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**CORPORATE/COMMERCIAL/EMPLOYMENT:
QUICK TIPS AND LEGISLATIVE UPDATES**

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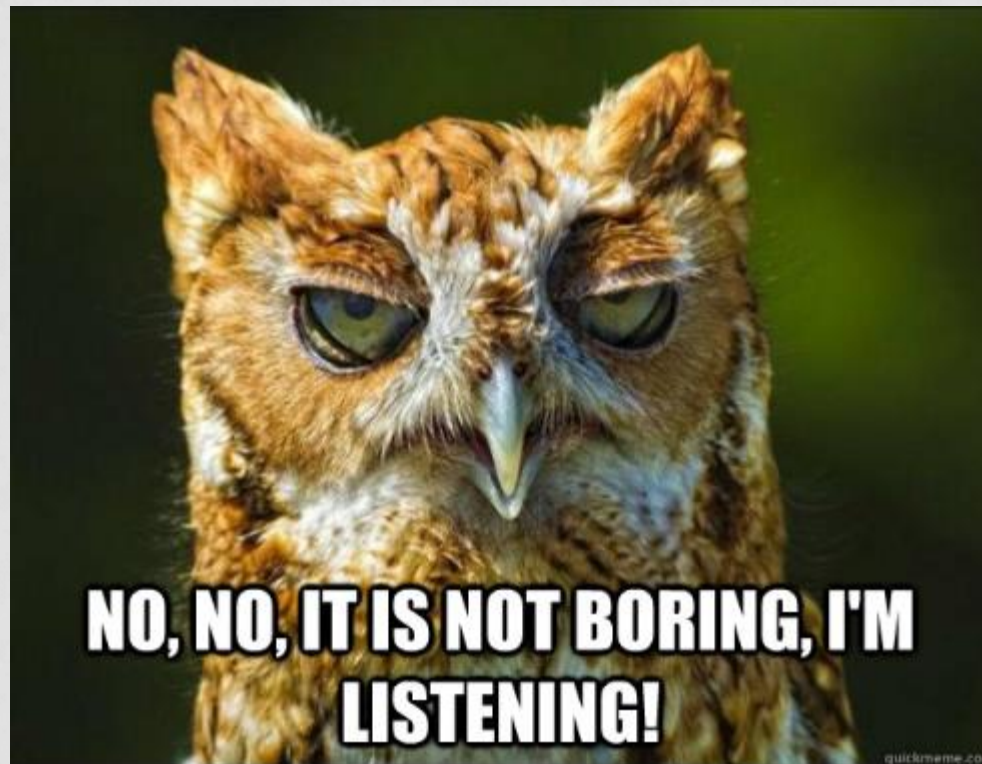
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BIOGRAPHY

SARAH SAAD:

- Sarah attended the University of Ottawa for her undergraduate studies in Psychology and graduated from the University of Ottawa's Faculty of Law with an LL.B. in 2004.
- Sarah was called to the Ontario Bar in 2005. Her practice concentrates on corporate and commercial work including advising clients on:
 - many corporate areas including incorporations and re-organizations, shareholders' rights and remedies, financing and commercial real estate;
 - purchases and sales of businesses, assets and shares, secured transactions, franchising, and leasing;
 - employment, consultancy and cost-sharing matters and agreements; and
 - intellectual property including issues and disputes with trademarks, copyright, and unfair competition and with respect to protecting, selling, and licensing their intellectual property.
- Sarah is fluently bilingual and is a member of l'Association des juristes d'expression française de l'Ontario. Sarah is also fluent in Arabic.

LEGISLATIVE UPDATES



INTRODUCTION

- Among the recent legislative changes, some were made to laws and regulations that are worth noting for those who practice corporate, commercial and employment law. These include the following statutes and the regulations made under them:
 - ***The Canada Business Corporations Act and the Canada Cooperatives Act (part of Bill C-25); and***
 - ***The Ontario Employment Standards Act (Bill 148);***
- This presentation focuses mostly on the above-noted legislative updates and provides notes on other note-worthy changes.

AMENDMENTS TO THE CANADA BUSINESS CORPORATIONS ACT AND THE CANADA COOPERATIVES ACT

Canada Business Corporations Act and the Canada Cooperatives Act:

- Among the changes made, you will find amendments to:
 - the election of directors;
 - notice and access for documents; and
 - diversity disclosure.

ELECTION OF DIRECTORS

- **Individual votes for each nominee:** Election of directors of distributing corporations and distributing cooperatives are to be done on an individual basis. The amendment:
 - prohibits a slate system in which all directors are either elected or defeated in a single vote;
 - permits shareholders to vote “for” or “against” each nominee (rather than “withholding” sharers from voting); and
 - requires the majority of votes cast in the nominee’s favour for the nominee to be elected.



ELECTION OF DIRECTORS (CNT'D)

- **Exception:** If a nominee fails to be elected as a director under the majority voting rules, the directors may appoint that person to the board if the nominee is needed to meet the corporation's requirement under the Act to have:
 - at least 2 directors who are not officers or employees of the corporation or its affiliates; or
 - a certain percentage of the board members be Canadian residents (i.e. at least 25%; or where there are less than 4 directors, at least 1 director who is a Canadian resident).
- **Regulations:** When majority voting applies, the form of the proxy set in applicable regulations will require voting “for” or “against” each director instead of voting “for” or “withholding” a vote.

NOTICE AND ACCESS

- Provincial securities commissions have allowed corporations, since 2013, Internet use to provide meeting materials to shareholders.
- However, Federally-incorporated corporations and cooperatives have had some difficulties using notice and access provisions because of some technical wording that restricted them from doing so (i.e. required addressee to have consented in writing).

NOTICE AND ACCESS (CNT'D)

- The amendments made allow the regulations to align with the provincial securities commissions for distributing corporations. More specifically, the changes provide as follows:
 - **Link to financial statements:** If distributing corporations and distributing cooperatives include a link to the financial statements as part of the notice and access package, they will meet the obligation to send financial statements to shareholders and members.



NOTICE AND ACCESS (CNT'D)

- **Request-based system:** Distributing corporations and distributing cooperatives that are not using notice and access or not including a link to the financial statements in the notice and access package must send financial statements only to shareholders and members who request the statements.
- **Non-distributing corporations and cooperatives:** The rules have not changed. They would still be required to send financial statements to all shareholders and members, except those who say that they do not want to receive them.

DIVERSITY DISCLOSURE

- The regulations now require distributing corporations to provide shareholders with information on the corporation's policies related to diversity on the board of directors and within senior management.



DIVERSITY DISCLOSURE (CNT'D)

- Obligation to comply or explain (under National Instrument 58-101 – Disclosure of Corporate Government Practices):
 - adopt a written policy relating to diversity, other than gender, on the board of directors and within senior management:
 - “Designated groups” are defined to include, but not be limited to, designated groups as defined by the *Employment Equity Act*: women, aboriginal peoples, persons with disabilities and members of visible minorities; and
 - if no policy has been adopted, explain why not.



QUICK TIPS

- Make sure your clients are aware of the changes to the Canada Business Corporations Act and the Canada Cooperatives Act:
 - Board of Directors and Senior Management;
- Update corporate by-laws, if required, to account for notice and access procedures; and
- Ensure your clients have the required diversity policy in place.

AMENDMENTS TO THE ONTARIO EMPLOYMENT STANDARDS ACT ("ESA")

- The changes to the ESA were scheduled to come into force on various dates between November 27, 2017 and January 1, 2019.
- Among the changes:
 - **Employee/Independent Contractor Classification (In force November 27, 2017):**
 - Prohibits the misclassification of employees. Employer must prove that an individual is an independent contractor and not an employee.
 - **Parental Leave (In force December 3, 2017)**
 - The length of parental leave is increased by 26 weeks to 61 weeks for employees who took a pregnancy leave and to 63 weeks for employees who did not.
 - **Critical Illness Leave (In force December 3, 2017)**
 - Critical illness leave is available only to employees who have been employed for at least 6 consecutive months and is comprised of 2 basic entitlements:
 - a leave of up to 37 weeks in a 52-week period for an employee to provide care or support to a critically ill minor child who is a family member of the employee; and
 - a leave of up to 17 weeks in a 52-week period for an employee to provide care or support to a critically ill adult who is a family member of the employee.
 - "Family member" is defined broadly and encompasses spouses, parents, grandparents, siblings, aunts/uncles and can extend to "step" relatives.

AMENDMENTS TO ESA (CNT'D)

- **Minimum Wage Hike (In force January 1, 2018 and January 1, 2019)**
 - On January 1, 2018 - \$14.00 per hour.
 - On January 1, 2019 - \$15.00 per hour;
 - Exceptions to these minimum wage rates, include students under 18 years old, if their weekly working hours do not exceed 28 hours or if they are employed during a school holiday, and employees who serve liquor directly to customers in a licensed establishment and who regularly receive tips or other gratuities from their work.

AMENDMENTS TO ESA (CNT'D)

- **Vacation and Public Holidays (In force January 1, 2018)**
 - An employee who has been employed for 5 years or more will be entitled to 3 weeks of paid vacation.
 - For employees who receive vacation pay, it will increase to 6% for an employee who has been employed for 5 years or more.
 - Where employees work on a public holiday, they are to be paid holiday pay plus premium pay for the hours worked.



AMENDMENTS TO ESA (CNT'D)

- **Personal Emergency Leave (In force January 1, 2018)**
 - Personal emergency leave is now available in all workplaces regardless of the number of employees. Employees are entitled to 10 days leave and 2 of those days must be paid days. An employee who takes personal emergency leave is not required to provide a medical note to substantiate their claim for leave.
- **Pregnancy Leave (In force January 1, 2018)**
 - The length of pregnancy leave for employees who suffer a still-birth or a miscarriage is extended to 12 weeks after the pregnancy loss occurs.
- **Family Medical Leave (In force January 1, 2018)**
 - The length of family medical leave is extended to 27 weeks in a 52-week period for the provision of care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks.
- **Crime-Related Child Disappearance Leave and Child Death Leave (In force January 1, 2018)**
 - Two types of leave for employees who have been employed for at least 6 months:
 - 104 weeks if the employee's child disappears and it is probable that the disappearance was the result of a crime; and
 - 104 weeks following the death of the employee's child, regardless of whether the death was crime related.

AMENDMENTS TO ESA (CNT'D)

- **Domestic or Sexual Violence Leave (In force January 1, 2018)**
 - An employee who has been employed for at least 13 consecutive weeks is now entitled to a leave of absence where the employee or the employee's child experiences domestic or sexual violence or the threat of such violence and the leave is taken for one of the delineated purposes.
 - In each calendar year, an employee is entitled to up to 10 full days of domestic or sexual violence leave, whether they are employed on a full- or part-time basis.
 - An Employee is also entitled to take up to 15 weeks of domestic or sexual violence leave within a calendar year for the purposes set out above. A "week" is defined as running from Sunday to Saturday.
 - The first 5 days of domestic or sexual violence leave taken in a calendar year must be paid. The rest are unpaid. The first five days are to be paid whether the employee takes leave from the 15-week entitlement, or the 10-day entitlement.

AMENDMENTS TO ESA (CNT'D)

- **Record Keeping for Employers (In force January 1, 2018)**

- In addition to existing record keeping requirements which have been retained, several new requirements including the dates and times an employee worked or was scheduled to work or to be on-call, cancellations of scheduled work or on-call periods, overtime and vacation pay entitlements, and documents related to the new Domestic or Sexual Violence Leave are now also required (including ensuring confidentiality).



- **Enforcement (In force January 1, 2018)**

- An employee no longer has to demonstrate that they attempted to resolve their issue with the employer before proceeding with a complaint under the *ESA*.
- Penalties for violations of the *ESA* are increased and the Director of Employment Standards can now publish the names of penalized individuals along with a description of the circumstances and the amount of the fine.
- Employment Standards Officers are now also able to award interest on unpaid wages.

AMENDMENTS TO ESA (CNT'D)

- **Equal Pay for Equal Work (In force April 1, 2018)**
 - Prohibits differential pay based on a difference in “employment status”. It implements a general rule that no employee may be paid less than what is paid to a full-time employee for the same work.
 - This new rule will not apply if an employer can show the difference in pay rates is because of a:
 - seniority system;
 - merit system;
 - system that measures earnings by quantity and quality; or
 - any other factor other than sex or employment status.
 - In addition to the above exceptions, there are also a limited number of positions exempt, including an employee who is a student under 18 years of age and who does not work more than 28 hours a week.

AMENDMENTS TO ESA (CNT'D)

- **Scheduling and On-call Assignments (In force January 1, 2019)**
 - Establishes rules regulating scheduling and on-call assignments.
 - Three Hour Rule – must pay an employee wages equal to the employee's regular rate for 3 hours' work if the employee:
 - regularly works more than 3 hours per day;
 - is required to work; and
 - works less than 3 hours despite being available to work longer.
 - Minimum On-Call Pay – must pay an employee minimum on-call pay when placed on call but is either not called into work or is required to work for less than 3 hours despite being available to work longer. Same formula as the Three Hour Rule. Exception: ensuring continued delivery of essential public services (regardless of who delivers those services) and the employee on call was not required to work.
 - Right to Refuse Work – employee will generally be able to refuse work or be on an on-call assignment if at least 96 hours' notice of the start of the shift is not provided. There are a number of exceptions to the right to refuse, such as to deal with an emergency, remedy or reduce a threat to public safety, ensure the continued delivery of essential public services (regardless of who delivers those services) and other prescribed reasons.

AMENDMENTS TO ESA (CNT'D)

- **Changes to Schedule or Work Location (In force January 1, 2019)**
 - An employee who has been employed for at least 3 months will be allowed to submit a written request to their employer requesting changes to their schedule or work location.
 - The employer must discuss the request with the employee and notify such employee of the employer's decision within a reasonable time.
 - If the employer grants all or any part of the request, the employer must specify the date the changes will take effect and their duration. If the request is denied, the employer must provide reasons for the denial.

QUICK TIPS

- COMPLIANCE, COMPLIANCE, COMPLIANCE!
- Ensure your Employer clients update their employment agreements and policies, if required;
- If alterations to other “benefits” already provided to employees are needed, taking into consideration the ESA amendments, make sure consideration is provided to the employee;
- Ensure that you your Employer clients keep records.
- Make sure your Employee clients are aware of their rights.

OTHER NOTE-WORTHY CHANGES

- **Chartered Professional Accountants of Ontario Act**
 - Subsection 28(1) of the Act now permits one or more members of CPA Ontario, professional corporations or both to “establish a professional corporation for the purpose of practicing as a Chartered Professional Accountant.” One or more professional corporations registered as public accounting firms with CPA Ontario can own shares of another professional corporation as long as the individual shareholders of the first professional corporation are members of CPA Ontario.
- **Charities**
 - As of July 1, 2017, CRA no longer pre-approves objects.
 - For guidance: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html>

OTHER NOTE-WORTHY CHANGES (CNT'D)

- **Income Tax Act**
 - Significant tax changes – Tax panel addressed yesterday
- **The Ontario Personal Property and Security Act (s.46) and the Repair and Storage Liens Act (s.9)**
 - If the Statement identifies the name of the debtor in error, but the correct VIN number, your security will still be perfected.
- **Residential Leases**
 - As of April 30, 2018, landlords of most private residential rental units – from individual landlords to property management companies – must use the standard lease template for all new leases: <http://www.mah.gov.on.ca/Page18704.aspx>
- **Cutting Unnecessary Red Tape Act (Bill 154)**
 - Amends or repeals a number of Acts and enacts a number of new Acts:
http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&ntranet=&BillID=5000

THANK YOU!



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