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Risk Management Counsel of Canada



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Risk Management Counsel of Canada presents:

### **Employer's Dream: Insurer's Nightmare! Employer's Liability: The Need for a Canadian Model**

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## **Areas of Potential Liability for Employers**

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## 4 bases for liability:

- ▶ Statutory Liability
- ▶ Contractual Liability
- ▶ Tort
- ▶ Vicarious Liability

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## 1. Statutory Liability

### a) Canada Pension Plan Act

- ▶ remit premiums
- ▶ financial penalties
- ▶ fines/imprisonment
- ▶ officers' and directors' liability

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## Statutory Liability Continued

### b) Employment Insurance Act

- ▶ remit premiums
- ▶ financial penalties
- ▶ fines/imprisonment
- ▶ officers' and directors' liability

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## Statutory Liability Continued

### c) Occupational Health & Safety

- ▶ requirements to ensure employer provide healthy and safe working environment
- ▶ criminal sanctions (fines) for violation

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## Statutory Liability Continued

### d) Pay Equity

- ▶ requires compliance with pay equity standards
- ▶ pay equity plans may be imposed
- ▶ fines for some violations

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## Statutory Liability Continued

### e) Employment Equity

- ▶ imposes standards designed to promote employment equity
- ▶ employment equity plans may be imposed

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## Statutory Liability Continued

### f) Workers' Compensation

- ▶ insurance scheme for employees injured in the course of employment
- ▶ employers liable for premiums

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## Statutory Liability Continued

### g) Pension Benefits

- ▶ imposes requirements with respect to funding and administration of pension plans

### h) Whistleblower Legislation

- ▶ protection for employees who report environmental damages

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## Statutory Liability Continued

### i) Criminal Code

- ▶ imposes legal duty on employers to take reasonable steps to prevent bodily harm to employees
- ▶ fines

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## Statutory Liability Continued

### j) Employment Standards

- ▶ imposes minimum standards of employment
- ▶ enforcement may include payment of amounts owed to employee, damages, fines
- ▶ some officers' and/or directors' liability

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## Statutory Liability Continued

### k) Human Rights

- ▶ prohibits discrimination on enumerated grounds
- ▶ damages

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## 2. Contractual Liability

- a) on termination of employment
  - i) contractual notice period
  - ii) implied term of reasonable notice
- b) benefit/pension coverage
- c) collective agreements
- d) vested rights
- e) fiduciary obligations

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## 3. Tort

### a) Types:

- i) misrepresentation
- ii) assault /battery
- iii) intentional infliction of emotional suffering
- vii) intimidation
- viii) conspiracy

## Tort Continued

- ix) defamation
- x) inducing breach of contract
- xi) breach of confidentiality
- xii) harassment



## Tort Continued

### b) Additional Damages:

- i) aggravated damages
- ii) punitive damages

## 4. Vicarious Liability

An employer is liable for the negligence or wrongful acts of its employees if the acts are committed in the course of employment.

It is a doctrine of strict liability.



## **Areas of Potential Liability for Employers**

**Risk Management Counsel of Canada is a national association of independent law firms with expertise in meeting the needs of the risk management industry by providing a range of cost-effective and quality services for the insurance industry, risk retention groups and self-insureds.**

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