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# WELCOME!

LEGALLY  
DEFENSIBLE HR  
PRACTICES



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[www.KimHRConsultant.com](http://www.KimHRConsultant.com)

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"Law is nothing else but the  
best reason of wise men  
applied for ages to the  
transactions and business of  
mankind."



# HELLO!

# I'm Kimberley

I PROTECT BUSINESSES FROM FROM  
UNNECESSARY RISKS AND COSTLY MISTAKES  
THROUGH HUMAN RESOURCE AND BUSINESS  
CONSULTING OUTSOURCING SOLUTIONS.

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# Herstory

HR as my second career after a workplace injury  
Passionate about doing the right thing - leads to doing things right  
Empowering people and businesses to achieve highest potential

HRPA registration #1062234  
Code of Ethics, Best Practices, Fiduciary

Wife. Mother. Professional. Entrepreneur. Coach. Mentor.

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# Today: Legally Defensible HR Practices

IT'S ALL COMING TOGETHER....



Strategic HR- Top it off

HR Operations- Core  
strength

Compliance-  
Foundation



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## DISCLAIMER: NOT LEGAL ADVICE



The information provided in this webinar does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes only. Information may not constitute the most up-to-date information.

# Legally Defensible HR Practices

1. Benefits of following employment legislation
2. Review: Law + Policies + Handbooks
3. Risk Management in HR
4. Areas of Risk in HR+ How to Mitigate
5. Secret Sauce (shhhh!)



1. Mitigate risks
2. Avoid fines & jail time
3. Good for public relations & consumer trust
4. Boosts employee morale



# Employment Law

1. Ontario Human Rights Code
2. Employment Standards Act
3. Occupational Health & Safety Act
4. Accessibility for Ontarians with Disabilities Act
5. Pay Equity Act

# Mandatory Policies

1. Accessibility
2. Pay Equity Plan (10+ employees)
3. Workplace Health & Safety
4. Workplace Violence & Harassment
5. COVID-19 Safety Plan



***REMEMBER!***

# Should Have Policies

1. Code of Conduct
2. Confidentiality
3. Workplace Investigations
4. Social Media
5. Progressive Discipline
6. Others relevant to your business

# Employee Handbooks

1. Help guide workplace behaviours and culture
2. Protects employer from liability
3. Define obligations of employers and employees clearly



***REMEMBER!***

# What is Risk Management?

Risk management is the identification and response to risk factors that form part of the life of a business. Effective risk management means controlling as much as possible, future outcomes by acting proactively rather than reactively. The goal:, to reduce both the possibility of a risk occurring and its potential impact.



# HR Risk Management

1. Avoid: eliminate risk by getting rid of its cause - but you also eliminate the benefits (contractors v employees)
2. Reduce: take steps to reduce the probability and severity of loss associated with managing employees (follow employment law, ethical practices)
3. Transfer: give the risk to a 3rd party (HR outsourcing)
4. Accept: accept the risk and develop contingencies to mitigate the impact of the risk, should it occur ( in-house HR or legal department)

# 5 Areas of Greatest Risk in HR

AND HOW TO MITIGATE THEM WITH LEGALLY  
DEFENSIBLE HR PRACTICES



# Where's the risk?



1. Recruitment & Selection



2. Hiring



3. Managing Employees



4. Workplace and Working Conditions



5. Termination

## OHRC Human Rights at Work, 2008

Guide employers in their efforts to proactively comply with the Code at all stages of employment, from advertising to discipline right through to retirement and termination

# 1. Recruitment & Selection

- Start with an understanding of the OHRC
- Check if you have *bona fide* occupational requirements
- Create a job description focused on skills, abilities, knowledge, and other attributes
- Establish job-related criteria to help with interviewing & selection
- Score candidates based on measurable skills
- Job ads should include accommodation and human rights code statement, right to check background, BFORs etc.

**Risk level: Low**

**Where's the risk? discrimination & bias - poor candidate pool - wasted time**

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## Disclaimer:

Be advised that Human Resources frequently audits resumes of internal/external applicants to ensure/validate information provided is consistent and trustworthy. Falsification of information provided at any time throughout the recruitment process may be grounds for disqualification, and for internal applicants, subject to discipline up to and including termination.

## Terms:

The ????? is an equal opportunity employer that is committed to inclusive, barrier-free recruitment and selection processes. Consistent with our Values and Corporate Culture Pillars, ????? is committed to providing equitable treatment to all with respect to barrier-free employment and accommodation without discrimination. ??? will provide accommodation for applicants in all aspects of the hiring process, up to the point of undue hardship. If you have an accommodation need, please contact ????? as soon as possible to make appropriate arrangements.

We invite you to visit our webpage to obtain further information on the culture and business of this department.

The incumbent shall comply with all Health and Safety Policies and Practices for this position and the workplace.

It is the responsibility of the applicants to ensure that their application is received by the closing date or they may not be considered. It is also the responsibility of applicants to supply qualifications, licences and related experience relevant to the qualifications outlined above for this competition as directed. On the basis of the criteria set out above, this posting is open to all applicants

The statements made by me are true, complete and correct to the best of my knowledge. I understand that any falsification of statements, misrepresentations, deliberate omission or concealment of information may be considered just cause for discipline, up to and including termination.

# 2.Hiring

- Understand and apply the OHRC
- Employment contract a must!
  - lawyer / experience HR pro
  - 'fixed term' temporary contract initially
  - conditional offers
- Probation period and onboarding
- Cannot withdraw a contract

**Risk level: Low to Moderate**

**Where's the risk? discrimination & bias - poor candidate choice 'wrongful hiring' - lawsuits/damages - unsafe employees**

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# EMPLOYMENT AGREEMENT

CANDIDATE NAME

DATE

**Re: Employment with COMPANY.**

We are pleased to offer you the position of **HELLO** working 40 hours/week. Please find a description of the employment terms below. You will report to SUPERVISOR.

- 1 Department:
- 2 Effective Date:
- 3 Starting Rate:
- 4 Our compensation package for this position includes:
  - a) After 3 months of employment, enrolment into the company group insurance benefit plan.
  - b) After one year of employment, contribute to the COMPANY copayment RRSP plan.
  - c) After one year of employment, participation in the profit-sharing plan, at the discretion of the owners of the company.

9 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

9. I understand and agree that providing false information to COMPANY now or in the future constitutes as breach of trust which could result in immediate termination of employment for cause.

If these terms of employment are acceptable to you, please sign both copies of this contract, date them and return one signed copy to my attention. This offer will be open for acceptance until 4:30 pm, November 17, 2021.

Sincerely,

Kimberley Inniss-Petersen  
Human Resources Consultant, Agent for COMPANY

**ACCEPTANCE**

The terms and conditions of employment as set out in this letter are acceptable

- 5 This offer is conditional upon:
  - a) Being available to work **Monday through Friday from 7:00 am – 3:30 pm**, subject to change in accordance with the needs of the Company.
  - b) Understanding, accepting and abiding by the Values and Guiding Principles of COMPANY
  - c) Agreeing that your first ninety (90) calendar days will constitute as a probationary period, during this time the company will be assessing your suitability for permanent employment. This assessment will include such things as teamwork, ability to work well with others, capability to productively perform the type of work we have here (both physically and mentally), absenteeism and time keeping (i.e. tardiness, break times, lunch breaks).
- 6 Confidentiality:
  - a) At no time during your employment or any time thereafter will you disclose confidential or proprietary information belonging to COMPANY, its affiliates, employees, customers, or suppliers.
  - b) Taking photos or videos inside the facility is strictly prohibited.
  - c) You must agree to the POLICIES:
- 7 Early Termination:
  - a) Either party may terminate this Agreement upon written notice.
- 8 Modification of Agreement:
  - a) Any modification to this Agreement must be in writing and signed by the parties.

# 3. Managing Employees

- Employment Standards Act, Pay Equity, AODA, OHRC
- Workplace policies & employee handbook
- Formal processes: investigations, complaints, discipline
- Documentation: employee issues, warnings, infractions & responses
- Employee issues via performance improvement plans
- Understand concept of 'undue hardship' with accommodation
- Performance evaluations

**Risk level: Moderate to high**

**Where's the risk? injuries - discrimination - lawsuits/damages - employee morale - lost productivity/sales - reputation/PR - high turnover**

## Performance Improvement Plan

This document is intended for use during Stage Two Formal Notification. However you can use the format for the informal/ local discussions with an employee at Stage One. Advice should be sought from your HR Business Partner/ HR Adviser. This template should be used to record action plans, interview notes and other related evidence throughout the performance improvement plan process. Use the same document for each meeting held and noting changes to actions including all dates.

<b>1. Performance Issue</b>	
Line Manager to clarify with evidence where the shortfall in performance has occurred e.g. behavioural, delivery. When did it start and what is the impact on the organisation.	
<b>Date</b>	
<b>2. Required/ Expected Standard</b>	
Line Manager to summarise what is needed to meet the required/ expected standard e.g. from the job description , PDR, objectives, behaviours etc	
<b>Date</b>	
<b>3. Improvement Actions</b>	
A list of actions that need to be taken by the individual to improve performance and how these will be assessed, include details of any further support or training offered including dates. Actions should be specific and achievable.	
<b>Date</b>	

Table 1: The Workplace Investigation Process

Preliminary Considerations	1. Follow through with MOL and WSIB reports as required (legal requirements) 2. Whether complainant should remain in the workplace during the investigation 3. Who should conduct the investigation (supervisor/clinic owner or a third-party investigator) 4. The investigator should have a strong knowledge of the workplace policies, practices, codes of conduct and laws (employment, safety, and Human Rights) that have been breached.
Relevant Documents	5. Gather workplace policies, procedures, codes of conduct and laws that have been breached. 6. Seize electronic mail accounts, timecards, personnel files, and other relevant supporting documents. 7. Keep all documents secure and confidential.
Conducting Interviews	8. Interview every individual involved or with knowledge of the incident. Open ended questions are preferred. Encourage 'story telling'.
	13. Elicit and record as much detail about the complaint as possible, such as date, time, location, witnesses, what happened prior, during, and after the incident, whether a similar incident had been reported and prior action taken.
Documenting Interviews	14. Keep accurate notes of each interview, keeping in mind that the documents may be required in subsequent litigation. 15. Interview must keep careful and accurate documentation of: - who was interviewed and who was present during each interview - where and when the interview occurred - what was discussed, in detail and as close as possible to verbatim. Avoid opinions and editorial comments.
Assess, Evaluate, Report	16. Create a written report of the findings. 17. Report should include: - summary of the complaint/incident under investigation - summary of the relevant evidence obtained from the documents reviewed and individuals interviewed - identification and evaluation of inconsistencies in the evidence - assessment of the credibility and the weight given to competing evidence used to reach a factual conclusion. Include whether there has been a breach of the law or workplace policy - explanation of the reasons for the conclusion reached.
Communicating the Outcome	18. Report of the investigation is kept confidential. Unless using an external investigator, who will give the report to the individual responsible for the final decision regarding discipline. 19. A summary of the findings (not the report itself) should be communicated to the individuals directly impacted, usually the

# 4. Workplace & Working Conditions

- Occupational Health & Safety Act, Ministry of Labour
- Employers have a duty of due diligence and responsible for taking all reasonable precautions to prevent injuries & accidents in the workplace - know your obligations
- Employees are to be trained in H&S policies and procedures
- Posted in the workplace: 'Health & Safety at Work', 'In Case of Injury at Work', 'What you Should Know about the Ontario ESA' and more

**Risk Level: High**

**Where's the risk? - injuries - WSIB premiums - criminal charges/jail - unsafe/disengaged employees - high turnover - MOL investigations - fines**

# IN CASE OF INJURY OR ILLNESS AT WORK



## 1 Get medical help

Your employer is responsible for providing first aid. Go to the doctor or hospital if you need treatment. Your employer pays for your transportation.



## 2 Document

Tell your employer about your injury or illness. They investigate and keep a record of what happened.



## 3 Report to the WSIB

Employers must tell us within three days if an injury or illness happens. You can report by submitting Worker's Report of Injury/Illness (form 6).



## 4 Work together

We work with you and your employer to help you recover and return to work safely and at the right time.

Questions? We're here to help.

Call us at: 1-800-387-0750 | TTY: 1-800-387-0050

For details visit [wsib.on.ca/reporting](http://wsib.on.ca/reporting)

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Ministry of Labour, Training and Skills Development

# Employment Standards in Ontario

The *Employment Standards Act, 2000* (ESA) protects employees and sets minimum standards for most workplaces in Ontario. **Employers are prohibited from penalizing employees in any way for exercising their rights under the ESA.**

## What you need to know

### Public holidays

Ontario has a number of public holidays each year. Most employees are entitled to take these days off work and be paid public holiday pay. Visit [Ontario.ca/publicolidays](http://Ontario.ca/publicolidays).

### Hours of work and overtime

There are daily and weekly limits on hours of work. There are also rules around meal breaks, rest periods and overtime. Visit [Ontario.ca/hoursofwork](http://Ontario.ca/hoursofwork) and [Ontario.ca/overtime](http://Ontario.ca/overtime).

### Termination notice and pay

In most cases when terminating employment, employers must give employees advance written notice of termination or termination pay instead of notice. Visit [Ontario.ca/terminationofemployment](http://Ontario.ca/terminationofemployment).

### Vacation time and pay

There are rules around the amount of vacation time and pay employees earn. Most employees can take vacation time after every 12 months of work. Visit [Ontario.ca/vacation](http://Ontario.ca/vacation).

### Leaves of absence

There are a number of job-protected leaves of absence in Ontario. Examples include sick leave, pregnancy leave, parental leave and family caregiver leave. Visit [Ontario.ca/ESAGuide](http://Ontario.ca/ESAGuide).

### Minimum wage

Most employees are entitled to be paid at least the minimum wage. For current rates visit [Ontario.ca/minimumwage](http://Ontario.ca/minimumwage).

### Other employment rights, exemptions and special rules

There are other rights, exemptions and special rules not listed on this poster, including rights to severance pay and special rules for assignment employees of temporary help agencies.

Subscribe to our newsletter and stay up to date on the latest news that can affect you and your workplace. Visit

Learn more about your rights at [Ontario.ca/emplo](http://Ontario.ca/emplo)

## UNDERSTANDING THE RIGHT TO REFUSE UNSAFE WORK

**TRAINING**  
THE RIGHT THING, THE RIGHT WAY.

## Knowing Your Rights and Responsibilities — An Important Step Towards SAFER, HEALTHIER WORKPLACES

Established in 1979, the Workers Health & Safety Centre (WHSC) is Ontario's foremost health and safety training and information service provider. We are Ontario's legally designated health and safety training centre.

Our early years were spent developing and delivering training and other information resources aimed at helping workers and other workplace parties to understand their rights and responsibilities outlined in the newly secured *Occupational Health and Safety Act (the Act)*. To this day, this type of training and information service remains central to our mandate.

WHSC has assisted thousands of workplaces to comply with legal training requirements. Many workplaces want to go beyond minimum standards to meet all the specific training needs of their workforce. In response, we've developed an extensive range of up-to-date hazard-specific and industry-specific training programs.

Health and safety law places the greatest onus on employers to ensure safe and healthy work environments. Examples of employer duties include:

- ▶ establishing an effective hazard control program that takes into account health and safety measures, emergency procedures, access to current material safety data sheets and proper labeling of hazardous materials;
- ▶ providing training to protect both the health and immediate safety of workers;
- ▶ ensuring equipment, materials, and protective devices are maintained in good working order; and
- ▶ taking every precaution reasonable in the circumstances to protect workers.

For workers, knowing and acting upon your rights can help lead to safer and healthier work environments. As a worker:

- ▶ you have the right to know about any potential hazards in

# Health & Safety at Work

## ➤ Prevention Starts Here

Ontario's Occupational Health and Safety Act gives workers rights. It sets out roles for employers, supervisors and workers so they can work together to make workplaces safer.

### ➤ Improve Health and Safety:

- Find out about your Joint Health and Safety Committee or Health and Safety Representative.
- Talk to your employer, supervisor, workers, joint health and safety committee or health and safety representative about health and safety concerns.

Call the Ministry of Labour, Training and Skills Development at 1-877-202-0008

Report critical injuries, fatalities, work-related deaths

### ➤ Workers have the right to:

- Know about workplace hazards and what to do about them.
- Participate in solving workplace health and safety problems.
- Refuse work they believe is unsafe.

### ➤ Workers must:

- Follow the law and workplace health and safety policies and procedures.
- Wear and use the protective equipment required by their employer.
- Work and act in a way that won't hurt themselves or anyone else.
- Report any hazards or injuries to their supervisor.

Employers must NOT take action against workers for following the law and raising health and safety concerns.

### ➤ Employers must:

- Make sure workers know about hazards and dangers by providing information, instruction and supervision on how to work safely.
- Make sure supervisors know what is required to protect workers' health and safety on the job.
- Create workplace health and safety policies and procedures.
- Make sure everyone follows the law and the workplace health and safety rules.

## ALWAYS REPORT

## INJURED AT WORK?

A Guide to Reporting for Injured Workers and Employers



### EMPLOYER | WHAT IF AN EMPLOYER DOES NOT REPORT A WORKPLACE INJURY OR ILLNESS?

Employers may be subject to a penalty for not reporting, reporting late, not giving all the details requested, or discouraging a worker from reporting an injury or illness. The WSIB can lay charges and prosecute employers that do not report workplace accidents, or discourage workers from reporting injuries or illnesses. Individuals and corporations may be subject to court-imposed fines.

### WORKER | WHAT IF I FIND MYSELF IN ONE OF THESE SITUATIONS?

- My employer tells me not to report my injury or illness to the WSIB.
- My employer tells me that I will lose my job if I report my injury or illness to the WSIB.
- My employer says my injury or illness is not covered by the WSIB.
- My employer tells me that I must use my sick days, while I'm away from work, rather than report my injury or illness.

If you find yourself in one of these situations, you should still report your injury or illness. The WSIB will decide if the injury or illness is considered work-related and should be covered.

### CONFIDENTIAL ACTION LINE

If you suspect that someone has committed an offence or is abusing the workplace safety and insurance system, including trying to stop a WSIB claim, please report it to our confidential Action Line at 1-888-745-3237, email [sleads@wsib.on.ca](mailto:sleads@wsib.on.ca) or go to the WSIB website to anonymously report a potential wrongdoing.

### ABOUT THE WSIB

The Workplace Safety and Insurance Board (WSIB) is an independent trust agency that administers compensation and no-fault insurance for Ontario workplaces. We are committed to delivering what matters to the workers and employers of Ontario: fast, accessible service and fair benefits at a fair price. The WSIB provides wage-loss benefits, medical coverage and help getting back to work - the best possible outcome following an injury or illness on the job.

For more information on reporting a workplace injury or illness, please go to [www.wsib.on.ca](http://www.wsib.on.ca).

### CONTACT

Phone: 1-800-387-0750 or 416-344-1000 (TTY: 1-800-387-0050) 7:30 am to 5:00 pm EST, Monday to Friday

Mail: Workplace Safety and Insurance Board 200 Front Street West Toronto, ON M5V 3J1

Fax: Local 416-344-4684 Toll-free 1-888-313-7373

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## Post names and locations of joint health and safety committee members

In workplaces that must have a joint health and safety committee (JHSC), you must post the names and work locations of JHSC members in a place where they are easy for employees to find (for example, an employee lunch room).

If you regularly employ 6 or more workers, you must also put up:

- a health and safety policy
- a workplace violence prevention policy
- a workplace harassment prevention policy
- copy of the OH&S Act

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# 5. Termination

- Termination is complex and professional advice is recommended.
- Employment Standards Act: length of notice required, number of employees, termination & severance pay (these are minimums)
- Green light: probationary period
- Yellow light: termination without cause
- Red light: termination with cause, constructive dismissal, wrongful dismissal
- How to:
  - Termination process & checklist
  - Notice or termination pay in lieu of notice
  - Private, at end of day, be sensitive & respectful, termination letter, referral letter & employment support, walk employee out
  - Exit interview (employee resignation)

**Risk level: High**

**Where's the risk? lawsuit/damages - PR/reputation - theft/damaged property - disgruntled employee - costs**



Period of employment	Notice required
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

**Note:** Special rules determine the amount of notice required in the case of [mass terminations](#) – where the employment of 50 or more employees is terminated at an employer's establishment within a four-week period.

## Termination pay

An employee who does not receive the written notice required under the [ESA](#) must be given termination pay in lieu of notice. Termination pay is a lump sum payment equal to the **regular wages** for a **regular work week** that an employee would otherwise have been entitled to during the written notice period. An employee earns vacation pay on their termination pay. Employers must also continue to make whatever contributions would be required to maintain the benefits the employee would have been entitled to had they continued to be employed through the notice period.

“Severance pay” is compensation that is paid to a qualified employee who has their employment “severed”. It compensates an employee for losses (such as loss of seniority) that occur when a long-term employee loses their job.

Severance pay is not the same as termination pay, which is given in place of the required notice of termination of employment.

<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>

# Secret Sauce...shhhh!

- *Wallace Damages*: Extra financial compensation if employer treats employee poorly during termination. Bad faith damages.
- *Meiorin Test*: to determine BFOR , duty must be
  - rationally connected to the performance of the job
  - good faith belief that it is necessary for work-related purpose; and
  - impossible to accommodate without imposing undue hardship for the employer
- *Bardal Factors*: Reasonable notice to termination
  - Age, length of service, the character of their employment, and availability of similar employment
- *Tort Damages*: violations or wrongful acts which cause a legal liability and relate to a company's employment practices (harrassment, privacy breaches)

**'Don't-be-a-Jerk'  
Rule of Thumb**

**BE REASONABLE! exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances to avoid liability**

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QUESTIONS?





# Get in touch

For inquiries or anything under the sun

EMAIL

[Kim@KimHRConsultant.com](mailto:Kim@KimHRConsultant.com)

WEBSITE

[www.KimHRConsultant.com](http://www.KimHRConsultant.com)

PHONE NUMBER

**226-930-1999**