

Employment Law for Chiropractors



Presented by David Mills

MILLS & MILLS LLP

BARRISTERS & SOLICITORS

ESTABLISHED 1884

MILLS & MILLS LLP

AGENDA

1. Hiring Practices
 - a. Independent Contractors vs. Employees
 - b. Tips on Hiring Employees
2. Employment Contract Essentials
3. Termination
 - a. Terminating for cause
 - b. Terminating without cause
 - c. Recourse available to Employees
4. Application of the *Employment Standards Act*
5. Questions



How to Hire People

- Assess whether you will be retaining independent contractors or employees
- Invest the time in reviewing applications, contacting references and conducting interviews
- Have every employee and contractor sign a contract

Independent Contractor or Employee?

An Independent Contractor:

- Works for herself, but provides contracted services to you / your business
- Pays tax based on income from a business
- Has all the income tax-deductibility options of a business
- Is not covered by the *Employment Standards Act*

An Employee:

- Works for you / your business
- Pays income tax based on employment income
- Has limited expenses that they can deduct from income
- Has rights under the *Employment Standards Act* and other legislation

What are some examples of independent contractors and employees?





“Independent Contractor” may include...

1. another chiropractor, or a massage therapist or other healthcare provider who provides services in your premises who:

- sets own hours;
- uses own equipment;
- largely controls own economic fate – has own patients (though may serve your patients as well from time to time);
- is not under your direction.



“Independent Contractor” may include...

2. a book-keeper who provides services to you and other chiropractors who

- sets own hours;
- uses own equipment / software;
- chooses own location for performing services.



An “employee” may include...

1. a chiropractor or massage therapist or other healthcare provider who:
 - works on the schedule you set or control;
 - is an important part of your practice;
 - may or may not have own patients;
 - uses your equipment;
 - receives a set wage as some or all of compensation.



An “employee” may include...

2. a book-keeper working for you on a full or part-time basis who

- works at your office on the schedule you set or control;
- uses your equipment / software.

3. a receptionist or other front-office staff working for you either on a full or part-time basis.



There is no one set of rules to determine whether a specific person is an employee or contractor.

Canada Revenue Agency and the courts have developed a number of analyses that are used to answer whether someone is an employee or independent contractor, including:

1. The “control test”
2. The “economic reality test”
3. The “specific results test”
4. The “integration test”

Take care and seek advice when setting up these important relationships. The cost of wrongly labeling someone an independent contractor can be very high.





Essential Practices When Hiring Employees:

1. Take time to review resumes, conduct interviews and contact references
2. Use written contracts EVERY time you hire a new employee
3. Obtain appropriate advice before using a “standard” employment contract you got from a friend, colleague or the internet
4. Set clear expectations and performance standards from the outset

What should be included in an employment contract?



Contract Essentials

- Date of hire;
- Whether there is a probationary period;
- Role and responsibilities;
- Pay;
 - Including bonuses, commissions, etc.
- Vacation entitlement;
- Sick days;
- Termination provisions; and
- Restrictive covenants – non-solicitation, confidentiality, non-competition.

Contract Essentials

- **Restrictive covenants - non-solicitation, confidentiality, non-competition:**
 - **If you try to impose unreasonable restrictions they will not be legally enforceable**



What about termination?

- What is “just cause”?
- How do I prove “just cause”?
- What if I don’t have “just cause”?
- What is reasonable notice?






Am I allowed to fire an employee for any reason?

- Yes – almost....
 - There are two types of termination:
 - (1) termination for “just cause”, and
 - (2) termination “without cause”.

(1) Just Cause

- Misconduct so serious that it fundamentally breaks the employment relationship.
- Difficult to prove , so
 - Be consistent
 - Document everything
 - Provide progressive discipline (warning in writing -> punishment -> termination)
 - Have clear termination clause in employment contracts
 - Treat all employees consistently




If I don't have “just cause”
but want to fire someone,
what then?




(2) Without Cause

- may be the single most important reason for employers to have a valid and enforceable employment contract
- notice or pay in lieu of notice:
 - under the *Employment Standards Act; or*
 - at common law.



What if the terminated
employee doesn't like my
decision or the notice / pay
in lieu provided?



If the employee doesn't like your decision or the notice / pay in lieu provided they may...

1. File a complaint with the Employment Standards branch of the Ministry of Labour;
2. Start a lawsuit in court for wrongful termination; or
3. File a human rights complaint with the Human Rights Commission of Ontario.



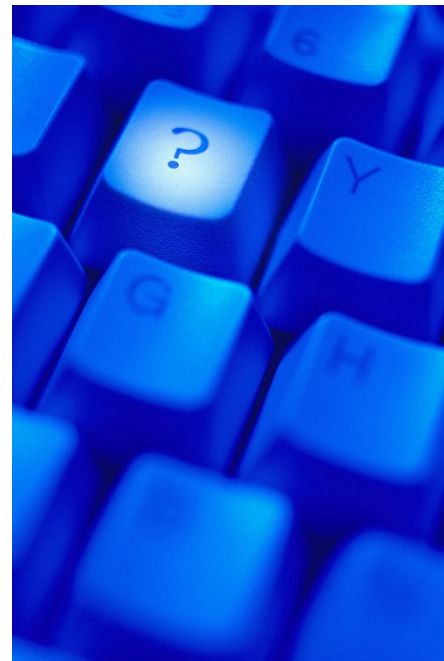
Employment Standards Act, 2000

- Chiropractors are largely exempt from the protections of the *Employment Standards Act, 2000* (the “Act”).
- Other employees (e.g. receptionist, book-keeper) would be entitled to all protections of the Act.

Employment Standards Act, 2000

Standard	Are Chiropractors Covered?
Minimum Wage	No
Hours of Work	No
Daily Rest Periods	No
Time off Between Shifts	No
Weekly/Bi-Weekly Rest Periods	No
Eating Periods	No
Overtime	No
Personal Emergency Leave	Special rule applies relating to professional responsibility
Public Holidays	No
Vacation with Pay	No
Notice of Termination/Termination Pay	Yes
Severance Pay	Yes

QUESTIONS...



Thank you!



The information contained in this presentation is of a general nature and cannot be relied upon as legal advice.

For legal assistance, contact David Mills at 416-682-7138, or david.mills@millsandmills.ca.

Blog: www.millsandmills.ca/blog LinkedIn: Mills & Mills LLP Twitter: @MillsMillsLLP