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CSSEA NEWS
COMMUNITY SOCIAL SERVICES EMPLOYERS' ASSOCIATION

How long are employer records to be retained?

Bela Barros
Consultant, HRLR Services

By law, employers must keep certain records for a set period of time. While there is no law with the sole purpose of imposing a retention requirement for employee records, various pieces of federal and provincial legislation require record retention.

Applications and Resumes

Section 35(1) of the *Personal Information Protection Act* (PIPA) states: "The organization must retain [an application or resume] for at least one year after using it." The Office of the Information and Privacy Commissioner published a guide to employers called "PIPA and the Hiring Process," which establishes that unsolicited and solicited applications should be treated differently:

Unsolicited applications: Unless employers keep unsolicited resumes based on the idea that they might use them in the near future, they should not collect personal information they have not asked for. If there is no job open, then employers are not making a decision using the personal information in unsolicited resumes and the one-year retention requirement in section 35(1) does not apply. Employers should take reasonable care when disposing of unsolicited resumes by shredding paper copies and deleting electronic copies.

Solicited applications: If employers use information in a resume or hold onto it for possible future use, they are responsible for protecting the personal information in it and for responding to the individual's enquiries about how his or her personal information has been used or disclosed. If employers use a resume to make a decision to hire or not to hire the individual, they have to keep the resume for at least a year so the individual can obtain access to it.

Both the *Human Rights Code of British Columbia* (HRC) and the *Employment Standards Act of British Columbia* (ESA) allow an applicant to file a complaint within six months of the submission of an application or resume. Therefore, any records related to a potential complaint (in this case, both solicited and unsolicited applications and resumes) should be kept for at least six months.

Ultimately, different legislation has different requirements. While PIPA requires employers to dispose of personal information immediately if they are not using the information to make a decision, it would be imprudent, per the HRC and the ESA, to dispose of the information.

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Cssea

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From the CEO

Bargaining continues to move along at a slower pace than anticipated but in line with the other public sector tables. Recently, I had the opportunity to assume the role of chief spokesperson while Peter Cameron was on a short leave for family reasons. It provided me with an insight into the dynamics at the table and I am pleased to say the tone is much more civilized than in previous rounds although the Union's opening monetary proposal (18% plus over 2 years) which they presented on May 17 could be called anything but reasonable. We remain cautiously optimistic.

Bargaining in the social services sector has implications and is influenced by the broader public service sector. It is my opinion that if significant progress is not made at our table before July it is likely we can experience some type of job action but likely not before this fall. To that end we suggest you regularly check the CSSEA website for the up-to-date bargaining information.

In addition to bargaining, board and panel members and senior staff have been focusing on the strategic plan that was recently approved by the board. I would like to share with you CSSEA's new updated vision statement which was developed during this process: "*Leader in human resources and labour relations and trusted advisor to our membership and government for the community social services sector.*"

Staff is preparing for an operational planning meeting scheduled for June 25. There will be more information on both the strategic and operational plans in the next newsletter as well as exciting news on CSSEA's redesigned website. [Update: bargaining was suspended on June 7, 2012] §

Proposed Amendment to Workers Compensation Act Narrows Definition of "Mental Disorder"

Jennifer Nuttall
Advocate, Legal Services

The Minister of Labour recently introduced amendments to the *British Columbia Workers Compensation Amendment Act, 2011* (the "Act"), proposing further changes to section 5.1, which addresses compensation for mental disorders that do not result from an otherwise compensable injury.

The new amendments clarify that a worker is entitled to compensation for a "mental disorder" if it is diagnosed by a psychiatrist or psychologist and is either a reaction to one or more traumatic events arising out of and in the course of employment, or predominantly caused by a significant work-related stressor, including bullying and harassment, or a cumulative series of such stressors, arising out of and in the course of employment.

It is important to note that workplace stressor(s) as defined by the Act do not include legitimate organizational decisions relating to the worker's employment, such as a decision to change working conditions, discipline, or terminate employment. This portion of the Act remains unchanged from the previous version.

The impact of these recent proposed changes appears to be a narrowing of the types of claims that will be accepted by WorkSafeBC relating to mental conditions. Specifically, the mental disorder must be "predominantly caused" by a significant workplace stressor(s). Further, diagnosis of the recognized mental disorder must be made by a qualified psychiatrist or psychologist, as opposed to a general practitioner.

If enacted, these suggested changes will apply to all decisions of WorkSafeBC or the Workers Compensation Appeal Tribunal made on or after July 1, 2012.

The *Workers Compensation Amendment Act, 2011* can be accessed at http://www.leg.bc.ca/39th4th/orders/o120502p.html §

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Practically speaking, it is vigilant for employers to retain both solicited and unsolicited applications and resumes for one year. Additionally, it is advisable for an organization to include in its policies and practices a statement addressing how it handles unsolicited resumes; for example, resumes will be retained for a period of one year, after which time the resumes will be destroyed in a secure manner.

Employment Records

On the provincial level, the ESA requires employers to keep certain employment records. These records must be kept in English at the employer's principal place of business in British Columbia for two years after the employee's employment ends.

The ESA defines payroll records as the following:

- The employee's name, date of birth, occupation, telephone number, and residential address
- The date the employment began
- The employee's wage rate, whether paid hourly, by salary, commission, flat rate, piece rate, or on some other basis
- The hours worked on each day, regardless of how the employee was paid
- The benefits paid to the employee
- The employee's gross and net wages for each pay period
- The amount of and reason for each deduction made from the employee's wages
- The dates of the statutory holidays taken by the employee and the amounts paid
- The dates of the annual vacation taken, the amounts paid, and the days and amounts owing
- The dates taken and amounts paid from the employee's time bank, and the balance remaining

Federal legislation also mandates the collection and retention of specific employee information. In accordance with the the Canada Revenue Agency's (CRA) Keeping Records Guide, employers are required by law to keep complete and organized records as stated in the:

- *Income Tax Act*
- *Excise Tax Act*
- *Excise Act, 2001*
- *Canada Pension Plan*, and
- *Employment Insurance Act*.

Payroll Records

Employers must keep certain payroll records so that the CRA can verify or review them, on request.

If employers deduct Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums, or income tax from remuneration or other amounts they pay, they must keep records of:

- the hours worked by each employee, and
- the CPP contributions, EI premiums, or taxes they withheld.

Employers also have to keep the following documents:

- Form TD1, Personal Tax Credits Return, which all employees have to complete
- CRA letters of authority that allow employers to reduce the tax deductions for certain employees for a specific year
- All information slips issued and all returns filed
- Registered pension information

Employers that use payroll providers to handle payroll functions are still responsible for keeping records for the time period specified, generally seven years. Payroll records can be kept in either paper or electronic format.

Once again, different legislation has different requirements. While the ESA requires employers to keep payroll records for two years after termination, the CRA, under a number of federal legislations, requires employers to retain such records for seven years. If there is any doubt, it is better to be prudent and retain the records for the longest of the retention requirements. §

Welcome New Member

Northwest Inter-Nation Family and Community Services Society, Terrace, Aboriginal Services

In Profile: Island Métis Family & Community Services Society

A Conversation with Executive Director Robert Donahue

Tell us about your agency's mandate and the services you provide to the community.

Island Métis Family & Community Services Society is engaged in child welfare work in the Métis community, including child and family support services, specialized support for families dealing with Fetal Alcohol Spectrum Disorder, collaborative planning and traditional dispute resolution, family visitation, and cultural support, including community outreach. Our official mandate is "to research, develop, deliver, and evaluate human service programs for the approximately 8,000 Métis people who live on Vancouver Island." We are the only agency serving this community, and we do so by working closely with the Ministry of Children and Family Development. We have nine full-time and two part-time employees, several contract workers, and a number of volunteers providing these services.

Tell us a little bit about your community outreach programs.

We offer presentations to expose the broader community to the Métis culture, including puppet shows, videos, and traditional songs and dances. We also have four to five major community gatherings every year, including an annual homecoming for children who have been in foster care and are returning to their birth families. This year, on June 15, we'll be celebrating the return of 12 children.

You are in the process of becoming a delegated agency. What does that mean, and how will it change the services you provide?

Delegation is a process through which Aboriginal people reclaim the right to care for children who have been in permanent government care. Since 1996, we have been working to provide services to the Métis community primarily through the Ministry and in collaboration with Ministry social workers, as the Ministry has been the legal guardian. The delegation process is similar to the accreditation process in the non-Aboriginal world. A delegated agency must demonstrate a community mandate and the capacity to fulfill the role of legal guardian, and must meet certain goals. We are going through the delegation process now, and expect it to be complete within a year. It will dramatically change what we do, as we will become the delegated guardians for the children we work with, allowing us to be more involved in decisions about apprehension and support services, with the ultimate goal of keeping families united. Where that is not possible, we will be able to ensure all Métis families and children in care are provided with culturally appropriate support and services, and specifically we will be able to keep children within the Métis community. The research shows this has many benefits – identity is central to our way of being, and children who don't have a Métis experience can find themselves feeling identity-confused, which does not lead to good results.

What is the Circle of Courage, and how does it apply to the work done by agency staff?

The Circle of Courage is based on the traditional values of belonging, mastery, independence, and generosity. These are the principles by which we try to define our services. We test and evaluate everything we do against these values: How are we helping each child achieve in these areas? It keeps us focused on the core purpose of the work we do. §

Mark Your Calendar

2012 AGM / Fall Conference

October 23 - 25

Four Seasons Hotel, Vancouver

New format, new workshops, new ideas

Watch for the brochure coming in early July.

Ask an HRLR Consultant: Tamina Mawji

Q: A regular unionized employee fell sick on a designated holiday she was scheduled to work. Is she entitled to both a lieu day off with pay for the holiday and sick leave pay?

A: Yes. Arbitrators have held that in collective agreements like ours with no language that specifically excludes the application of both provisions, an employee has a valid claim to receive both sick leave pay (Article 19) and a lieu day off with pay for the designated holiday (Article 17).

Arbitrators view sick leave pay and holiday pay as two separate benefits with two separate legal entitlements.

Compensating an employee with sick pay for a designated holiday she was scheduled to work would not in and of itself disentitle the employee from claiming holiday pay for that day as well.

Where holiday pay is seen as forming part of the total compensation package, it is usually held that an employee is entitled to both sick leave pay and holiday pay unless there is specific language precluding the application of both entitlements.

Note: A regular part-time employee would receive a day off in lieu per Article 17.11.

Send your questions to cssea@cssea.bc.ca.

Sectorial Case Updates

Rate of pay at time of hire – Issue: Interpretation of application of prior experience to wage rate at the time of hire. Status: Case management meeting being scheduled at request of Arbitrator Brian Foley.

Hours worked outside regular classification – Issue: The Union claims that all hours worked by an employee must be used to progress along the steps of the wage grid, regardless of the classification in which they are performing work. CSSEA's position continues to be that only hours worked in exactly the same classification/position can be applied to the steps of the wage grid. Status: Arbitrator Wayne Moore has been appointed. CSSEA will file a written response to the Union's position.

Expedited arbitration process – Issue: Setting dates for regional expedited hearings in 2012. Status: Hearings took place in Vancouver on May 15, 28, and 29, 2012. The next hearing dates are scheduled for July 24 and 25 in Prince George, September 18 in the Kootenays, September 27 and 29 in Prince George, and October 3 and 4 in Kelowna/Kamloops. The Union must provide CSSEA with a list of grievances at least one month prior to the scheduled dates.

Variance of certification and declaration re: bargaining agency – Issue: The HEU has attempted to file an application with the Labour Relations Board (LRB) to cancel the BCGEU's certification. Status: Written submissions have been filed on the preliminary question: "Does Appendix D 2(f) mean that where employees are not integrated into an existing certification, the employees continue to be represented by the Union certified to the former employer?" The parties are awaiting a decision from the LRB.

Application to change CSSBA articles of association – Issue: CSSEA has reinvigorated its application before the LRB in order to ensure bargaining can proceed in a manner consistent with the Labour Relations Code. Status: A case

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management meeting was held on April 26, 2012, before Vice-Chair Mike Fleming; as a result, the LRB will seek a formal response from the CSSBA.

Article 29 (Harassment) – Issue: Harassment complaints have been advanced by the Union without notice to CSSEA, and CSSEA's involvement as the bargaining agent. Status: While the language has been clarified at the bargaining table for the future, there remain outstanding investigations that are contentious, involve senior management, and are extremely costly. CSSEA is reviewing the investigation documentation and will seek to impose natural justice and procedural fairness into the procedure, where absent, in addition to assisting agencies to contain investigation costs.

"Bill 29" severance pay grievances – Issue: Whether the severance provisions contained in the *Health and Social Services Delivery Improvement Act* (formerly called Bill 29) continue to apply to those employees who meet the criteria established by the Act despite the existence of subsequent collective bargaining and sectoral collective agreements. Status: A hearing was held on May 9, 2012, before Arbitrator Wayne Moore. The parties are awaiting his decision.

Summary dismissal of grievance – Issue: The Union requested the adjournment of an arbitration hearing of a terminated employee. CSS EA opposed the adjournment and filed a motion to have the grievance dismissed. Status: On May 22, 2012, Arbitrator Vince Ready issued his decision in favour of CSSEA and granted the dismissal of the grievance. A copy of the decision is posted to the website under LR Awards and Decisions. §

Hellos and Farewells

- **Jennifer Nuttall** has returned to the HRLR Services Department after parental leave for the birth of her second son, Caleb. We know Jennifer's clients and colleagues are glad to have her back.

- **Resina Becket**, who has been an integral part of the HRLR Services Department for seven years, recently left CSSEA for a position at WorkSafeBC. Her rock-solid advice and meticulous attention to detail will be missed by her clients and colleagues.

- After three years with CSSEA, **Doris Sun** has left her position as Communications Coordinator for a new role in the health sector. We thank Doris for her hard work in keeping members informed and for her creative designs for the AGM brochures.

Reminder: What to do when creating a new job…

1. Forward the new or amended job description to CSSEA

2. CSSEA will review the job description and provide you with a classification.

3. Forward the final job description and classification to the union and CSSEA within 20 calendar days of the effective date of the new or changed job description.