In this case, the employer must either get the employee to agree to the change or face a potential lawsuit.

Q: When an employee is laid off, will he still be bound by a non-competition clause in his employment contract?

A: Not necessarily. When an employee is laid off or wrongfully dismissed, he may be freed from any prior contractual undertaking not to compete or to work for a competitor. An employer should therefore think twice about laying off specialized or senior employees whose future competition could cause damage to the business.

***SOLOWAY WRIGHT LLP: Dedicated to Excellence in the Area of Employment Law.
Nous sommes heureux de répondre à tout besoin en droit du travail et droits de la personne.***