

Current Workplace Issues

Out-of-Province Employment Standards Code

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Two recent decisions in the Alberta Courts have defined the limit for the enforcement of the Employment Standards Code on employers who carry on business operations outside the Province of Alberta.

The employers in these cases were Neft Services Ltd. and Flint Canada Inc. Both had their head offices in Calgary and hired employees to work as construction workers abroad. Their contracts of employment provided for 28 consecutive days' rotation at the worksites, followed by 28 consecutive days' off in Canada, with transportation back and forth at the expense of the companies. The employees, many or all of whom were residents of other provinces, were paid a flat rate of pay per diem, plus an allowance of 30% of base salary as a remote workplace allowance, plus reasonable accommodation and meals. There was no provision in the contracts of employment for general holiday pay or vacation pay.

Nevertheless, several employees of Neft and Flint claimed that they were entitled to vacation pay and general holiday pay under the Employment Standards Code. In both cases, the Umpire, who is the person authorized under the Employment Standards Code to consider the complaint, ruled that the employees were entitled to such pay.

On further review by the Courts, the Umpire's decision was upheld for the Neft employees because their contracts of employment contained a clause which specifically provided for the application of Alberta laws to them:

"This contract shall be construed and enforced in accordance with and governed by the laws or the Province of Alberta. Each of the parties here to irrevocably attorns to the jurisdiction of the courts of the Province of Alberta and agrees that those courts shall have exclusive jurisdiction over any action or proceedings taken respecting this agreement".

Therefore, the Employment Standards Code was an Alberta law which applied to the Neft employees.

There was no such clause in the Flint contract of employment. As a result, in the case of the Flint employees, the Court reversed the decision of the Umpire and denied their claim. The Court decided that the Flint employees were not engaged in Alberta employment, despite the fact that

1. Flint had its head office in Alberta and
2. Calgary was the point of departure and return for their rotations. He found no reason to lay down a principle that hiring is deemed to take place where the employer is resident. The Employment Standards Code cannot confer rights or establish a procedure for obtaining them in an extra-provincial employment context absent an express provision that Alberta law applies.

In summary, a well-drafted clause in an employment contract expressly specifying that Alberta laws will apply to the contract, carries the advantage for both employer and employee of clarifying where any disputes involving legal process must be resolved.

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It also involves the risk for employers that non-contractual entitlements will be available pursuant to the Employment Standards Code to employees engaged by Alberta employers to work out of the province, even if they have no other real connection to Alberta except for their employer's location.

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