Human Resources Legislative Update

Securities Act Amendments Allow Employees to Bring a Civil Action for Reprisal Against Whistleblowing

Date: February 14, 2018

Recent amendments to the Ontario *Securities Act* (Act) now permit an employee to commence a civil action in court for reprisal against whistleblowing. Section 121.5 of the Act imposes new potential liability for employers. It states:

121.5 (1) No person or company, or person acting on behalf of a person or company, shall take a reprisal against an employee of the person or company because the employee has,

(a) sought advice about providing information, expressed an intention to provide information, or provided information to the person or company, the Commission, a recognized self-regulatory organization or a law enforcement agency about an act of the person or company, or person acting on behalf of the person or company, that has occurred, is ongoing or is about to occur, and that the employee reasonably believes is contrary to Ontario securities law or a by-law or other regulatory instrument of a recognized self-regulatory organization; or

(b) in relation to information provided under clause (a), cooperated, testified or otherwise assisted, or expressed an intention to cooperate, testify or otherwise assist in,

(i) an investigation by the Commission, a recognized self-regulatory organization or a law enforcement agency, or

(ii) a proceeding of the Commission or a recognized self-regulatory organization, or a judicial proceeding.

Section 121.5(5) of the Act places the burden of proof on employers to show that they did not take a reprisal against an employee, in contravention of subsection (1).

In the event of a contravention of section 121.5, employers may be ordered to reinstate an employee in the event of a termination of employment, and pay to the employee two times the amount of remuneration the employee would have been paid by the employer if the contravention had not taken place, between the date of the contravention and the date of the order (with interest).

Given this legislative amendment, employers should ensure that:

- individuals and groups responsible for handling whistleblower complaints and internal human resources matters are aware of the legislative changes
- they are particularly diligent to ensure that their whistleblower policies and procedures are up to date, and
- proper records are maintained regarding all disciplinary decisions and actions.