



## Lancaster, Brooks & Welch LLP

BARRISTERS AND SOLICITORS

### Seven Myth's of Employment Law

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There is an old saying that "a little knowledge is a dangerous thing". In practicing employment and labour law, we find that a little often leads to a greater degree of misapprehension between employees and employers regarding workplace entitlements. Here are 7 (there are many more) common myths of "employment law":

1. *Compliance with the Employment Standards Act 2000 statutory minimum entitlements on termination means no wrongful dismissal claims.* This is not correct unless you have a valid enforceable employment agreement that contains a termination provision limiting the employee's entitlement to notice of termination to the statutory minimum entitlements. Otherwise, an employ will likely be entitled to common law reasonable notice of termination or pay in lieu thereof.
2. *An employee is entitled to one months' notice of termination per year of service.* This is incorrect. In the absence of a valid enforceable termination provision contained in an employment agreement, an employee is entitled to common law reasonable notice of termination (including the statutory minimum entitlements) subject to the employee's ability to secure alternative employment. Length of service is only one factor to be considered in determining notice which would also include, position, age, duties, responsibilities, economic climate, etc. There is no rule of thumb or judicial formula for determining notice.
3. *An employer can never discriminate against an employee.* This is incorrect. An employer can make decisions in managing the workforce with regard to an employee's personality, their looks, their dress and, yes, even whether one has piercings or visible tattoos. An employer cannot discriminate against an individual based on the grounds set out in human rights legislation such as: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.
4. *Absenteeism leads to termination for legal cause without any further obligation.* This is incorrect. Innocent absenteeism relating to illness, legitimate leaves of absence and human rights related issues are not generally culpable (fault based) attracting discipline or termination. Rather innocent absenteeism may require some form of accommodation and is not generally grounds for a just cause termination.
5. *No written contract means no terms governing the employment relationship means no problem.* Incorrect. A contract can be written or verbal. Where there is no written contract, the law implies terms into a contract of employment - terms such as obligations on termination; human rights obligations; the obligation of good faith. An employment contract that is written actually clarifies the obligations and rights between the parties and often takes the guesswork out of the relationship.
6. *If my employee is on a successive year to year contract, I have no obligation to provide notice of termination.* This is incorrect. Where an employer simply renews a "year to year contract over a period of successive years, the law may imply an obligation on the employer to provide common law reasonable notice of termination or pay in lieu thereof. An employer will not be permitted to circumvent their notice obligations under the guise of a year to year fixed term contract.
7. *I can terminate for any reason during the probationary period and pay nothing.* Wrong! Termination during the first 90 days of employment requires no payment under the *Employment Standards Act 2000*. However, an employee may still have a claim for common law notice of termination or pay in lieu thereof. Furthermore, human rights obligations to accommodate begin on the first day of the employment relationship.

There are several more misconceptions regarding employment obligations and entitlements. These represent the most common that come to our attention on almost a weekly basis. We would encourage employers to seek assistance in dealing with employment issues in order to minimize the risk of potential liability. It's just good business.

*The foregoing information is provided to you for information purposes only.  
We caution you to obtain legal advice specific to your situation in all circumstances*

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