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PUBLICATION

# Getting Your Employment Contracts and Policies Ready for 2013

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As the year comes to a close, we thought it would be helpful to provide you with a list of things to think about for the new year.

## Are Your Employment Agreements Up-to-Date?

Earlier this year the Ontario Court of Appeal held that employment agreements with a fixed severance term are not subject to an employer's implied right to deduct any mitigation earnings received by the employee during the notice period. This could be a very costly change in law for employers.

Many existing employment agreements have fixed severance terms. If you are an employer that uses employment agreements with fixed severance terms and you want to be able to deduct mitigation earnings received by a dismissed employee during the notice period from the severance amounts owing you must revise your employment agreements to specifically state that severance payments are subject to mitigation.

This is a simple fix that can save employers from unanticipated expense in the future.

## Are Your Non-Competition Covenants Enforceable?

We strongly recommend that employers review employee non-competition terms periodically to make sure that they remain enforceable in light of recent changes in the law. Although there has not been a significant change to the law in this area over the last 12 months, non-competition covenants are notoriously hard to enforce and your best chance of doing so is to make sure that the covenant you are using complies with the current tests applied by the courts.

## Does Your Organization Comply with the *Accessibility for Ontarians With Disabilities Act, 2005* ("*AODA*")?

By December 31, 2012, all organizations with 20 or more employees must file a Compliance Report with the Ministry of Community and Social Services, confirming that the organization has met the Customer Service Standard issued under the *AODA*.

In addition, the Customer Service Standard requires that all Ontario businesses and organizations with one or more employee  create and implement an accessibility policy that:

- Focuses on principles of independence, dignity, integration and equality of opportunity;
- Allows for assistive devices;
- Takes disability into account in terms of communication;
- Welcomes support persons, guide dogs and other service animals; and
- Provides notice when accessible services are not available.

### Have You Updated Your Human Rights Policy?

The *Ontario Human Rights Code* has been amended to add Gender Identity and Gender Expression as prohibited grounds under the *Code*. Now would be a good time to update your policy to reflect recent changes including these two new grounds.