

Managing in a Unionized Workplace

By: Noella Martin, Q.C. and Michael Bourgeois

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Please note: this presentation is being recorded

Outline

1. Management rights
2. Grievances
3. Other processes Unionized Employers can encounter
4. Collective Bargaining
5. Labour Board issues

Check your Agreement!



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Management Rights

Management Rights

- Imposing Discipline
- Managing Performance
- Addressing Absenteeism



Management Rights

- Even in a unionized workplace, Management retains the right to manage the workplace, subject only to the restrictions contained in the Collective Agreement.
- If an issue is not covered by the CA, Management is free to do as it sees fit, subject to the limitation that the actions taken by the employer must be reasonable and not a violation of any governing legislation.

Imposing Discipline

- Purpose of discipline
 - Creates accountability for unacceptable behaviour
 - Encourages employees to modify their behaviour to acceptable norms
 - Documents issues and incidents
 - Creates and develops a file to support actions and defend against potential grievances

Imposing Discipline

- Progressive discipline
 - Misconduct (bad acts)
 - COVID - flexible, compassionate given context



Managing Performance

- Performance management requires communication with the employee
 - Messages to the employee should be conveyed in writing
- To take an employee through performance management, it is crucial that an employer does the following:

Managing Performance

- Advise the employee of the standard(s) that the employee needs to meet;
- Explain how the employee is falling short of those standards;
- Give the employee a reasonable time to meet those standards;
- Specify the consequences of not meeting the standard. To be clear, if the employee could be dismissed for failing to meet the standard, it is important to specify that consequence.

Addressing Absenteeism

- Regular attendance at work is part of the employment bargain.
- “I accept that the need to monitor the absences of employees who are regularly absent from work is a *bona fide* work requirement in light of the very nature of the employment contract and responsibility of the employer for the management of its workforce”

- *Keays v Honda Canada Inc.*, 2008 SCC 39

Addressing Absenteeism

- Absenteeism during COVID-19
 - Management maintains the right to monitor and manage absenteeism in the workplace
 - Be compassionate considering the current situation and context



Addressing Absenteeism

- Culpable vs Non-culpable absences
- Medical notes
 - Must be satisfied that illness is bona fide and how it will affect attendance
 - Longer the absence, the more information you are entitled to receive
- Accommodation
 - Reasonable accommodation to the point of undue hardship

Questions?

Grievances

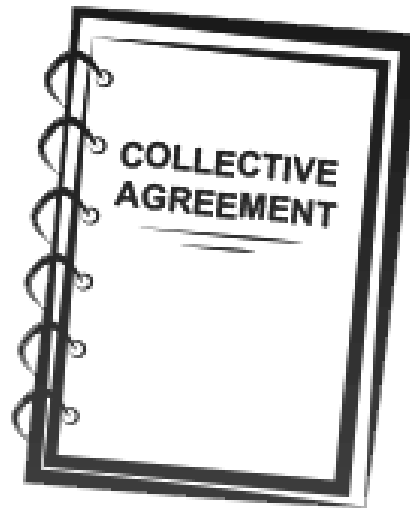
Grievances

- Meetings
- Procedures
- Replies
- Mediation
- Arbitration



Grievance Meetings

- Are they necessary?
- What is their purpose?
- Can they be held via telephone or web conference?
- What if you can't have one?



Grievance Procedure

- Procedures and time limits
 - What happens if one party violates the:
 - Process?
 - Timelines?



Grievance Replies

- How can grievance replies be delivered during the pandemic?
- What should you include in them?
 - Identify procedural irregularities or time limit issues
- 2 Approaches:
 - General
 - Use standard language - denying grievance, no violation
 - Specific
 - Fact specific - denying grievance, reason why

Grievance Mediation

- Mediation remains available for resolving grievances
- Involves a neutral 3rd party trained in dispute resolution - not judging or advocating
 - Assists with crafting solutions to the problem
 - Can be an efficient, effective way to tackle disputes in a less adversarial manner
 - Resolution requires agreement of the parties

Grievance Arbitrations

- How are arbitrations proceeding during COVID-19?
 - In-person?
 - Zoom or Skype?
 - Written submissions



Questions?

Other Processes

Human Rights Complaints

- The Commission continues to operate
- Particular potential now for claims relating to mental disability and/or family status
- Employees and/or Unions could file a grievance AND a human rights complaint in some circumstances

Occupational Health and Safety

- COVID-19 presents a number of complications and concerns in the field of OH&S.
- Amy Bradbury and Will Russell will be presenting on OH&S and Work Refusals on June 4, 2020.

Questions?

Collective Bargaining

Collective Bargaining

- Can occur during COVID
- Conciliation staff are working
- Options for bargaining/conciliation:
 - In-person meetings; Zoom/Skype; email
- Expired/Expiring agreements
 - Can be addressed with planning - 1 year extension?
Wage re-opener?

Questions?

Labour Board Issues

Labour Board

- The Labour Board continues to operate with staff working remotely
 - Continue to be available to respond to:
 - Issues relating to an illegal strike (cease and desist orders)
 - Accepting unfair bargaining practice complaints



Questions?

Contact us:

Noella Martin, Q.C.
nmartin@wickwireholm.com
902.482.7013

Michael Bourgeois
mbourgeois@wickwireholm.com
902.482.7009