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YAHOOS OF THE WORLD UNITE — ARE EMPLOYEES ENTITLED TO WORK FROM HOME?

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Recently, Yahoo Inc. made the controversial decision to end telecommuting and to insist that employees be physically present in the workplace. The decision has sparked shock and outrage amongst those who see telecommuting as a step forward in the advancement of employee rights. Notwithstanding Yahoo's decision, the number of people working from home continues to grow. With this growth comes a corresponding set of legal ambiguities and potential pitfalls, and it raises questions with respect to whether, and to what extent, employees can work from home.

Benefits Associated with Telecommuting

Some of the potential benefits associated with telecommuting have been said to include: saving employers money in overhead; reducing employee work-life conflict; increasing employee engagement; increasing employee loyalty; reducing turnover; attracting and retaining talent; accommodating employees who would not otherwise be able to work; and reducing absenteeism (Global Workplace Analytics, online: www.teleworkresearchnetwork.com).

Pitfalls Associated with Telecommuting

Some of the potential pitfalls associated with telecommuting have been said to include: exposing employees to a number of distractions at home; requiring a high level of employee discipline; loss of face to face contact with supervisors; and loss of social interaction and collegiality with co-workers.

Are Employees Entitled To Work from Home?

Generally speaking, an employee is not entitled to work from home absent permission from the employer. British Columbia courts have held that an employer has a right, within reason, to determine how its business will be conducted. In so doing, an employer may establish any procedures it thinks advisable so long as they are not illegal, dishonest or dangerous to the health of employees. Such procedures may include insisting that employees be physically present at the workplace. Recently, the B.C. Supreme Court concluded that a Burnaby based employer was justified in dismissing an employee who insisted on working remotely, notwithstanding the fact that the employer had temporarily permitted this arrangement. The employee's refusal to return to the Burnaby office constituted wilful disobedience, and insubordination amounting to repudiation of a

fundamental term of the employment relationship (*Staley v. Squirrel Systems of Canada Ltd.*, 2012 BCSC 739).

Although an employer can establish any procedures it thinks advisable, an employee may become entitled to work from home under certain circumstances. Such an entitlement might arise through an express term in an employment agreement permitting employees to work from home. Such an entitlement may also arise by implication, for example, where there is no express term of employment prohibiting or limiting telecommuting and where:

(a) the nature of the workplace and the position make telecommuting necessary;

(b) a physical presence in the workplace is not a genuine occupational requirement;

(c) an employer enables telecommuting through provision of remote access to the workplace; and/or

(d) other employees in similar positions are permitted to work from home.

An employee may also become entitled to work from home if an employer condones such activity. This might occur in circumstances where the employer is aware that an employee is working at home without permission, and nevertheless permits the employment relationship to continue.

An employer may also be required to permit an employee to work from home in circumstances where it would constitute discrimination to insist upon physical presence in the workplace. Such a situation might arise in the case of employees suffering from disabilities that preclude them from working outside of the home. Alternatively, such a situation might arise where an employee needs to work from home in order to meet family obligations (for a recent case on the employer's obligation to accommodate family obligations, see *Canada (A.G.) v. Johnstone*, 2013 FC 113). In such cases, employers may be required to accommodate employees by permitting telecommuting to the point of undue hardship.

Given the foregoing, employers should establish written telecommuting policies that make sense for their specific workplace and their employees. Such policies should be clear and specific with respect to whether employees may telecommute, how often, and when, and with respect to the consequences of an employee's refusal to abide by these policies. Ideally, any telecommuting arrangements or policies should be referenced directly in employment agreements. An employer will likely benefit from ensuring that its telecommuting policies are balanced, reasonable and respectful of employees' needs.

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Q & A

What Types of Discrimination Might Arise During the Recruitment and Selection Process?

Discrimination can occur throughout many parts of the recruitment and selection process. Following are some of the main areas where discrimination may arise during the hiring process:

- **Employment agencies:** Employers who use employment agencies should ensure that the agencies they use are not screening out applicants on the basis of prohibited grounds of discrimination. Agencies are prohibited from refusing to refer applicants on the basis of a prohibited ground (e.g., age, race, sex). There are cases in which this has occurred, either at the employer's request or because the agency had made assumptions about the kind of applicants the employer wanted. Employers should ensure that the employment agencies they use are aware that they are equal opportunity employers and want to see a broad range of applicants.

- **Advertisements:** Advertisements should be reviewed carefully to ensure that they do not discourage applications from any particular group. For example, gender-neutral job titles should be used: An advertisement for a "waitress" is not likely to encourage applications from qualified men. The advertisement should not contain any requirements that may be discriminatory. For instance, many employers state that applicants should have "Canadian experience." This is rarely a true job requirement and can have the effect of screening out potential applicants by their place of origin (a prohibited ground of discrimination). It is also wise to ensure that advertisements are placed in venues where they will be seen by a range of applicants.

- **Application forms:** Human rights legislation prohibits employers from making inquiries related to a prohibited ground of discrimination. Employers should therefore carefully review their application forms to ensure that they are not inadvertently soliciting inappropriate information. For example, job application forms should not ask for the marital status of the applicant or request the applicant to provide a photograph. Any questions on the application form should be clearly related to ability to perform the job. Employers should avoid making assumptions on the basis of group membership. For example, employers may assume that married people will be reluctant to relocate, or that persons with children will have difficulty with business travel, and may therefore ask discriminatory questions about sex, marital status, or family status. Instead of asking for prohibited information, the employer should ask directly whether the applicant is available for business travel or would be willing to relocate.

- **Hiring criteria:** Since hiring criteria are usually based on the job description, it is important, when developing the hiring criteria, to ensure that the job description is accurate and up-to-date. One of the most difficult areas around hiring involves the use of pre-employment tests. Many organizations use psychological or cognitive tests to evaluate applicants. Employers should regularly review their pre-employment tests to ensure that they are job-related, valid, and non-discriminatory. This is not always as straightforward as it seems, as tests may have subtle adverse impacts on the protected groups. Extreme care should be used when selecting and using pre-employment tests. Medical tests should never be given before a conditional offer of employment has been made, and then only where there is a reasonable, job-related rationale for applying the test. In addition, medical tests should not be general examinations of the health of the applicant, but should be specifically directed to the applicant's ability to do the job. If difficulties are revealed through the medical test, the employer should consider whether it would be possible to accommodate the applicant in the job.

- **Employment interview:** Many of the same concerns as were discussed with respect to application forms also apply to the employment interview. Employers should ensure that anyone who conducts employment interviews has been given training on human rights issues. In order to eliminate individual bias, it may also be helpful to have more than one person doing the interviewing. Interviewers must take care when they are making notes during the interview; they should not make notes regarding any characteristics of the applicant that are protected by human rights legislation.

Employers sometimes wish to ask questions about such topics as marital status or family status because such information is required for the administration of benefit plans. However, an employer does not need this information until after an applicant is hired. It is therefore wise to clearly separate pre-employment and post-employment inquiries.

LEGISLATIVE ALERT

Federal

Access to EI Sickness Benefits for Recipients of Parental Benefits

On March 24, 2013, provisions of Bill C-44, the *Helping Families in Need Act*, SC 2012, c. 27, that provide access to Employment Insurance ("EI") sickness benefits for those receiving parental benefits came into force.

Formerly, individuals could not access EI sickness benefits while they were receiving parental benefits due to a requirement for applicants to be "otherwise available for work." The new provisions waive this requirement for those receiving parental benefits, thereby allowing parents who become ill or injured while on parental leave to apply for EI sickness benefits.

Bill C-44 received Royal Assent on December 14, 2012.

Bill To Amend *Canadian Human Rights Act* and *Criminal Code* Regarding Gender Identity Passes in the Commons and Moves to the Senate

Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression)* was introduced as a Private Member's Bill on September 21, 2011, with the goal of including gender identity and gender expression as prohibited grounds of discrimination under sections 2 and 3(1) of the *Canadian Human Rights Act*. As well, amendments to the *Criminal Code* would include gender identity and gender expression as characteristics of an identifiable group to be protected under section 318(4) and to be considered subject to bias, prejudice or hate as motivating factors in an offence.

Gender identity is already a prohibited ground of discrimination in Manitoba, Northwest Territories, Nova Scotia, and Ontario.

The Bill received second reading in the House of Commons on June 6, 2012, third reading on March 20, 2013, and first reading in the Senate on March 21, 2013.

British Columbia

Bill 16: *Pooled Registered Pension Plans Act* Introduced

Bill 16, the *Pooled Registered Pension Plans Act*, was introduced into the British Columbia legislature on February 28, 2013. The Bill contains enabling legislation to complement the federal Bill C-25, now SC 2012, c. 16, which came into force on December 14, 2012. Pooled registered pension plans are intended to provide an alternative savings option to allow self-employed persons and employees of companies without pension plans to pool registered pension funds to achieve lower costs in relation to investment management and plan administration.

Medical Services Plan Premiums Increase

According to the British Columbia Budget released on February 19, 2013, and effective January 1, 2014, Medical Services Plan premiums will be increased to help fund health care for residents of British Columbia.

Maximum monthly premium rates will increase by approximately 4%, or $2.75 per month to a total of $69.25 for single persons, $5 per month to a total of $125.50 for two person families, and $5.50 per month to a total of $138.50 for families of three or more persons.

Also effective January 1, 2014, premium assistance will be enhanced to ensure those receiving assistance will not be affected by the increase. Details will be available later in 2013.

ATTENDANCE MANAGEMENT PROGRAM WRONG FOR PUNISHING SERIALLY ABSENT EMPLOYEES WITH OVERTIME BAN

— Drew Demerse of Roper Greyell LLP. © 2013 Roper Greyell LLP, Employment + Labour Lawyers. Reproduced with permission.

Frequent or continued absenteeism by employees is a common and costly problem for employers, and one which is challenging to manage. Over the past few years, there has been much litigation about whether attendance management policies violate human rights legislation by discriminating against employees who have a disability (whether mental or physical). A recent arbitration in British Columbia serves as a good reminder that there are other pitfalls employers must be mindful of when implementing attendance management programs.

In the recent decision of *Vancouver Coastal Health Authority v. BCGEU, CUPE, HEU, HSA and UFCW* (January 18, 2013, unreported at time of publication), Arbitrator Ready was asked to decide whether particular facets of an Attendance and Wellness Promotion Program ("AWP") were invalid on the basis that the AWP imposed discipline on employees who did not meet attendance standards.

The AWP involved a process that was triggered when an employee was absent for a period (or periods) of time that exceeded the employer's average period of paid sick leave. The process involved four main steps as set out below.

As an initial step, and then at each of the following stages of the AWP, the employer would conduct a review with the employee in question to discuss matters such as scheduling medical appointments outside of work hours where possible, disability, wellness strategies, and the next stage in the AWP. If the employee's absence was due to a disability, the AWP was not followed and separate processes were undertaken.

If the employee remained above the employer's paid sick leave average after the initial review, the employer would move to the first formal stage of the process, Stage 1. At Stage 1, in addition to the review, the employee would be subjected to an overtime ban and would be required to provide a medical certificate after three consecutive days of absence.

If the employee continued to have absences that were above the paid sick leave average, the employer would conduct two further reviews with the employee: Stage 2 and Stage 3. At Stage 2, the employee would be warned that his or her hours would be reduced if he or she progressed to Stage 3.

At Stage 3, the employee would be warned that his or her employment would be in jeopardy if his or her absenteeism continued to exceed both the employer's paid sick leave average and the relevant collective agreement average.

Finally, the employee could be dismissed on a non-culpable basis if his or her absenteeism continued to be above average after the conclusion of Stage 3.

The unions argued that the AWP was invalid because, among other reasons, it improperly imposed overtime bans and contemplated the reduction of full-time hours for non-culpable absenteeism. The unions argued that these consequences were disciplinary and punitive.

The employer argued that it had the right to develop and introduce practices and policies relating to absenteeism in the workplace. It said that the facets of the AWP to which the unions objected were corrective, rather than punitive, in nature. The employer's view was that the policy was designed to support employees while at the same time striving to encourage employees to attend work consistently and regularly.

Arbitrator Ready allowed the grievance. While he agreed with the employer that it had the right to introduce an attendance management program, and in fact applauded the employer for focusing on wellness as part of the program, the arbitrator concluded that aspects of the AWP were more punitive than corrective and were therefore invalid.

On the facts before him, Arbitrator Ready concluded that the AWP's imposition of an automatic overtime ban and/or automatic reduction in an employee's hours of work were clearly punitive and disciplinary responses to non-culpable absenteeism. As a result, the AWP ran afoul of two long-standing labour relations principles: (1) absences due to circumstances beyond an employee's control or that are not blameworthy or culpable are not grounds for discipline; and (2) an employer may not impose discipline without just and reasonable cause.

The following is a non-exhaustive list of principles to consider when introducing an attendance management program, and a reminder that employers must be very careful when implementing such a program.

- Employers have the right to introduce policies to manage employee absenteeism, subject to any restrictions in the collective agreement.
- Non-blameworthy or non-culpable absenteeism (i.e., absences caused by illness or injury) cannot form grounds for discipline. Accordingly, an attendance management program must focus on improving attendance through corrective and not punitive or disciplinary measures.
- Measures that are automatically applied without considering an employee's individual circumstances are more likely to be disciplinary in nature.
- Whether corrective action is appropriate must be assessed on a case-by-case basis, taking into account all of the circumstances of the employee's absenteeism. More specifically, there should be some causative correlation between the corrective action imposed and the reason for the absence or absences.
- An employer may terminate an employee for non-blameworthy or non-culpable absenteeism. However, before doing so, the employer must engage in an individual assessment of the facts and ultimately demonstrate that: (1) the employee has a record of excessive absenteeism; and (2) the employee is not capable of regular and consistent attendance in the future.

- An employer may not blindly apply an attendance management program to an employee with a disability without first investigating whether the employee's disability is affecting his or her ability to attend work regularly. If any part of the employee's absences are caused by a disability, an employer will have a separate duty to accommodate the employee's disability (and the absenteeism-related effect of the disability) unless doing so would cause the employer undue hardship.

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ON THE CASE

Employee Breached Fiduciary Duty by Soliciting Former Employer's Clients

Court of Appeal of Alberta, January 18, 2013

Evans worked as a hockey agent at The Sports Corporation ("TSC"). Under the terms of the employment agreement, Evans was entitled to compete with TSC after leaving and he could take any clients that he had recruited himself. When his contract was up for renewal, Evans did not receive a new offer. He decided to leave TSC and become an agent on his own. Shortly after, a number of clients sent termination notices to TSC, including some who were not explicitly recruited by Evans. Evans brought an action against TSC for unpaid salary and bonus. TSC counterclaimed that Evans had breached the restrictive covenant or non-solicitation provisions in his employment agreement. The trial judge upheld Evans's claim, in part, and allowed the counterclaim, finding that Evans had breached the restrictive covenant and his fiduciary duty to TSC (see 2011 CLLC ¶210-046). Evans appealed.

The appeal was dismissed. The restrictive covenant was not plain or readily interpretable, its meaning was ambiguous, and its reach undeterminable. However, the trial judge had found liability on breach of fiduciary obligation as well as breach of the restrictive covenant, and the resulting damages were the same. Respecting whether Evans was a fiduciary, he was entrusted with primary responsibility for the successful operation of the Eastern European market for TSC. He could then use the power and influence arising from the personal relationships developed with the players. Therefore, the trial judge did not err in finding Evans was a fiduciary, and his termination by TSC did not relieve Evans of his fiduciary obligations. The evidentiary record supported the trial judge's finding that solicitation occurred.

Evans v. The Sports Corporation, 2013 CLLC ¶210-011

Employee's Termination Was Motivated By Anti-Union Animus

British Columbia Labour Relations Board, June 7, 2012

The union was certified for a bargaining unit of employees working for Progressive Rubber Industries Inc. ("Progressive Rubber"). Black had worked for Progressive Rubber for four years, and was the main inside organizer during the union's certification drive. Black left work early one day and forgot his cellphone at his workstation. When he returned to pick it up, he discovered that a new text message had been opened and checked. Black suspected that his supervisor had been reading his messages, and was concerned since he had communicated with the union about organizing the drive through text messages. Black confronted his supervisor at a pub after work about the cellphone, returning to the bar three times over the course of the night. In addition, he repeatedly called and texted his employer about filing a complaint. Progressive Rubber informed him that he was terminated for threats, harassment, intimidation, and stalking toward another employee. The union brought an unfair labour practice complaint respecting Black's termination.

The complaint was allowed. Progressive Rubber overstated the nature of Black's actions resulting in his termination, characterizing his behaviour as stalking and threatening. In addition, it did not ask Black for his side of the story prior to preparing the termination letter, and decided to terminate him very quickly after the alleged actions occurred. Progressive Rubber was aware that Black was a union supporter, and overreacted to Black's actions, even if it was attempting to enforce its zero-tolerance harassment policy. Therefore, Black's termination was motivated by anti-union animus. In addition, Black's termination altered a term or condition of employment within the four-month freeze period after certification of the union. Black's conduct deserved some form of discipline, although there was no rational connection between the alleged misconduct and the termination. A lengthy suspension would have been sufficient to

modify and correct Black's conduct. As a result, he was reinstated and suspended without pay until the date of the Labour Relations Board's decision.

Progressive Rubber Industries Inc. v. CEPU Local 10-B, 2013 CLLC ¶220-007

Employee's Mental Disability and Political Comments Were a Factor in His Termination

British Columbia Human Rights Tribunal, November 8, 2012

Wali was a pharmacy manager for Thrifty Foods. In January 2010, Wali suffered back injuries as a result of a car accident. In May 2010, he requested a reduction in work hours for health reasons, which was denied. In July 2010, Wali actively opposed a new regulation regarding pharmacy technicians that was proposed by the College of Pharmacists. Wali's position on the regulation differed from that of his employer. Wali took a vacation later in July, and did not return to work when his vacation ended. Instead, he went on medical leave due to severe depression and received short-term disability benefits. While on approved medical leave, Wali was terminated and received two weeks' pay in lieu of notice. Wali brought a human rights complaint, alleging discrimination on the basis of mental disability and political belief.

The complaint was allowed. At the time of his termination, Wali was suffering from depression, was on medical leave, and had received short-term disability benefits for two months. Thrifty was aware that Wali had a disability, since Wali had requested a reduced workweek for medical reasons, which was denied, prior to his medical leave. It was not necessary that Thrifty know the exact nature of the disability. Wali's termination constituted adverse treatment, and his mental disability was a factor in his termination. In addition, Thrifty had no specific examples of poor performance to justify Wali's termination. Therefore, his disability was at least a factor in his termination. Respecting the claim of discrimination on the basis of political belief, the free speech of College members on matters affecting the regulation of their profession fell within the scope of political belief. Wali's position before the College was a factor in his termination and, therefore, he was discriminated against on the basis of political belief as well. Wali was awarded $10,000 for injury to dignity, feelings, and self-respect, along with an additional four weeks' wages and vacation pay.

Wali v. Jace Holdings Ltd., 2013 CLLC ¶230-008

Board Issued an Interim Order Prohibiting Union Members From Engaging in a Concerted Refusal To Work Overtime

Saskatchewan Labour Relations Board, October 4, 2012

The union was the certified bargaining agent for some employees at Mosaic Potash mine. Mosaic Potash and the union were engaged in collective bargaining since April 12, 2012. In late July 2012, the parties reached a tentative agreement. The ratification vote, taken the week of August 20, 2012, did not support the tentative agreement. At the same time that the ratification vote was occurring, union members refused to work overtime. Mosaic Potash informed the union that it considered the refusal to work overtime an illegal strike. The union did not encourage or condone the refusal to work overtime, and it indicated to its members that the union was not in a legal strike position. By August 29, 2012, employees were once again signing up for overtime. Mosaic Potash brought an unfair labour practice and unlawful strike application before the Board. It also filed an application seeking interim relief preventing the union members from engaging in any form of strike or further committing an unfair labour practice.

The application for interim relief was allowed. There was an arguable case that an unlawful strike may have occurred. The policy objective of prohibiting strike action during the currency of a collective agreement was an important policy in labour relations. Where a collective agreement expired, a strike would be allowed after a strike vote. No strike vote was taken in this situation. Therefore, given that "wildcat" strikes or lockout actions are not permitted and that there was an arguable case that an unlawful strike activity occurred at the Mosaic Potash mine, it was appropriate to issue an order stopping such action. The union's response to the actions of its members in refusing overtime was insufficient to meet its obligation to take prompt, effective, and affirmative action to end a spontaneous strike.

Mosaic Potash Colonsay ULC v. United Steelworkers Union, Local 7656, 2013 CLLC ¶220-011

Tribunal Required To Address All Grounds of Discrimination Raised By Employee

Federal Court of Appeal, May 30, 2012

Turner worked for Service Canada as a seasonal customs inspector. He applied for a full-time regular customs inspector position in Vancouver and a similar position in Victoria. An eligibility restriction was added to the Vancouver competition, providing that applicants who had been interviewed previously for the same position were not eligible. Turner passed the test, and the first interview. During the second interview, he was recognized as having been unsuccessful for customs inspector positions in Victoria, and was disqualified from the Vancouver competition. He was the only candidate disqualified from the competition based on the eligibility restriction, even though one other candidate had also unsuccessfully applied for a customs inspector position in Victoria. Respecting the Victoria competition, Turner failed to pass the interview. Prior to the interview, his supervisor had sent out a long email describing several of Turner's perceived failings. Turner brought a human rights complaint, claiming discrimination on a number of grounds. The Canadian Human Rights Tribunal (the "Tribunal") dismissed the discrimination complaint on the basis of age, race, and national or ethnic origin. An application for judicial review was dismissed. Turner appealed.

The appeal was allowed. Turner raised the ground of discrimination on the basis of perceived disability, namely his weight, both in his complaint to the Commission and in his statement of particulars before the Tribunal. The ground was an issue in the proceedings before the Tribunal, and was discussed on many occasions by both counsel and by the Tribunal member. Even though the primary focus of the complaint may have been discrimination on the basis of race, an analysis may not ignore the other grounds of complaint, such as disability, and the possibility that compound discrimination may have occurred as a result of the intersection of these grounds. Therefore, the complaint of discrimination on the ground of disability was sufficiently significant that the Tribunal was under a duty to address it or to explain why it did not. Without any reasons in the Tribunal's decision or a clear answer in the record, the Court was unable to speculate on possible conclusions that the Tribunal would have reached on the issue. The complaint was referred back to the Tribunal for a new determination.

Turner v. Attorney General (Canada), 2013 CLLC ¶230-006

STEADY HIRING CLIMATE FOR 2Q

In a March 12, 2013 press release, Manpower Canada indicated that Canadian employers expect the hiring climate to remain steady for the second quarter of 2013, with employers in the Transportation & Public Utilities sector reporting the strongest 2Q job prospects.

With seasonal variations removed from the data, the Net Employment Outlook of 12 per cent is a slight decrease when compared to the Outlook reported in the previous quarter. This Outlook is also a one percentage point drop from the Outlook reported during the same time last year. However, results for the second quarter do represent a continued trend of respectable hiring patterns seen over the course of the last year.

The survey of over 1,900 Canadian employers reveals that 20 per cent of them plan to increase their payrolls in the second quarter of 2013, while five per cent anticipate cutbacks. Of those surveyed, 75 per cent of employers expect to maintain their current staffing levels.

Job seekers in Western and Atlantic Canada are likely to benefit from an upbeat hiring climate from April through June, while Ontario and Quebec still expect some gains. Although regional Outlooks are experiencing slight decreases compared to the previous quarter, job seekers will likely continue to find opportunities in the labour market as employers throughout Canada project the hiring pace will remain steady through the spring.

"Thanks in part to expected job gains from companies such as Walmart and Green Revolution EMS, the national hiring climate should remain upbeat," said Byrne Luft, Vice President of Operations for Manpower Canada. "Employers in the Transportation & Public Utilities and Construction sectors anticipate the strongest gains in the upcoming quarter, especially in Western Canada. Additionally, we're seeing that most of the new jobs created in Canada so far this year have been full-time positions. This continuing trend toward full-time employment is an encouraging sign."

Transportation & Public Utilities — Employers anticipate a strong hiring climate, reporting a Net Employment Outlook of 22 per cent for the second quarter of 2013. This quarter's Outlook is a one percentage point increase from the forecast reported for the previous quarter; it is also a six percentage point increase from the Outlook reported

during the same time last year. The Transportation & Public Utilities sector reported its strongest Outlook since the second quarter of 2007. It is the most optimistic Outlook for any sector in the second quarter of 2013.

Construction — Reporting a Net Employment Outlook of 17 per cent, employers in the Construction sector expect to see a favourable hiring climate for the upcoming quarter. This forecast is unchanged from the Outlook reported during the previous quarter and a three percentage point increase over the Outlook reported during the same time last year.

Wholesale & Retail Trade — In the Wholesale & Retail Trade industry sector, employers project a hopeful hiring climate, reporting a Net Employment Outlook of 16 per cent. This reflects a four percentage point increase when compared to the previous quarter's forecast and a slight increase of three percentage points compared to the Outlook reported during the same time last year.

Services — In the Services sector, employers anticipate a respectable hiring climate for the second quarter of 2013, reporting a Net Employment Outlook of 13 per cent. This forecast is relatively stable when compared to the 14 per cent Outlook reported both in the previous quarter and the same time last year.

Finance, Insurance & Real Estate — Employers report a Net Employment Outlook of 10 per cent for the second quarter of 2013, indicating a respectable hiring climate. This Outlook is a moderate drop from the forecast of 15 per cent that was reported for the previous quarter, but is in line with the Outlook reported during the same time last year.

Manufacturing–Durables — The Net Employment Outlook for employers in the Manufacturing - Durables sector is a mild eight per cent. This is a four percentage point drop from the Outlook last quarter and a six percentage point decrease when compared to the Outlook reported in the same quarter last year.

Manufacturing–Non-Durables — In the Public Administration industry sector, employers anticipate a fair hiring environment for the second quarter of 2013, reporting a Net Employment Outlook of six per cent. This is a slight decrease of two percentage points when compared to the previous quarter. It is relatively stable compared to the Outlook of seven per cent from the same period last year.

Mining — The Net Employment Outlook in the mining sector remains unchanged from the prior quarter, at a moderate eight percent. This is, however, a considerable decrease of 13 percentage points from the Outlook reported during the same time last year.

Public Administration — In the Public Administration industry sector, employers anticipate a fair hiring environment for the second quarter of 2013, reporting a Net Employment Outlook of six per cent. This is a slight decrease of two percentage points when compared to the previous quarter. It is relatively stable compared to the Outlook of seven per cent from the same period last year.

Education — Employers report a Net Employment Outlook of 4 per cent, indicating a modest hiring climate for the upcoming quarter. However, little activity is expected since nearly nine out of 10 sector employers intend to keep their current workforces intact. The Outlook declines eight percentage points from last quarter when sector employers reported an Outlook of 12 per cent, and is a slight decrease from the Outlook reported last year during the same time.

Regional Hiring Intentions Remain Steady and Encouraging

The second-quarter research indicates job seekers throughout Canada are likely to benefit from varying degrees of positive hiring activity. Employers in Western Canada project the most hopeful hiring climate for the coming quarter, reporting a Net Employment Outlook of 15 per cent. Employers in Atlantic Canada expect a respectable hiring pace with an Outlook of 12 per cent, while employers in Ontario and Quebec anticipate a moderate climate for job seekers with employers in both provinces reporting Outlooks of nine per cent.

About the Survey: The Manpower Employment Outlook Survey is conducted quarterly to measure employers' intentions to increase or decrease the number of employees in their workforce during the next quarter. It is the most extensive forward-looking survey of its kind, unparalleled in its size, scope, longevity and area of focus. The Survey has been running for 50 years and is one of the most trusted surveys of employment activity in the world. The Manpower Employment Outlook Survey is based on interviews with over 66,000 public and private employers worldwide and is considered a highly respected economic indicator. More information on the survey may be found at http://manpower.ca/MP-CA-File-Pile/About-Us/MEOS/2Q13/2Q13-EOS-Brochure-EN.pdf.

EMPLOYMENT LAW DAILY

Most Companies Plan To Keep Letting Employees Work from Home, Survey Shows

Posted: March 13, 2013

When struggling big box retailer Best Buy followed in the footsteps of Yahoo! Inc. by altering its telecommuting policies for employees, some undoubtedly concluded that there would soon be a flood of companies doing the same. However, a new survey indicates that Best Buy may be in the minority, with the overwhelming percentage of companies planning to maintain their telecommuting policies. According to the survey, 80 percent of the 120 human resources executives polled said their companies currently offer some form of telecommuting option to employees with 97 percent of them saying there are no plans to eliminate that benefit.

The survey was conducted by global outplacement and executive coaching firm Challenger, Gray & Christmas, Inc. in the days following Yahoo's widely reported and controversial plan to bring work-at-home employees back to the office.

"When major companies like Yahoo and Best Buy make notable policy changes, there is no doubt that other employers will take notice and some may even re-evaluate their policies. However, it would be misguided to assume that other companies will follow blindly without considering their own unique circumstances," said John A. Challenger, chief executive officer of Challenger, Gray & Christmas. "If a company is having success with its telecommuting program, it is unlikely to pull the plug on it simply because Yahoo did. It is just as unlikely that a company will not implement telecommuting because Yahoo did not have success with it. No two companies are the same, so each must evaluate policies such as telecommuting based on how it will affect its customers, employees and bottom line."

The latest available statistics from the Telework Research Network indicate that 3.1 million people, not including the self-employed or unpaid volunteers, considered home to be their primary place of work in 2011. While that is up 73 percent since 2005, it still represents just 2.5 percent of U.S. nonfarm payrolls. It is estimated that as many as 64 million U.S. employees (just under 50 percent of the workforce) hold a job that is compatible with telework.

"However, just because a job is compatible with telework, does not mean the person holding that job is. Not every worker has the discipline and selfmotivation to work from home on a regular basis, which makes it nearly impossible to have a blanket policy. Every manager must determine whether telecommuting will be permitted on a case-by-case basis. And, if allowed, it must be continually monitored to ensure that the quantity and quality of the employee's output does not drop off," said Challenger.

Most companies surveyed by Challenger did not have a blanket telecommuting policy. Less than 10 percent of employers offered telecommuting to all workers. About 40 percent offer telecommuting opportunities to some employees. Another 30 percent do not have a formal telecommuting program but permit some employees to work from home some days.

The need to examine telecommuting on a case-by-case basis was, in fact, the primary change in Best Buy's policy shift. According to reports, Best Buy's telecommuting policy, which had been in place since 2005, allowed any of its 4,000 non-store employees to work from home whenever they wanted without approval from a supervisor. The new policy now requires workers to get their supervisor's okay.

"Best Buy obviously still recognizes that there is value in allowing telecommuting or it would have simply terminated the program entirely. However, the company also recognizes the need to maintain tighter control over the telecommuting workforce. Just because some workers are more productive when they work from home does not mean that every employee is," said Challenger.

Increased productivity is one of the leading reasons for allowing employees to work from home, according to the Challenger survey. Respondents also cited the desire to help employees achieve better work-life balance. Other top reasons for telecommute included increased morale and lowering office costs.

Among the respondents who indicated that they may or already have eliminated telecommuting, the driving factors were decreased collaboration and increased animosity among those who were not permitted to telecommute.

Source: Challenger, Gray & Christmas, Inc. at www.challengergray.com.

New Study Finds Millennial and Mature Workers' Attitudes Align

Posted: March 15, 2013

When it comes to the workplace, the generational gap may be much slimmer than millennials (born 1982-1994) and mature employees (born before 1946) might assume. According to the latest Engagement Study from Randstad, the age groups that share the most workplace sentiments in common are, surprisingly, the youngest and oldest generations. The vocational verdict: these employees expressed a more positive outlook on their careers than other demographics surveyed.

When asked about their feelings toward their current job, millennials and mature workers responded more favorably than other respondents across the board. In fact, 89 percent of mature workers and 75 percent of millennials say they enjoy going to work every day, and a majority of both groups feels inspired to do their best at work (95 percent of mature respondents and 80 percent of millennials). These workers additionally perceive a higher morale in the workplace than other age groups, with 69 percent of millennials and 64 percent of mature workers finding a positive energy at work, compared to just a 53 percent average among other generational groups.

Yet, there are differences between matures and millennials. They expressed drastically different opinions when asked about plans to transition to a new employer. A vast majority of millennial respondents would give serious consideration to a job offer from another company (57 percent), and 47 percent would proactively seek out a position with a different employer. Only 20 percent of mature workers would consider making a career move this year, and even fewer (12 percent) would look for a new job. This may be in large part due to the fact that mature workers are typically already established in their careers, while millennials are characteristically in more of the beginning stages of their careers where they are trying to find their niche.

"As the average age of retirement continues to increase, employers are not only seeing a wider generational gap amongst their employees, but they are also seeing more generations sitting side-by-side in the workplace than ever before," said Jim Link , managing director for Randstad US. "It is critical for companies to take note of the distinct characteristics, motivations and perspectives each cohort possesses, as well as the overlaps in attitude and workplace desires. In looking at our study findings, companies can dive into what engagement and retention drivers are aligned and not aligned across the different generations to identify and prioritize the largest opportunities to improve employee engagement within their organizations."

In Randstad's latest study, generational insights and perspectives around the workplace were additionally supplemented with broader views on the state of the economy:

- A majority of both millennial and mature workers believe the job market will pick up in 2013 (67 percent and 55 percent, respectively).
- However, the millennial generation feels significantly harder hit by the recession. Fifty-nine percent of respondents believe the economy has negatively altered their career plans, compared to only 35 percent of mature workers sharing the sentiment.

Other notable findings:

- The top engagement activities for all age groups were offering promotions or bonuses to high performing employees and being flexible in terms or hours or working arrangements.
- Millennials are more likely to feel that social or team-building events are effective engagement strategies, while mature workers are more likely to view the encouragement of opinion-sharing as an effective way to build employee engagement.
- Significantly more millennials find it difficult to disconnect from work while at home (52 percent compared to a 45 percent average); however, these younger workers are more likely to believe the blurring of lines between work and home has increased productivity (50 percent compared to a 37 percent average).
- Millennials and mature workers ranked the same top three skills as the most important to grow their careers: Flexibility/adaptability; Computer/technology proficiency; and Leadership.

Source: Randstad at www.randstad.com.

DID YOU KNOW . . .

. . . That the British Columbia Human Rights Tribunal Now Records Its Oral Hearings?

In a recently released Practice Direction, the British Columbia Human Rights Tribunal (the "Tribunal") announced that it will now record its oral hearings. While audio recordings will be made, the Tribunal has stated that copies of the recordings will not be routinely provided to parties. Parties who wish to have a copy must apply to the Tribunal. The Tribunal may impose usage restrictions and restrictions regarding distribution of audio recordings. The Practice Direction states that the "audio recording, or any unofficial transcript made from it, does not form part of the Tribunal's record of proceedings for the purpose of judicial review." Certified transcripts may be acquired by a party by contacting the case manager to obtain contact details for the transcription company that transcribed the audio recording. Arrangements to obtain the certified transcript must then be made with the transcription company. According to the Practice Direction:

> Where a certified transcript is obtained, it will be considered part of the Tribunal's record of proceedings. Accordingly, for the purpose of judicial review, it forms part of the Tribunal's record that may be filed in the BC Supreme Court.

The Practice Direction is available at: http://www.bchrt.bc.ca/practice_directions/info/hearing-recording.pdf.

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