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The Three Costliest HR Mistakes Nonprofits Make



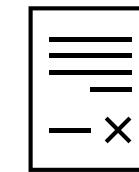
Webinar Outline



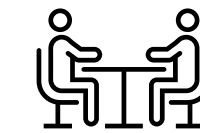
Submit your Questions for the Live Q&A to Follow



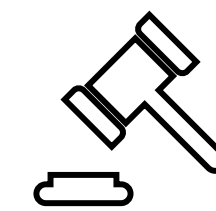
**The Importance of
the Employment
Agreement**



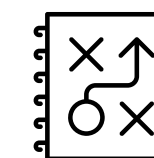
Termination Essentials



**Critical Case Law Linking
the Employment
Agreement to Terminations**



**Workplace Harassment
and Investigations**



The Importance of the Employment Agreement



Flexibility

Provide for flexibility in schedules, duties, location, *layoffs and working arrangements* (remote, hybrid, etc.).

Define Terms

Employee Status, Method of Payment and Qualification of Hours, location and working arrangements. Permanent, fixed term, seasonal, etc.

Supplemental Agreements/Appendixes

Averaging agreements, vacation pay per pay, excess hours, working from home, job descriptions, reference to policy manual, etc.



Pre-Conditions and Protections

Pre-conditions provide protection at the beginning of the arrangement and can be on-going (i.e. background checks, drivers license, truth of credentials). Restrictive covenants are critical, however –caution- they need constant attention.

Mitigate Liability - Leverage

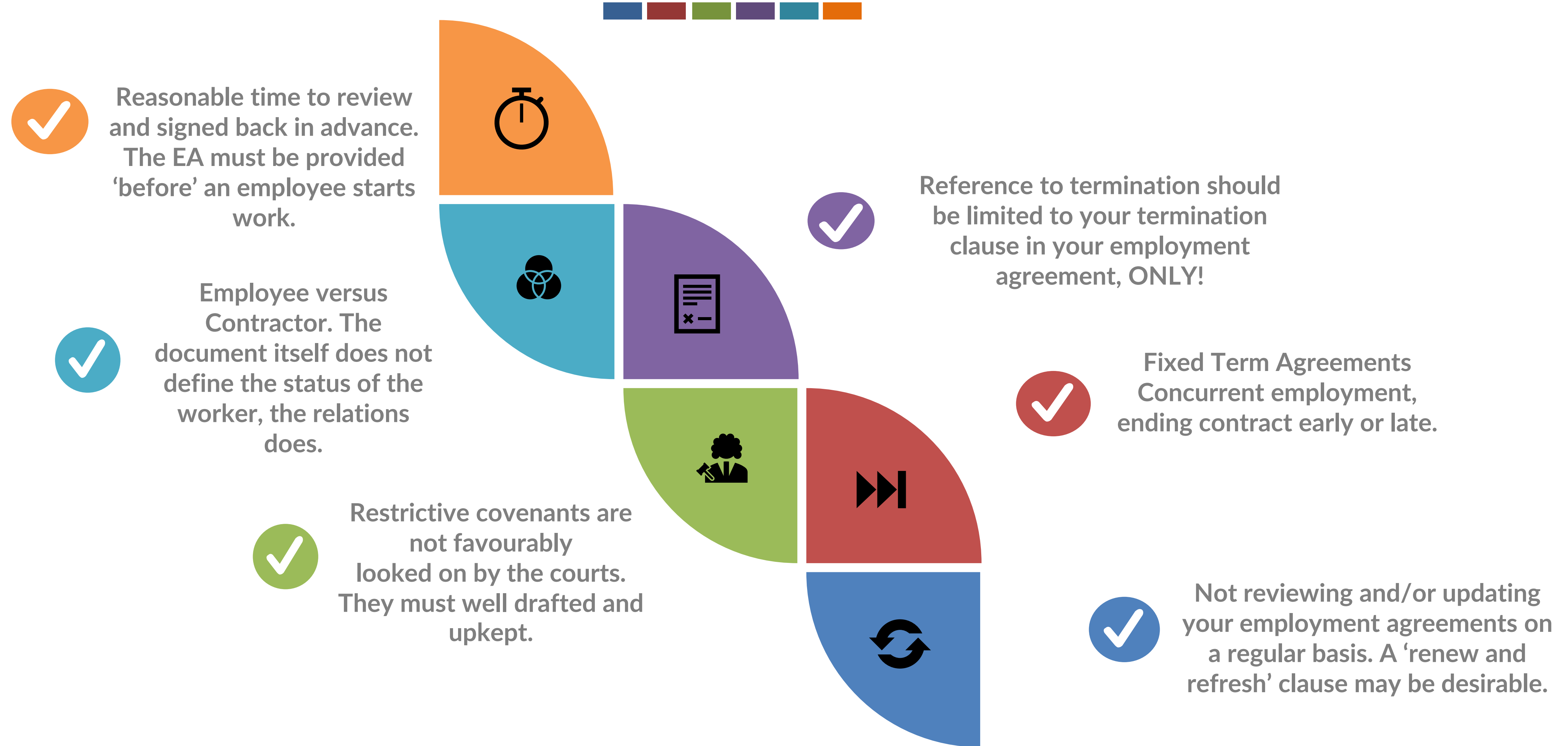
It is your ONLY opportunity to define the terms and conditions of employment, including mitigating your liability. You will never have more leverage in the employment life-cycle than at the time of offering employment.

The EA BENEFITS THE EMPLOYER!

Employee Status, Hours, And Pay



Legal Pitfall in Employment Agreements



Terminations Essentials

With Cause Terminations

“Serious employee misconduct ... employment contract cannot continue or be repaired.”

ONTARIO – Willful Misconduct

An act or series of acts that in culmination are egregious and intentional or deliberate.

In order to prove willful misconduct not the intent of the employee to determine if intentional or deliberate.

Termination Clause

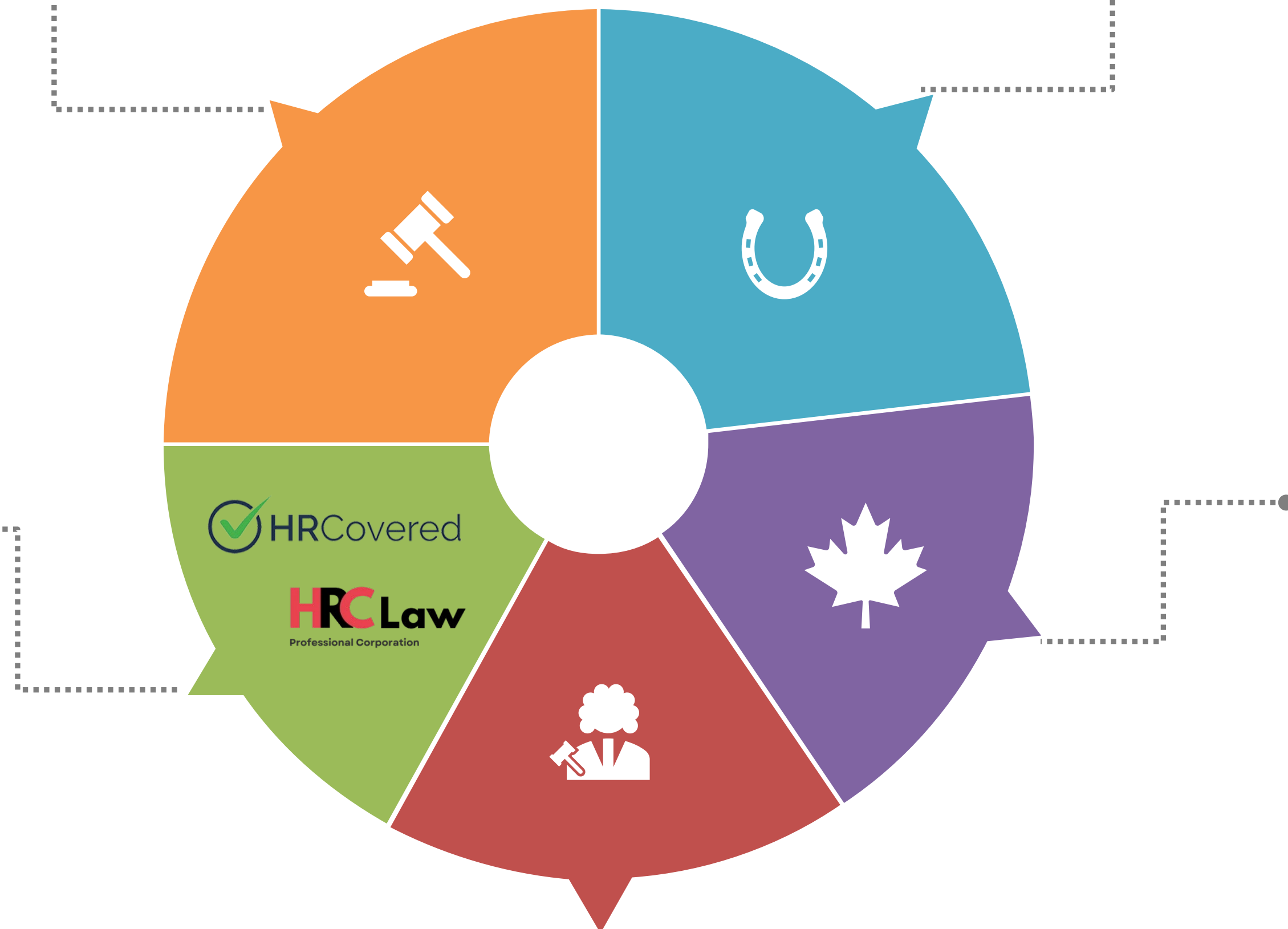
You can mitigate your liability with a very well-crafted termination clause as part of the original agreement. If you have not updated your employment agreement, specifically your termination clause in the last year or two, your EA is likely not enforceable.

Not a Game of Horseshoes

There is no such thing a ‘near cause.’ You either have it or you don’t. If you terminate without cause, you can’t use any of the reasons you think ‘might’ be worthy of termination as an argument. It becomes a unilateral decision of the employer and termination obligations are owing.

Termination Package

Termination pay, severance pay (ON, CLC) and common law
Common law is not employment legislation or subject to jurisdiction.
The fundamental principle is to provide the employee with enough paid time to find alternative ‘comparable’ employment.



Bardal Factors

Factors the courts will consider include the employee’s years of service, age, position and salary of the employee and the availability of comparable employment
Important to keep in mind there is no hard rules or outcomes.

Must Know Case Law



Termination Clause Essentials

Waksdale v. Swegon North America Inc., 2020 ONCA

The termination clause must be read 'as a whole.'

Wilful Misconduct – Ontario

Render v ThyssenKrupp Elevator (Canada) Limited, 2022

Wilful misconduct in Ontario requires not only must the act or acts be egregious, but they must also be intentional or deliberate.

Severance – Except ON and CLC

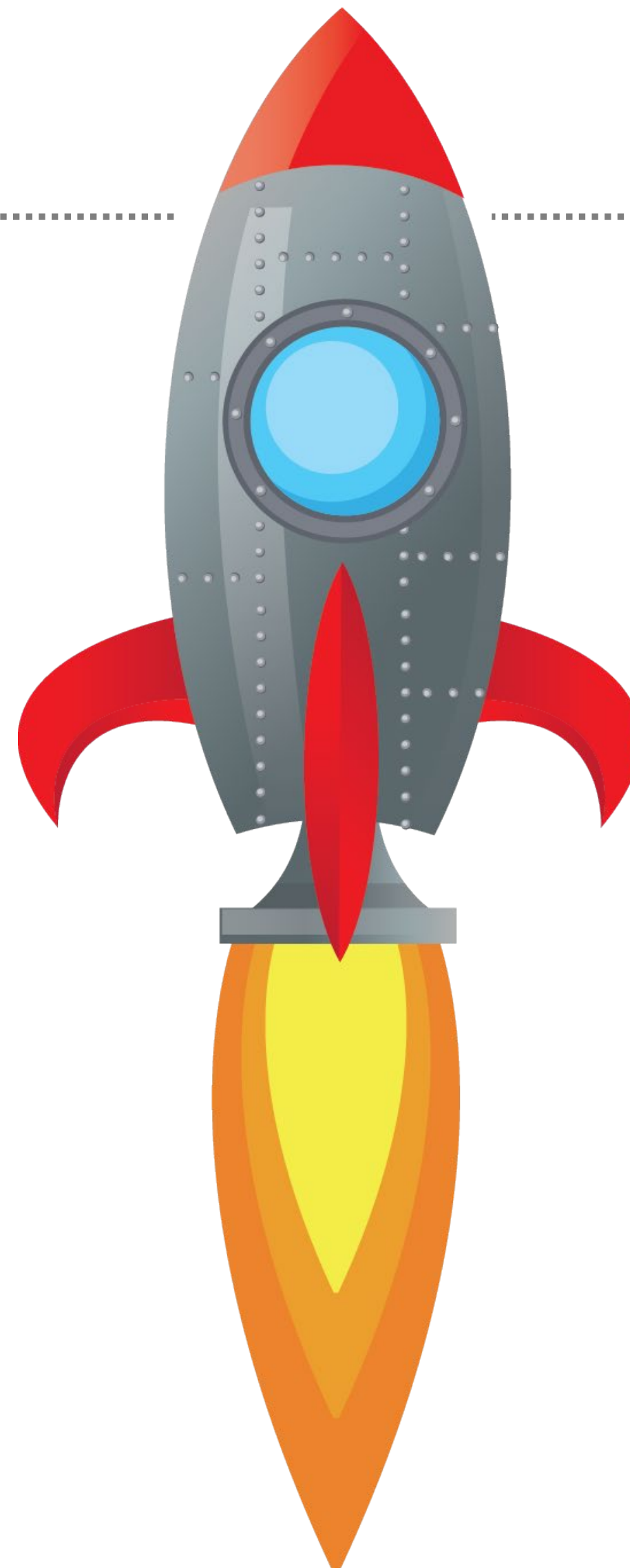
Brocklehurst v Micro Companies Limited (2025 NSSC 192)

Use of the word 'severance' in the termination clause makes it unenforceable.

Big Win for Employers

Li v. Wayfair Canada ULC., 2026 ONCA 568

Ontario Court of Appeal has clarified that commonly used termination clause language – including “at any time” and “for any reason” – does not automatically render a termination provision unenforceable for inconsistency with the ESA.



Important Case Law Updates Employment Law

Saving, Severability Clause

Wilds v. 1959612 Ontario Inc., 2024 ONSC 3452

Neither savings clauses or severability clauses can fix an otherwise illegal termination provision. A termination clause will only be enforceable **if on its face**, there is no violation of the ESA.

Non-Ambiguous

Bryant v Parkland School Division, 2022 ABCA

"This contract may be terminated by the Employee by giving to the Board thirty (30) days **or more** prior written notice ...

Plotnikoff v Associated Engineering, 2023,
Employment Standards legislation or such additional notice as the Company, in **its sole discretion**.

Term Contracts

Kopyl v. Losani Homes (1998) Ltd., 2024 ONCA

The Court of Appeal clarified that invalid termination clauses in a fixed-term employment contract do not invalidate the fixed-term nature of the agreement.



Offer Letters

TAdams v. Thinkific Labs Inc., 2024 BCSC 1129)

Holland v Hostopia.com

Where an offer letter sets out the substantial terms of employment and is accepted, the offer letter will be a binding employment agreement. This means that any subsequent employment agreement will require fresh consideration to be enforceable.

Consideration

Giacomodonato v. PearTree Securities Inc., 2024 ONCA 437

Court of Appeal reaffirmed the long-standing rule that fresh consideration is required for new employment contracts, but courts will not opine on the sufficiency of such consideration.

Workplace Investigation Essentials



Choice of Investigator is Crucial



The investigator can be internal or external. The investigator **MUST** possess **3 essentials:**

- ~ Strong knowledge of the OH&SA/C;
- ~ Solid knowledge of how to conduct an investigation;
- ~ Must be unbiased, both real and perceived.

Wilsher v. Olympic Wholesale, 2026 ONSC

Used their own law firm to facilitate the investigation who subjected the employee to a prosecution style investigation, with due process which was clearly targeted to avoid paying termination pay.

19 Months Notice PLUS 14 Months for Bad Faith Damages!



Rutledge v Markhaven Inc, 2022 ONSC

Hired a third-party investigator who has ties to the company's legal firm. Further, their own legal firm started the investigation process and handed to the retained third-party.
\$50,000!

Elgert v Home Hardware Stores Ltd., ABCA

The investigator had no experience with or facilitating sexual harassment claims. Further, the investigator had ties to the defendants' father; the potential conflict was left undeclared.
\$200,000!

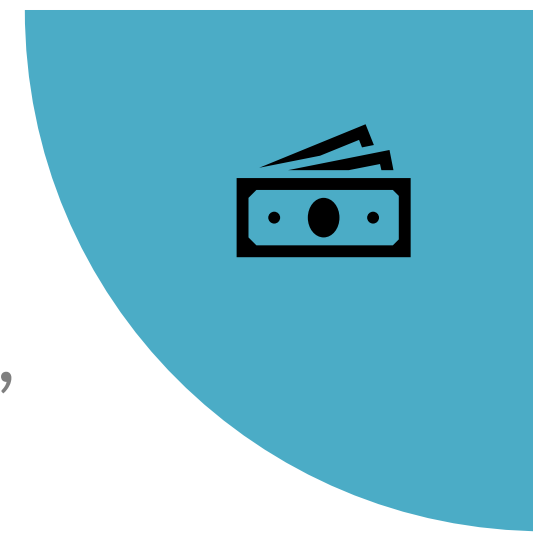
Investigation Don'ts



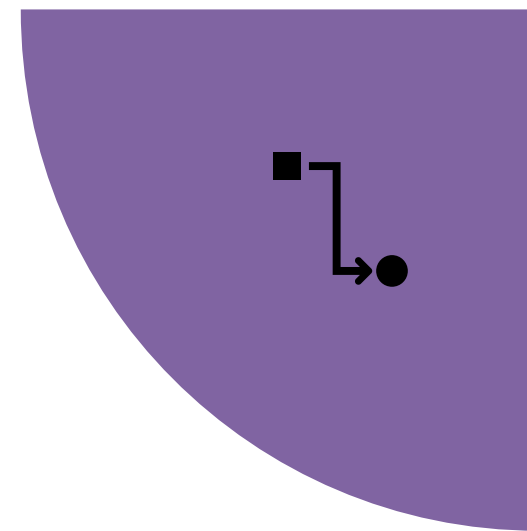
Never promise the complainant or witness anonymity throughout the entire process.



If you must suspend an employee, likely the accuser, never do so without pay.



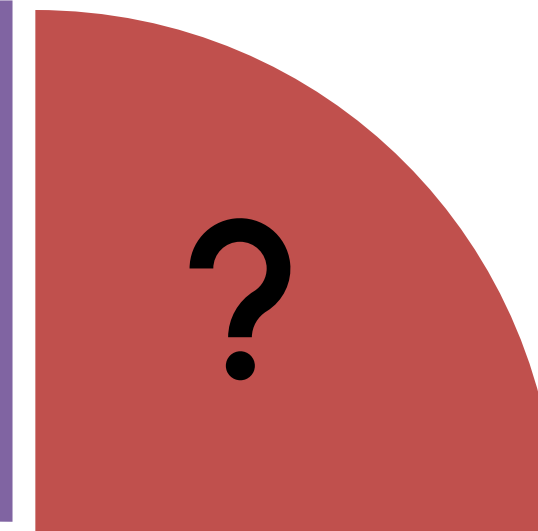
Never deviate from the process outlined in the policy or the investigation plan developed at the onset of the investigation.



An investigation is an unbiased fact-finding mission. Always 'interview' the parties to the investigation, never 'interrogate.'



When making the final decision never do so based on your feelings or what is best for the company, for financial, sake of ease or reputational reasons.

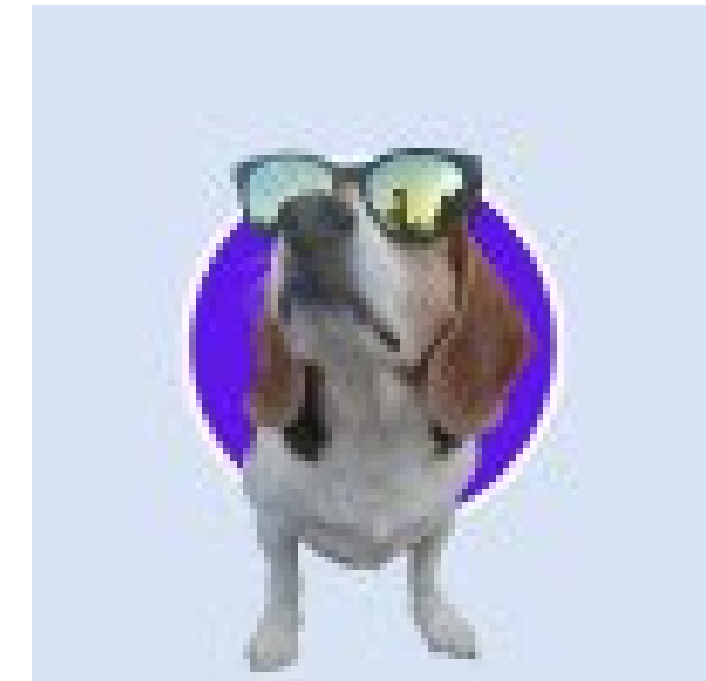


Never breach confidentiality when advising the parties of outcomes.





THANK YOU



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