

# Employment Law Masterclass

10 September 2018 - Toronto

9:00am **Introduction from chairperson**

9:15am **Discipline, termination and mental health**

This session will provide HR professionals with guidance on dealing with underperforming or toxic employees who suffer from disclosed (and undisclosed) mental health issues.

Mental health and disruptive behaviour - balancing the needs of the individual with the interests of the business

Which performance management plans are appropriate for employees with mental health issues?

When can you terminate an employee whose behaviour compromises others' mental health?

Step by step guide to investigating and managing a potential undisclosed mental health issue that may be impacting performance or behaviour

**Speaker:**



*Kevin Robinson, Partner, Robinson Heeney*

10:00am

**Accommodating employees with mental health issues**

When it comes to mental health, it can be particularly difficult to determine when the duty to accommodate arises. This session will discuss best practices for approaching the accommodation process in cases involving complex mental health issues.

When will the duty to accommodate be triggered in a mental health context?

Where do courts draw the line between duty to accommodate and undue hardship?

How to handle employees who do not cooperate with requests for medical information

Mental health accommodation in safety-sensitive roles – when will employee safety be considered to be an ‘undue hardship’?

Balancing accommodation on mental health grounds with client and employee safety

Documentation and procedural requirements for processing mental health accommodation requests

Striking a balance between the rights of the employee and the obligations of HR professionals to ensure a productive and safe workplace

**Speaker:**



*Maria Gergin, Senior Associate, Borden Ladner Gervais*

10:45am

## Morning tea

11:15am

### Accommodation: family status, medical records and undue hardship

This session will discuss the duties and responsibilities that arise in the accommodation process in cases that do not involve mental health issues. The limits to the duty to accommodate and best practice procedural guidelines for requesting medical information will also be covered.

At what point is an accommodation request considered to cause undue hardship?

When can you deny an accommodation requests to work from home?

How far does an employer have to go to accommodate individuals who have non-work related illness or injuries?

Updates in family status and elder care accommodation requests

Resolving situations in which an individual employee's rights conflict with that of another employee

Terminating an employee with a disability - when is an employment contract "frustrated" by an employee's disability?

#### Speaker:



*Brian MacDonald, Partner, Fillion Wakely Thorup Angeletti LLP*

12:00pm

### Sexual harassment in the workplace

The #metoo movement and high profile sexual misconduct allegations have elevated the profile of workplace sexual harassment. What HR policies and procedures will effectively prevent sexual harassment in the workplace?

What behaviour constitutes sexual harassment under the Ontario Human Rights Code and Occupational Health and Safety Act

Balancing pressure to 'believe the women' with employee rights to due process

Step by step guide to investigating sexual harassment complaints

How to handle confidentiality requests from complainants during workplace investigations

Dealing with false accusations – what penalties should apply?

Can HR professionals conduct sexual harassment investigations in the absence of an official complaint?

Does a release signed by a complainant upon the termination protect the employer from future allegations? *Watson v. The Governing Council of the Salvation Army of Canada, 2018*

#### Speaker:



*Muneeza Sheikh, Partner, Levitt LLP*

12:45pm

**Lunch**

1:45pm

**Clarifying ongoing misunderstandings relating to Bill 148**

Significant set of amendments come into force on January 1, 2018 as a result of Bill 148, the Fair Workplaces, Better Jobs Act, 2017.

Clarifying the "equal pay for equal work" amendments to the Employment Standards Act, 2002

How are the Ontario courts interpreting the phrase 'substantially the same'?

How to process requests from employees under the Equal Pay for Equal Work section of the ESA

How to document exemptions for seniority, merit, productivity system, or some other non-discriminatory factors

What qualifies as evidence that is "reasonable in the circumstances" for the purposes of Personal Emergency Leave (PEL)?

2:30pm

**Afternoon tea**

2:45pm

**Pay Transparency Act, 2018 – obligations for employers**

Coming into force on 1 January 2019, the Pay Transparency Act, 2018 will require employers in Ontario to disclose information about the compensation of its employees and prospective employees.

What can employers ask a candidate about their compensation history?

What type of behaviour is classified as intimidating, dismissing or otherwise penalizing employees for making inquiries about their compensation?

Reporting obligations and penalties for non-compliance

**Speaker:**



*Lisa Cabel, Partner, Norton Rose Fulbright*

3:30pm

**Complex termination cases: constructive dismissal, just cause and termination provisions and payments**

This session will discuss practical lessons from recent cases involving just cause, constructive dismissal and termination provisions in Ontario.

Step by step guide to disciplining and terminating an employee for poor performance

When does a change to a job description constitute constructive dismissal? *Hagholm v. Coreio Inc.*

What are the courts awarding employees for moral damages? *Galea v. Wal-Mart Canada Corp*

Best practice guide to terminating an employee under the Canada Labour Code

Tips for drafting termination provisions– lessons from *Nemeth v. Hatch Ltd.*, 2018 and *Bergeron v. Movati Athletic (Group) Inc.*, 2018

When do common law "reasonable notice" periods apply?

Reasonable notice period calculations – lessons from *Dussault v. Imperial Oil Limited*, 2018

**Speaker:**



*Stephen Wolpert, Partner, Whitten and Lublin*

**4:15pm**

**Legalization of marijuana in the workplace**

The much-anticipated imminent legalization of marijuana presents HR professionals in Ontario with several challenges. This session will provide practical guidelines for drafting and implementing effective policies and procedures relating to marijuana in the workplace.

How to prohibit the use of marijuana in the workplace

When can you submit employees to drug testing?

Accommodation - dealing with situations where substance use involving marijuana is characterized as a disability

Lessons from *University of Windsor v Canadian Union of Public Employees*, 2017

Tips for drafting workplace drug and alcohol policies

**Speaker:**



*Daryl Cukierman, Partner, Blakes Cassels Graydon*

**5:00pm**

**Close**