

WHAT'S NEW at RUBIN THOMLINSON LLP

Chris Thomlinson conducted a workshop on workplace investigations at Osgoode Hall's Law School, Employment Law Conference on Tuesday April 29.

Janice Rubin was quoted in the Globe and Mail on Monday May 19 about the effects of extreme team-building activities.

David Whitten and **James Heeny** spoke at the Human Resources Association of Ontario on Tuesday May 20 on managing employee terminations.

Janice Rubin and **Chris Thomlinson** conducted the second session of Conducting Internal Workplace Investigations on May 29 and 30. The session was full and was well received by the participants. In addition to various cities across Ontario, participants came from Manitoba and the North West Territories to attend the session.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Ruben Thomlinson LLP. This has been sent to you courtesy of Ruben Thomlinson LLP.

Employers often spend significant amounts of money training and relocating new employees who are joining their organization. The recent case of *Renaud (c.o.b. Renaud-Otten) v. Graham* demonstrates that employers can enter into contracts with employees that require them to repay these costs if they resign within a specified time after they are hired.

Employees Can Be Liable For Training Costs Upon Departure

Renaud operated a real estate agency. In August 2003, he decided to hire Mr. Graham as an unlicensed sales assistant. As part of the offer of employment, Renaud offered to pay for the costs of the training required for Mr. Graham to become a listing agent. The parties entered into a written employment agreement which required Mr. Graham to repay some of his wages to compensate the employer for the costs of the training, if he resigned and accepted a position with a competitor within a prescribed period.

Before Mr. Graham signed the agreement, he negotiated a \$20,000 cap on the return of wages clause in the agreement.

Mr. Graham worked for Renaud for just over a year when he elected to resign. He also accepted a position very shortly after his resignation with a competitor. As a result, Renaud

commenced a claim against Mr. Graham to recover wages as per the terms of the agreement.

The Court held that Mr. Graham was liable to Renaud.

It was held that the repayment clause was "clear, unambiguous, and was understood by the defendant when the contract was executed". It was the Court's position that the terms contemplated a fair and reasonable assessment of the loss sustained by Renaud.

In finding that the contract was reasonable, the Court noted how favourable the terms were to Mr. Graham. The Court held:

"Mr. Graham knew this was an unusual and favourable arrangement for himself" in that "[he] was provided a salary while he was obtaining his license, plus valuable hands on training, and a salary and bonus structure once he became a licensed agent."

Continued

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contract was executed"
.....

Employees Can Be Liable For Training Costs Upon Departure

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“Mr. Graham knew this was an unusual and favourable arrangement for himself... [he] was provided a salary while he was obtaining his license”

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As such, judgment was granted to Renaud in the sum of \$23,387.14.

What Does This Mean for Employers?

Employers can protect themselves from employee resignation

Where an employer is investing significantly in hiring a new employee, thought should be given to entering into a contract which requires repayment of these costs if the employee leaves within a specified time. This can be applicable to training costs or relocations which may be provided to the employee upon accepting a position.

Make sure the terms are reasonable

In the above case, the Court found that the terms of the agreement were reasonable and were a fair reflection of the

damages suffered by the employer. In entering into such an agreement, employers should be cautious not to create a repayment term which would constitute a “penalty” if the employee decides to resign. The repayment amount should be clearly linked to a quantifiable loss suffered by the employer.

Make sure the agreement complies with the Employment Standards Act

Employers need to be cautious that the agreement complies with the *Employment Standards Act* (“ESA”). The employer must ensure the contract adheres to minimum wage provisions as well as to provisions which regulate when an employer can make deductions from an employees wages. Failure to comply with these minimum entitlements may result in the contract being unenforceable. ●

UPCOMING EVENTS

June 9

James Heaney will be speaking at the 4th Annual Learning Symposium that is being hosted by CuSource on Monday June 9. James will be discussing workplace accommodation and just cause terminations.

June 10

On Tuesday June 10, **Rubin Thomlinson LLP** will be hosting another breakfast seminar entitled “When Overworked Means Overtime: Staying Out of Legal Trouble”. We are fully booked, however if you are interested in being placed on a waiting list, please contact us at (416) 847-1814 or breakfast@rt-law.ca.

June 11

David Whitten will be one of four panelists discussing employment law litigation under Bill 107 at the Ontario Bar Association—Law Society of Upper Canada’s joint program called “Representing Clients in Ontario’s New Human Rights System” on Wednesday June 11.

June 12

Chris Thomlinson will be speaking at the Law Society’s annual “Six-Minute Employment Lawyer” program on Thursday June 12. Chris will be speaking about recent updates to just cause terminations.

June 12

David Whitten will be speaking at the 26th Annual Conference and Trade Show that is being hosted by the Canadian Payroll Association on Thursday June 12. David will be discussing the differences between employees and independent contractors.

July 9

Janice Rubin will be speaking on July 9th at the webinar series, “Wednesday’s with WXN”. This series is being hosted by the Women’s Executive Network. Janice will be discussing toxic workplaces and bullying in the workplace. This webinar is one of many webinars held on Wednesday’s.

September 23 & 24

The third session of **Conducting Internal Workplace Investigations** will take place on September 23 & 24. If you would like to attend, please contact us at (416) 847-1814 or contact@rt-law.ca to register.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca.

20 Adelaide Street East, Suite 1104, Toronto, Ontario M5C 2T6 Tel: 416.847.1814 • Fax: 416.847.1815
www.rubinthomlinson.com