



ACHKAR LAW

Work. Smarter.



QUICK GUIDE
FOR EMPLOYERS

INTERVIEWS,
HIRING AND FIRING

ABOUT US

ACHKAR LAW is a team of skilled, talented, and creative litigators advocating on behalf of businesses in labour, employment, and commercial disputes. We assist our clients in fostering healthy workplace environments keeping an eye on business interests and the various bottom lines of our clients. Our lawyers are trusted for practical expertise in labour, employment, and commercial disputes on which our clients repeatedly rely. Our experiences extends over various industries and at various stages of their growth. Whether tailored legal services, or automated legal solutions for your business, we find and implement solutions.



Christopher Achkar

Principal Lawyer

We combine our expanding legal knowledge, skills, and talent – with a thorough understanding of our clients' business – so we can be the trusted business and legal partners to our clients.



HIRING AND RETENTION

Whether you are the founder of a new startup or you have an established organization, hiring the right talent is tricky, but if done properly, can spell success for your company.

Hiring the right person to do the right job is both challenging and delicate. Employers must take on the task of learning about a candidate's suitability for an important position and in a small timeframe.

With some managers rushing the hiring process, they often ask the wrong questions that lands them in hot waters. Employers must be cognizant of the laws surrounding **discrimination** in the hiring process.

It is best to explain the culture of your company, ask the employee about their priorities, and gauge whether the employee could fit in well with the existing key players on your team.

QUESTIONS THAT COULD LEAD TO LITIGATION

1. Do not ask the candidate's age, religion, gender, sexual orientation
2. Do not ask if they have a disability, or if they plan on retiring
3. Do not ask if they are married, if they have kids, or plan on having kids
4. Don't ask them where they were born

HUMAN RIGHTS AND EQUITY CONSIDERATIONS

Employers must refrain from, directly or indirectly, making any discriminatory comments or insinuations that contravene the Human Rights Code and any of its protected grounds, including age, race or religion. Employers cannot ask an employee if they plan on having children, for example, or if they have any disabilities. Even if the candidates' answers do not affect the hiring decision, these types of questions may lead a candidate to make their own conclusions and contact a lawyer.

DAMAGES UNDER THE HUMAN RIGHT CODE AND THE HUMAN RIGHTS ACT

If an employee can make the case that an employer did not hire them because of a human rights protected-ground such as age, religion, gender, disability, among other grounds, they may be entitled to General Damages and Special Damages.

General Damages could range between \$3000 to \$30,000 on average, but could be more in certain circumstances.

Special Damages are damages that include lost wages, which would be calculated from the date of discrimination until the date of a hearing, or until the candidate obtains another job.

BEST PRACTICES FOR INTERVIEWS

Best practices for the hiring process include organizing a panel of interviewers and conducting the interview in a formal setting. Interviewers should have questions prepared in advance but should make sure to listen to the candidate and their answers. The most productive interviews are ones where the conversation is allowed to flow. Listening to and getting to know the interviewee can help you make the right decision. Employers should ask every candidate the same questions to ensure that the process is fair and equitable.

ACCOMMODATION DURING INTERVIEWS

Employers should try to know in advance if candidates require **accommodation** to **access** the business premise as well as any other accommodation they may need. Accommodation should be provided to the point of **undue hardship**.

To ensure an equitable and effective hiring process, it is essential that Employers adhere to the principles of uniformity, transparency, objectivity and depth. Doing so will ensure that the business will hire strong candidates in an impartial process.



WHAT TO DO WHEN YOU FIND THE RIGHT CANDIDATE

You found a star candidate and you have decided you wanted them on your team. It is best that employers refrain from making job offers on the spot. Making job offers fails to take into account important considerations to make such as:

1. Do you have an outline and clear list of duties?
2. Do you have mentorship or training in place for that employee?
3. Do you have an employment contract that outlines the important aspects of the employment?

Employers should make sure they have a properly drafted employment agreement **BEFORE** the employee commences employment. that employers refrain from making job offers on the spot. If the employee begins working without a signed employment agreement, the employer is at risk of having to compensate the employee more than the minimums prescribed by the **Employment Standards Act**.

TERMINATION PAY - EMPLOYMENT STANDARDS ACT, AND COMMON LAW

Employers who have employees working without an employment contract are leaving themselves open to serious exposure. The terms of the employment contract will dictate the amounts owed to the employee in the event of termination.

EXAMPLE

Example an engineering firm made the decision to terminate an engineer's employment, who is **58 years old**, who makes **\$110,000 a year**, and has worked at the engineering firm for **12 years**. (*the bold items constitute part of the **Bardal Factors** considered in each particular case*)

WITHOUT AN EMPLOYMENT AGREEMENT

In the absence of a contract, the common law applies. This is the judges' estimation of how long it will take someone with the characteristics above to get a comparable job. Case law on the issue gives us a range of possibilities when it comes to the entitlements, ranging from about **6 months** to about **16 months** of notice, both being significantly higher than had there been an enforceable employment agreement.

WITH AN EMPLOYMENT AGREEMENT

Employment Standards Act limits employees' entitlements to 1 week of notice per year up to a maximum of **8 weeks**. (*with the exception of **severance paying companies***)

So this employee gets the maximum of **8 weeks** allowed by the **ESA**.

CONTACT US

The information contained in this publication is for information purposes only. It does not constitute legal advice.

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