Although we share a common language and a highly integrated economy, it is a mistake for US labour and employment lawyers to assume that Canadian employment laws are similar to those prevailing south of the 49\textsuperscript{th} parallel. What follows is a brief overview of some of the major differences and some of the proactive steps US-based employers need to take to reduce their exposure to Canadian employment claims.

**Employment Standards:** This area is governed exclusively by provincial (the equivalent of state) legislation for all but a tiny minority of businesses which are covered by federal legislation. The specific minimum employment standards vary by province, but typically include:

- **Overtime:** Employers are required to pay overtime over 40 or 44 hours in a week and, in many, provinces, over 8 hours in a day. Overtime exemptions are generally much narrower than in the US;

- **Statutory holidays:** Most provinces recognize 9, which differ from those observed in the US, and mandate statutory holiday pay for employees who do not work the holiday, while requiring premium rates of pay for those employees who do.

- **Vacation:** Two weeks is the basic minimum paid vacation entitlement, which several provinces demanding an additional week for longer-serving employees.

- **Leaves:** Most provinces oblige employers to grant several days of (unpaid) leaves for bereavement and family emergencies. “Compassionate care” leaves run to many weeks
and maternity and parental leaves are much longer than under FMLA, with up to 52 weeks available to birth mothers.

- Minimum termination standards: Although statutory termination notice/pay formulas vary between provinces, most mandate approximately one week per year of service to a maximum of eight weeks for individual terminations. “Mass lay-offs” trigger substantially higher additional notice requirements. However, employers are generally free to impose lay-offs without government permission, unlike many overseas jurisdictions.

- Significant Severance Entitlements: Canadian law has never recognized “at will” employment, so avoid importing US-drafted employment agreements or offers with “at will” language. The courts require employers to provide non-union employees who are terminated without cause with “reasonable notice” of termination or severance in lieu unless there is a termination clause in an employment contract.

- “Reasonable Notice”: Reasonable notice awards are set by the courts on a case-by-case basis and depend on several factors and comparison with precedents. It is common for middle managers with as little as 1 year of employment to receive an award of 4 to 6 months of severance. Your clients will need advice from an experienced Canadian employment lawyer to structure severance offers.

- Employment Agreements Recommended: Pro-active employers can reduce and clearly define their notice/severance obligations by implementing employment agreements with termination clauses, which the courts will enforce. Unlike the US, where employers try to avoid creating any contractual obligation which might fetter employment “at will,” Canadian employers can dramatically reduce their severance exposure by implementing employment agreements.
• “Bad Faith” or “Unduly Insensitive” employer handling of termination is sanctioned by awards of additional severance.

• Some jurisdictions, such as Quebec, offer “unjust dismissal” procedures which allow employees to challenge dismissals for cause, much like a grievance.

More Active Unions: Canadian labour laws are based on the US model, but typically much more restrictive of management’s right to intervene in a certification drive. More importantly, Canadian unions are much more prevalent in the private sector, representing approximately 20% of all workers, and they continue to aggressively pursue certifications in the service sector. They have managed to organize selected outlets of American retail giants such as Wal-Mart and Starbucks. Any larger employer needs to have a sophisticated union avoidance strategy.

Broad Anti-Discrimination Legislation but Less Costly Claims: Each province has broadly similar anti-discrimination legislation (known in Canada as “human rights” laws). They generally prohibit discrimination on the same grounds as US legislation, but add grounds such as sexual orientation, marital status and family status. Many key concepts such as “indirect” or adverse-effect discrimination, the “duty to accommodate” and harassment have been adopted from US law but given much broader application. However, discrimination and harassment complaints are heard by specialized tribunals, not juries. Tribunal awards for non-financial loss rarely exceed CDN$20,000 and punitive damages are not available. Most employers are not subject to reporting requirements and compliance auditing is very rare. As a result, while compliance with anti-discrimination legislation remains important, it does not demand the same resources and attention to detail as in the US.

Restrictive Covenants Hard to Enforce: The Canadian provinces have not codified this area of the law, leaving the courts to apply broad common law concepts. Overall, the Canadian courts take a fairly narrow view of the permissible scope of restrictive covenants in the employment context. Employers must demonstrate that their covenant protects a “legitimate business interest” and that the scope of the covenant (time, geography and activities restrained) is reasonable. Overly broad covenants are struck down, so “less is more.” Generally, enforcing non-solicit or non-service covenants is easier than true non-competes.
**Vive la Différence:** Quebec offers several unique benefits and protections for employees. Employers are generally required to conduct business in French.

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