FTR Nexus

Setting up Shop in Canada? What U.S. Employers Need to Know About Canadian Labour Law – Part 2 [Video]

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In this series, David Bannon walks through some key differences in labo(u)r law that U.S. employers should know when buying, selling or operating a business in Canada. In this instalment, David explores the employer's ability to communicate with employees during organizing and bargaining, the lack of "Right to work" jurisdictions in Canada, the timing of legal strikes and constitutional protections for labour processes.

In the first instalment, David discusses the governing regimes for labour relations, the timing of the union certification process and an employer's duty to disclose certain information to a train union.

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Transcript

Hi I'm David Bannon and today I'm going to take you through some key differences in labour law that U.S. employers should be aware of if you are considering buying, selling or operating a business in Canada.

Communications During Organizing / Bargaining

An employer's ability to communicate with its employees during an organizing campaign is much more limited in Canada than it is in the United States.

Long-standing principles establish that employers cannot communicate for the purpose of disparaging the trade union or undermining its right to represent the employees in the bargaining unit, nor can they circumvent the bargaining process by bargaining directly with the employees.

These prohibitions are balanced against the recognition of the right of an employer to communicate facts and its positions (and the reasons for the positions) as long as it does not use "coercion, intimidation, threats, promises or undue influence."

With respect to bargaining communications, these will only become illegal when a representative attempts to bargain directly with employees. Of key importance is the timing of these communications, for example whether they occur early or late in the negotiations, as well as their content. An employer is free to explain to its employees its position with respect to the negotiations after having engaged in collective bargaining with their bargaining agent on the matters that are the subject of the communications.

The *Ontario Labour Relations Act* expressly authorizes employers to communicate with employees and simultaneously protects the right of the union to exclusively represent employees in the collective bargaining process, giving rise to the need to balance those often competing rights.

Communications during negotiations are an essential part of the process when there are contentious issues that may lead to

a labour dispute. Whether through miscalculation, misunderstanding, inadvertence or intention, employees are too often left without information which may impact qualitative decision-making about the offer and the reasons for its contents. Open communications keep the process honest and transparent.

No “Right to Work” in Canada

There are no “right to work” jurisdictions in Canada. In the “right to work” states in the United States, employees are protected by the collective agreements negotiated by the union but they are not required to join the union or to union pay dues. There is no such right in Canada. Under the “Rand Formula” all employees who work in unionized workplace are required to pay dues, regardless of their membership status.

Legal Strike Timing

Legal strikes in Canada may only take place upon the expiry of a collective agreement. There is no provision for the giving of 10 days’ notice in writing that a strike will take place in any Canadian industry, as there is for example in the U.S. healthcare industry.

Constitutional Protections for Labour Processes

The Supreme Court of Canada has ruled that the process of collective bargaining and the right to strike are Freedom of Association Rights and are therefore constitutionally protected.

Thanks for listening, I hope these key takeaways have been valuable. If you have any further questions, please do not hesitate to contact us.