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DON'T WORK & DRIVE: POTENTIAL ISSUES FOR EMPLOYERS ARISING FROM THE NEW CELL PHONE BAN

By: Andy Pushalik, associate with Fraser Milner Casgrain LLP. This article originally appeared in the Fraser Milner Casgrain LLP Focus On Employment & Labour newsletter, October 2009. © Fraser Milner Casgrain LLP. Reproduced with permission.

Ontario employers may soon have to “pay up” if their employees don’t “hang up” when driving. Bill 118, Ontario’s new law banning the use of cell phones and other mobile devices while operating motor vehicles, came into force on October 26, 2009.

How Has the Law Changed?

Effective October 26, 2009, drivers are prohibited from holding or using a hand-held wireless communication device that is capable of receiving or transmitting telephone communications, electronic data, mail or text messages, or any other hand-held device that is unrelated to the safe operation of the motor vehicle. The law also bans individuals from driving if the display screen of a television, computer or other device in the motor vehicle is visible to the driver, although this latter prohibition does not apply to global positioning system navigation devices, commercially-used logistical transportation tracking systems, collision avoidance systems, or display screens providing information regarding the status of systems in the vehicle.

The law contains a number of practical exemptions. First, a driver may use a communications device that is “hands-free” (for example, a Bluetooth device or other headset). Second, a driver may use a hand-held wireless communication device to contact police, fire or ambulance emergency services, or where the driver’s vehicle is lawfully parked or it is off to the side of the road without impeding traffic.

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Any driver who violates the prohibitions noted above could receive a fine of up to \$500.00. If a driver is also charged with careless driving, the penalties upon conviction potentially include a fine of up to \$1,000.00, six demerit points, and/or jail time of up to six months.

Can Employers Be Held Liable?

Because these offences are directed at the driver of a motor vehicle, any penalties under the *Highway Traffic Act* will be imposed on the employee upon conviction, even if he or she was making business-related calls or driving a company vehicle. However, if an employee is in a motor vehicle accident while using a cell phone or BlackBerry for work purposes, an employer may be held vicariously liable for damages that result. If the employer provided the mobile device to the employee, the employer may even be held directly liable.

While there are no Canadian cases to date that have considered this issue, there are a number of examples in the United States:

- In Georgia, a paper company reached a settlement of \$5.2 million with a woman who had her arm amputated after being rear-ended by one of its employees who was talking on her company cell phone;
- In Florida, a jury returned a verdict of \$21 million against a lumber company after an employee was on his cell phone for business purposes and struck and severely injured an elderly woman; and
- In Pennsylvania, an investment banking firm paid \$500,000 to settle an action brought by the family of a

motorcyclist killed in an accident involving one of the firm's brokers who had been talking on his cell phone at the time.

What Should Employers Do to Prepare for These Changes?

Before these changes come into force, employers should take steps to educate their employees about the dangers of driving while distracted and to ensure compliance with Bill 118. Some immediate actions could include:

- Reviewing and updating your existing company vehicle or safe driving policies to reflect these changes to the law;
- Implementing specific guidelines to ensure compliance with the law (for example, requiring employees who make business calls from their vehicle to use a hands-free device at all times, or to pull over while making telephone calls or sending texts or e-mails);
- Issuing hands-free equipment to employees who regularly make business telephone calls from their car;
- Deciding whether it is advisable to prohibit employees from making telephone calls or sending texts or emails while operating company-owned vehicles;
- Educating employees on the new *Highway Traffic Act* changes, and reinforcing the importance of safe driving when operating a company vehicle or conducting company business;
- Reminding managers and supervisors of the policy, and ensuring that they are not causing violations of the policy when telephoning, texting, or e-mailing employees who are on the road.

As always, an employer should ask employees to acknowledge any new or amended policy in writing, and the policy must be consistently enforced by the employer. Through these steps, employers and employees will be able to create and maintain a culture of safety, inside and outside of the workplace. Further, in the event that an employee has an accident while driving a company vehicle or conducting business from their car, an employer may reduce its liability if it can demonstrate a proactive effort to promote safe driving and compliance with the law by its employees.

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IT'S YOUR BUSINESS

Budget Consultations Under Way

The federal government has begun cross-country consultations to give Canadians what Finance Minister Flaherty calls an "opportunity to voice their views on how to best lead Canada to full economic recovery". Initial sessions have been held in Quebec City and the government continues to announce other venues (www.finance.gc.ca). "While we have seen some signs of recovery, work remains to overcome the effects of the global economic crisis," Mr. Flaherty said. Online submissions also are being accepted at www.fin.gc.ca/prebudget-prebudgetaire/1-eng.asp.

Pipeline Project Gets Green Light

A \$16.2 billion Mackenzie Valley natural gas pipeline has received conditional approval from a review panel set up in 2004 by the federal environment minister Stéphane Dion. While subject to approval by the National Energy Board, which is expected to publish its decision next September, the project would involve 1,220 kilometres of pipe extending from the Mackenzie River Delta to Alberta's northern border and, in the words of the panel, would ensure a "durable and sustainable" economic future for the region. The project is backed by a consortium led by Imperial Oil and includes ExxonMobil, ConocoPhillips, Royal Dutch Shell, and the Aboriginal Pipeline Group.

"The panel is confident that the project as filed, if built and operated with full implementation of the panel's recommendations, would deliver valuable and lasting overall benefits and avoid significant adverse environmental impacts," the review panel says in its 679-page report (www.jointreviewpanel.ca). "The proponents' mitigations and enhancements, the measures governments would put in place, and the panel's recommendations would, in combination, mitigate adverse impacts, reduce the risk, and enhance the opportunities."

The panel's report had been expected approximately 10 months after began hearings, but it experienced numerous delays as public hearings disclosed deep divisions between supporters and critics. Supporters highlighted the economic benefits to be had while critics expressed concerns about the environmental impact of gas leaks and the project's effect on wildlife. "We can protect this land until hell freezes over, but if we do not have an economic base our people will perish," said Fred Carmichael, who was president of the Gwich'in Tribal Council at the start of the hearings and is now chairman of the

Aboriginal Pipeline Group, which holds a one-third stake in the project on behalf of the Inuvialuit people as well as the Gwich'in and Sahtu nations.

Pension Talks to Continue

Finance Minister Flaherty and his provincial and territorial counterparts have agreed to examine how Canadians' retirement savings can be enhanced before their governments press on with pension reform. Alberta and British Columbia had been considering their own supplements to the Canada Pension Plan, but evidently opted for what Mr. Flaherty called a "pan-Canadian" approach to be fleshed out for the next ministerial summit in May.

Securities Regulation

The Alberta and Quebec governments have effectively joined forces in a legal challenge against plans for a national securities regulator. The initiative was taken by Quebec, which wants the Quebec Court of Appeal to rule that the federal government is intruding on provincial jurisdiction. Alberta is seeking intervenor status in the case and is filing a similar challenge with the Alberta Court of Appeal.

EI Premiums: 2010

Employment Insurance (EI) premiums for 2010 are frozen in keeping with the provisions of the 2009 federal budget, which set up the Canada Employment Insurance Financing Board. The premium rate per \$100 of insurable earnings is \$1.73 and the maximum insurable earnings are increased to \$43,200 from last year's \$42,300. Accordingly, the maximum annual contributions are increased to \$747.36 from \$731.79 for employees and, since their rate is 1.4 times the employee rate, to \$1,046.30 from \$1,024.51 for employers. In Quebec, maximum insurable earnings are the same as in the rest of Canada, but the province's decision in 2006 to offer its own parental benefits has meant a reduction to \$1.36 from \$1.38 in the rate per \$100 of insurable earnings. Accordingly, the maximum annual contributions rise to \$587.52 from \$583.74 for employees and to \$822.53 from \$817.24 for employers. Maximum weekly benefits in all provinces and territories rise to \$457 from \$447.

Pension Benefits: 2010

Canadians already receiving Canada Pension Plan benefits as of December 2009 will see a 0.4% rise in their monthly benefits in 2010, an increase the government (www.hrsdc.ca) says is based on changes in the Consumer

Price Index from November 2008 to October 2009. The maximum CPP for new beneficiaries, calculated on average annual maximum pensionable earnings for the previous five years, rises 2.7% to \$934.17 from \$908.75. Not indexed but adjusted quarterly on the basis of annual cost-of-living changes, the basic Old Age Security benefit (\$516.96), basic Guaranteed Income Supplement (GIS) (\$652.51), pensioner GIS (\$430.90), regular allowance (\$947.86), and survivor allowance (\$1,050.68) are unchanged for the time being.

FUNDING OPPORTUNITIES FOR YOUR BUSINESS

The federal, provincial, and territorial governments offer numerous funding programs for Canadian businesses. Full details on these programs, as well as other government funding opportunities across Canada, are available in CCH's CANADIAN GOVERNMENT ASSISTANCE MANUAL.

Federal

Late-Stage Venture Capital Fund

Minister of Industry, Tony Clement, announced a \$300 million late-stage venture capital fund for Canadian investors. Approximately 20–40 Canadian firms will receive funding from this first stage of investment, including the Business Development Bank of Canada (BDC), which recently received \$75 million. Also known as the Tandem Expansion Fund, this investment instrument will support the growth and development of tech companies.

To be eligible to apply under the Tandem Expansion Fund, companies must meet the following criteria:

- Be primarily technology-based in the following sectors: information technology (hardware, software, or services), clean technology, energy and resource technology, advanced materials, technological innovations in traditional industries, and life sciences;
- Offer products or services which are already in production and being used by customers;
- Have raised their last or second to last round of financing prior to a liquidity event; and

- Have principal operations or a head office in Canada at the time the initial portfolio investment is made.

For more information on this investment opportunity visit www.tandemexpansion.com.

Nova Scotia

Funding for Seafood Processors

Nova Scotia's seafood industry now has a competitive edge, thanks to funding provided through the Community Development Trust Fund. An investment of \$310,983 for seafood processors will help to diversify markets, improve productivity, and assess lobster fishing areas. Funding will help to ensure that the seafood industry has a strong future, particularly for sectors and workers hit hard by economic challenges.

The Seafood Sector Renewal Program is open to seafood processors, harvesters, industry groups and organizations, seafood corporations, and cooperatives. Eligible projects will enhance economic growth and increase the competitiveness of the seafood sector

For more information on this initiative visit www.gov.ns.ca/fish/marine/ssrp.

Ontario

Support for Small to Medium-Sized Businesses

Businesses that have been affected by the global recession can apply for funding under Intake Two of the Community Adjustment Fund. The Federal Economic Development Agency for Southern Ontario launched the second phase of the program that will help people, organizations, and businesses prosper. Small and medium-sized businesses, municipalities, not-for-profit organizations, Aboriginal organizations, colleges, and universities are eligible to submit projects.

The Community Adjustment Fund will support projects in and around resource-based and manufacturing communities that depend on a single industry, as well as projects that create immediate job opportunities for communities. Overall funding for the second intake process is \$127.8 million in 2010-11. Applications for funding in 2010-11 will be accepted until January 18, 2010.

For more information on program eligibility and to download an application visit www.southernontario.gc.ca.

Prince Edward Island

Increased Funding for Food Safety Programs

Assistance is available to producers, boards, organizations, and agri-businesses that are implementing food safety and traceability programs in the province. Producers are now eligible to receive up to \$2,500 or 75 per cent of the costs for the purchase of equipment and audits. The previous level of assistance was up to \$1,000 or cost-shared on a 50/50 basis.

This program is divided into five subprograms:

- On-Farm Food Safety Sub-Program;
- Post-Farm Food Safety Sub-Program;
- Implementation Assistance Sub-Program;
- Traceability Projects Sub-Program; and
- Animal and Plant Biosecurity Sub-Program.

Training programs are also being offered to producers to help them meet national standards. Potato producers can participate in a training program offered by the Prince Edward Island Horticultural Association, in co-operation with the Potato Board. A similar training program for beef producers is being carried out through the Prince Edward Island Cattle Producers.

For more information on this initiative visit www.gov.pe.ca/growingforward.

Saskatchewan

New Incentives Create Corporate Jobs

Tax incentives have been created to encourage job growth in Saskatchewan's potash industry. Effective January 1, 2010, a deduction in determining the profit tax portion of the Potash Production Tax will apply to each new corporate office job located in the province. A smaller tax deduction will apply to jobs already located in the province.

For more information, contact Bob Ellis, Tel: 306-787-1691, E-mail: robert.ellis@gov.sk.ca.

PROGRESS OF LEGISLATION

Canada

El Scheme for Self-Employed Workers Receives Royal Assent

Bill C-56, *An Act to amend the Employment Insurance Act and to make consequential amendments to other Acts*, known as the *Fairness for the Self-Employed Act*, which creates an Employment Insurance scheme for self-employed workers, has received Royal Assent and most provisions came into force on January 1, 2010.

As discussed in MANAGEMENT MATTERS December 2009, No. 178, the Bill extends EI special benefits, including maternity, parental, sickness, and compassionate care benefits, to the self-employed. Self-employed Canadians will be able to voluntarily opt into the EI program and receive special benefits. Overall, the special benefits for self-employed individuals will mirror those currently available to salaried employees under the EI program.

Under the Bill, self-employed Canadians will be required to opt into the program at least one year prior to claiming benefits. They will also be responsible for making premium payments starting with the tax year in which they apply to the program. With a program start date of January 2010, claims could be made as early as January 1, 2011. To access EI special benefits, self-employed individuals will need to have earned a minimum of \$6,000 in self-employed earnings over the preceding calendar year.

The self-employed could opt out of the EI program at the end of any tax year, as long as they have never claimed benefits. If they have claimed benefits, they will have to contribute on self-employed earnings for as long as they are self-employed.

Self-employed Canadians who opt into the program will pay the same EI premium rate as salaried employees. They will not be required to pay the employer portion of premiums.

Self-employed residents of Quebec will continue to receive maternity and parental benefits through the Quebec Parental Insurance Program provided by the Government of Quebec. In addition, they will become eligible to take advantage of the sickness and compassionate care benefits being offered by the Government of Canada through EI. Should they choose to take advantage of the program, they will pay EI premiums at the same rates as employees in Quebec, where rates have already been

adjusted downward to take into account the existence of a provincial maternity and parental benefit plan.

Bill C-56 received first reading in the House of Commons on November 3, 2009, second reading on November 5, and third reading on December 10. It received first reading in the Senate on December 10, and second reading, third reading, and Royal Assent on December 15.

Manitoba

New Apprenticeship Legislation Awaiting Proclamation

Bill 26, *The Apprenticeship and Certification Act*, has received Royal Assent. The Bill will replace the *Apprenticeship and Trades Qualifications Act*.

The Apprenticeship and Trades Qualifications Board will continue as the Apprenticeship and Certification Board (the "Board"), and its composition will be unchanged except for the addition of an apprentice as a non-voting member. The Board's mandate is to guide and co-ordinate the apprenticeship training and certification system, and it is required as part of this mandate to prepare an annual strategic plan. The Act also establishes standing committees to give advice to the Board in specified areas.

The Board will continue to be responsible for designating trades and setting training and certification standards for trades, but will be given the added ability to designate occupations and set certification standards for those occupations. An occupation is a trade that is not a designated trade, and no training in an occupation is provided for under the Act. A person will be able to obtain an occupational certificate by passing the examination set by the Board.

Trade advisory committees will be continued as provincial advisory committees, and will be established for occupations as well as trades.

The Bill will also transfer responsibility for designating trades as compulsory certification trades to the Lieutenant Governor in Council. To work in a compulsory certification trade, a person must be certified, be an apprentice, or be allowed to work in the trade in another manner provided for in the Act.

Finally, with the agreement of the relevant ministers, it will be possible for enforcement of compulsory certification trade regulations to be done by employees of other government departments. The inspection and enforcement powers will be modernized, and provisions

respecting compliance orders and administrative penalties will be added.

Bill 26 received first reading on April 27, 2009, second reading on September 14, third reading on October 6, and Royal Assent on October 8.

Newfoundland and Labrador

New Labour Mobility Legislation Introduced

Bill 55, *An Act to Implement Labour Mobility*, has been introduced to provide greater labour market mobility for regulated professions in Newfoundland and Labrador. The Bill allows full labour mobility for workers from any province or territory. Any worker certified for an occupation by a regulatory body in one province or territory will be certified for that occupation in Newfoundland and Labrador without requiring further education, training, examinations, experience, or assessment. The proposed legislation applies to 36 regulatory bodies that govern 43 occupations. The Bill is part of a nation-wide campaign to create full labour mobility across Canada.

Bill 55 received first reading on December 8, 2009, second reading on December 10, and third reading on December 14.

Ontario

Update on Proposed Legislation To Protect Foreign Live-In Caregivers

Bill 210, *An Act to Protect Foreign Nationals Employed as Live-in Caregivers and in Other Prescribed Employment and To Amend the Employment Standards Act*, has progressed to third reading. The Bill will help protect foreign nationals who are live-in caregivers.

The federal Live-in Caregivers Program (LCP) allows individuals residing in Canada to hire qualified temporary foreign workers in their private residences to provide care for children, the elderly, and persons with disabilities.

The proposed legislation contains protections that reflect feedback received from the Ministry of Labour through a consultation with stakeholders and the public. The Bill proposes the following protections for foreign caregivers:

- Prohibit recruiters from charging live-in caregivers, directly or indirectly, fees, including recruitment and placement fees and fees for other supplementary services.

- Prohibit employers from recovering, directly or indirectly, recruitment and placement costs from live-in caregivers.
- Prohibit reprisals against live-in caregivers for exercising their rights under the legislation.
- Prohibit an employer or recruiter from taking possession of a live-in caregiver's property, including documents such as passports or work permits.
- Authorize employment standards officers from the Ministry of Labour to act on tips and conduct proactive investigations and audits and use the *Employment Standards Act* enforcement mechanisms.
- Require recruiters and employers to distribute information sheets setting out the rights of foreign live-in caregivers under the proposed legislation. If the language of the caregiver is a language into which the information has been translated by the Director of Employment Standards, the information must be provided to the caregiver in that language.
- Allow foreign live-in caregivers three-and-a-half years to file a claim and provide for the making of orders to repay fees or costs in connection with a violation of the proposed legislation.

The Bill also provides for regulation-making authority to:

- Extend the prohibition against charging fees to cover other classes of temporary foreign workers.
- Exclude certain fees from the prohibition against charging and collecting fees.

Bill 210 received first reading on October 21, 2009, second reading on November 30, and third reading on December 9.

New College of Trades and Apprenticeship Act Receives Royal Assent

Bill 183 (now S.O. 2009, c. 22), the *Ontario College of Trades and Apprenticeship Act, 2009*, received Royal Assent and became partially in force on October 28, 2009. The new Ontario College of Trades will promote careers in skilled trades and modernize the apprenticeship and skilled trades system. The College's membership will include journeypersons, employers, and apprentices. The College will be implemented in phases, and become fully operational by 2012.

The Act classifies trades as either compulsory trades (college membership is mandatory) or voluntary trades

(membership is optional) and establishes journeyperson to apprentice ratios in designated trades. Persons are prohibited from practicing, employing journeypersons, or sponsoring apprentices in compulsory trades unless he or she is a member of the College. As well, the Act prohibits persons from using certain titles and designations unless he or she is a member of the College, and from failing to employ sufficient journeypersons as required under the Act.

The College will have a Board of Governors, composed of 21 members representing various industries as well as the public, which will manage and administer the affairs of the College. The Board has the authority to make regulations and by-laws related to the affairs of the College.

The Act will establish several committees to deal with complaints and misconduct. The Complaints Committee will receive complaints and refer them to the appropriate committee for consideration. The Discipline Committee will review allegations of professional misconduct or incompetence. The Fitness to Practise Committee will review allegations of incapacity. The Discipline, Fitness to Practise, and Registration Appeals Committees will have the right to appeal to the Divisional Court.

Bill 183 received first reading on May 13, 2009, second reading on June 3, and third reading on October 27. The Bill received Royal Assent on October 28, 2009 and became partially in force.

New Labour Mobility Act Receives Third Reading

On December 9, 2009, Ontario's new Bill designed to strengthen the economy by opening provincial borders to qualified workers received third reading. The Act allows certified workers from any province or territory to work in Ontario without any additional training or testing. The Bill covers over 80 regulatory authorities and 300 occupations.

Bill 175, the *Ontario Labour Mobility Act*, is part of a nation-wide campaign to create full labour mobility across Canada.

Bill 175 received first reading on May 5, 2009, second reading on December 1, and third reading on December 9.

Prince Edward Island

New Employment Standards Act Receives Royal Assent

Bill 2, the *Employment Standards Act, 2009*, which will overhaul the province's current Act, received Royal Assent

on December 9, 2009. The current Act has not been substantially amended in over a decade.

Amendments proposed in Bill 2 include the following:

- an additional week of paid vacation after eight continuous years of employment;
- one day of paid bereavement leave;
- one day of paid sick leave after 10 continuous years of employment;
- court leave as an additional special leave under the Act;
- continuity of employment after a business is sold or transferred;
- directors' liability for unpaid wages;
- banking of overtime hours;
- enhanced access and benefits regarding maternity, parental, and adoptive leave;
- enhanced pay protections;
- limitation on workweek variance;
- changes to penalties for legislation contravention; and
- changes related to minimum wage rate criteria and input.

Bill 2 received first reading on November 18, 2009, second reading on November 24, third reading on December 8 and Royal Assent on December 9. Readers will be informed when the Bill receives proclamation.

NEWS FROM THE U.S.

This Newsletter regularly reports on American trends in Human Resources Management of interest to Canadians. The articles below, *Retirement isn't an Option for Many Older Workers*, and *Employers Seeing Increase in Age Discrimination Claims* appeared in *Ideas and Trends*, No. 704, November 4, 2009, published by CCH Incorporated, © CCH Incorporated, United States, a Wolters Kluwer business, and is reproduced with permission. If you wish to place an order or would like more information on U.S. products, please contact our Customer Satisfaction Hotline at (416) 224-2248 or 1-800-268-4522.

Retirement Isn't an Option for Many Older Workers

America's older workers are facing a crisis that has eliminated retirement as an option, and instead, has forced them to find work to put food on the table and keep a roof overhead. The once aspired-to hope for a relaxed retirement has been replaced by the hope that someone will hire them. After spending decades in the workforce, these workers need to get back in.

According to a study conducted by Experience Works, 46 per cent of older workers need to find jobs so they don't lose their homes or apartments, and that same number sometimes have to choose between paying rent, purchasing food, or purchasing medication. And of the more than 2,000 unemployed older workers (and more than 700 employers) participating in the study, approximately half have been looking for work for more than a year. "More and more older adults do not have the option of retiring from work because they cannot make ends meet on their personal savings or Social Security benefits," said Cynthia Metzler, president and CEO of Experience Works. "These are low-income adults, but the economy has intensified older Americans' need to work whatever their income level."

Metzler pointed to a nationwide survey released by the Pew Research Center in September, which found that nearly four in ten adults who are working past age 62 have delayed retirement because of the recession. At the same time, the number of unemployed older workers jumped to 1.97 million in August 2009, an increase of 69 per cent since the previous August.

HR's Role in Alleviating the Crisis

According to Metzler, HR is a big part of resolving the crisis facing older workers. "In the Experience Works survey, 79 per cent of respondents said that employers prefer younger workers, so there is a definite sense – whether right or wrong – that older adults are at a disadvantage when answering a help-wanted ad or walking into an interview," Metzler said. "I think that HR must meet this misconception head on."

Here is what she says HR can do:

1. **Give current employees and new hires a reason to stay.** Show experienced workers that they have a

future in the company. The people we come in contact with are interested in taking their expertise in new directions. All too often, however, there is an unconscious subtext that keeps older workers from continuing to advance or move laterally into new, interesting jobs.

2. **Change the way you recruit candidates to indicate your interest in older workers.** Include terms like “age-friendly” in ads and photos of older workers in company materials. “Diversity should include employees of different ages as well as cultures, races, gender, and the rest,” emphasized Metzler.

Retaining Older Workers Creates Competitive Advantage

“Maximizing investment in employees is important for every company, whatever its size,” said Metzler. “With 93 per cent of the growth in our nation’s labor force from 2006 to 2016 among workers age 55 and over, a new world is coming where retaining and hiring experienced older employees will be a huge competitive advantage.”

“Also, I think it’s worth noting that many people develop new interests as they move through their lives, so changing careers or even veering in a slightly different direction is something that interests many older workers,” Metzler continued. “I’m hoping that HR will become more open to considering how to transfer experienced workers’ skills in ways that will benefit your business.”

For example, Metzler pointed to school districts that are actively recruiting people in their 50’s and 60’s to become teachers after careers in other fields. And, it wasn’t long ago that Experience Works helped a 73-year-old woman upgrade her computer skills so she could again become a social worker. “So,” said Metzler, “do not assume that age is ever a factor when someone has a goal or that an older worker will not be happy at a different type of work even when less status or pay is involved.”

Experience is the Value in Retention

According to Metzler, the Bureau of Labor Statistics projects that by 2012, older workers will compose nearly 20 per cent of the workforce. Because of fewer younger workers entering employment, the bureau also projects a shortfall of 10 million workers by 2012. Nearly 9 out of 10

employers surveyed by Experience Works strongly agreed or somewhat agreed that employing and retaining older people is a key solution for these future workforce shortages.

“When we asked people what they thought the best word is to describe job seekers 55 and over, they picked ‘experienced,’ and I think that’s true,” said Metzler. “We trained almost 25,000 workers aged 55 and above last year, which included work-based training; 99 per cent of their employers told us that older employees’ experience is a value in the workplace and that there is a need to educate other employers about the benefits of hiring and retaining older workers.”

Time to Change Your Assumptions

“People meet the expectations set for them, and I urge you to change your assumptions and beliefs about what older workers can do,” encouraged Metzler. “Of the 25,000 older workers who received job training last year, many moved into completely new careers. They work for younger supervisors, learn new skills, and change and grow in all sorts of ways. It makes sense to me because they have incredible experience, work skills and interpersonal skills after being employed for years, having managed a family and a home, and having been involved in their communities in so many ways. They are really ready to handle just about anything.”

No Need for Special Accommodations

“Older workers are individuals and do not need any special accommodations as a class,” said Metzler. Therefore, HR does not need to worry about what work-life balance needs, for example, older workers have that the rest of the workforce doesn’t. “The inclusive strategies you already have in place to create a productive environment that brings out the best in people are sufficient. As individuals, older workers will undoubtedly benefit from the policies you already have in place.”

“Older workers, like everyone else, are interested in continuing to change and grow,” concluded Metzler. “I mentioned before an unconscious subtext that employers may fall into, viewing older workers as treading water, sort of on a retirement track, and not considering them for growth positions. The best way to balance the needs of older workers while supporting the rest of the workforce is

to make every decision based on the best candidate and turn a blind eye toward age, race, gender, ethnicity, sexual orientation and disabilities.”

Source: Interview conducted by CCH, a Wolters Kluwer Company, of Cynthia Metzler, president and CEO of Experience Works, a nonprofit training and employment organization for older workers; www.experienceworks.org.

Employers Seeing Increase in Age Discrimination Claims

With age discrimination claims up 29 per cent this year, employers are taking a long look at their policies and training programs. Preventing age discrimination in the workplace requires not only that strong policies and training programs are in place, but also that employees know and understand the rules, particularly in these troubled economic times.

“We’re seeing an increase in age discrimination claims because of the volume of reductions in force that are occurring throughout the country,” said Janine Yancey, HR lawyer and CEO of emTRaiN. “Any different group can make a claim that they are adversely affected by reductions in the workforce, but there do seem to be more age discrimination claims than others, in large part due to age being associated with disproportionately high salaries.”

Time to update diversity programs. HR is faced with the difficult challenge of balancing three to four culturally different generations in today’s workplace. “HR needs to issue policies in a way that whatever they are saying within the organization will not have a disproportionate effect on older workers,” said Yancey. “Although diversity programs may already exist in an organization, they should be updated to include generational diversity.”

Everyone needs training. Once programs are updated and you are ready to implement them, you will need to set up training sessions, to be attended by all management and all “rank and file” employees. “It is important to have this training across the board,” said Yancey. “The potential expense of yet another training seminar may seem daunting, but there are cost-effective options. For example, some organizations are turning to online training methods.”

“In addition, HR should try pairing up older workers with younger workers so that they can learn from each

other,” Yancey concluded. “HR professionals should be aware that there are many stressors in the workforce through different generations with different work styles/work habits. The economic conditions put stress on us all. I suggest that HR professionals think of innovative strategic ways to create a team environment to learn from each other.”

Source: Interview conducted by CCH, a Wolters Kluwer company, of Janine Yancey, HR lawyer and CEO of emTRaiN.

Q & A

Can an employer enter into a binding agreement with an employee to waive her right to accommodation?

Imagine a situation in which an employer has a disabled employee in the workplace who has provided medical proof requiring that her workstation be modified. Then imagine that the employer does not wish to modify her workstation for cost reasons. Finally, imagine that the employer wants the employee to sign a document that indicates she agrees that the employer has not violated its obligations to her under human rights legislation by refusing to modify her workstation. The employer wants the employee to sign this document to protect itself from liability if the employee later launches a human rights complaint claiming that the employer failed to accommodate her. If the employee signs the document, can the employer rely on the signed document?

The short answer is “no”. Human rights legislation is considered to have “quasi-constitutional” status under Canadian law – that means that to the extent that any other Canadian law or private contract conflicts with human rights legislation, it will be void. Therefore, employers and employees cannot enter into binding agreements whereby an employee agrees to “waive” his or her right to accommodation that is protected by human rights legislation. The employer in the above example therefore would not be able to rely on its employee’s signed agreement that the employer did not violate its duty to accommodate.

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Business Briefing

Note: Unless otherwise stated, all information is from Statistics Canada. For more figures on the Consumer Price Index and the Bank of Canada rate, go to the CANADIAN BUSINESS MANAGEMENT MANUAL, “Facts & Figures” tab division, ¶523 *et seq.*

Gross Domestic Product: October

Economic growth, as measured by gross domestic product (GDP), evidently decelerated in October, posting a 0.2% gain after a 0.4% retraction in September. Subject to revision, the overall value of GDP in October, seasonally adjusted at annual rates (SAAR), was \$1,190,689 million (2002 prices) which remained 3.2% below October 2008. Most major sectors showed improvement in October, for the second month in a row, with utilities driving the goods-producing sector and real estate agents and brokers leading the services sector. The goods-producing sector in October was up 0.1% in the month, but down 10.8% from a year earlier at \$322,984 million. Services-producing industries were up 0.2% in the month as well as from a year earlier at \$872,318 million.

Budgetary Balance: October

The federal *Fiscal Monitor* showed a net budgetary deficit of \$3,304 million in October, the seventh month of the 2009-2010 fiscal year. That compared with a \$592 million deficit on the Finance Department's books (www.fin.gc.ca) from October 2008. As a result, the cumulative balance for the fiscal year to date was an estimated deficit of \$31,946 million, compared with a year-earlier deficit of \$57 million.

Revenues from personal income taxes in 2009-2010 so far fell 7.4% to \$61,220 million from \$66,115 million in the first seven months of 2008-2009, while corporate income tax revenue fell 36.9% to \$11,246 million from \$17,822 million and non-resident income tax revenue fell 16% to \$2,657 million from \$3,164 million. That meant that the overall income tax revenues were off 13.8% from a year earlier, at \$75,123 million, compared with \$87,101 million.

Employment Insurance (EI) premiums added \$9,299 million to Ottawa's coffers in the latest seven months, up 0.3% from \$9,267 million in the same period in 2008-2009. However, the Goods and Services Tax intake fell 16.5% to \$13,442 million from \$16,101 million, energy taxes rose 1.1% to \$3,020 million from \$2,988 million, customs import duties fell 13.1% to \$2,120 million from \$2,440 million, and other excise taxes and duties fell 0.3% to \$2,930 million from \$2,940 million. Other revenues such as the Air Travellers Security Charge and Crown corporations' earnings and foreign exchange fell 8.2% to \$13,022 million from \$14,187 million.

Transfer payments to persons – including seniors, children, and EI recipients – amounted to \$39,315 million in the first seven months of 2009-2010, up 14.9% from \$34,214 million a year earlier. Transfers to other levels of government for such things as infrastructure, health, and other programs rose 8% to \$29,753 million from \$27,550 million; subsidies and other transfers rose 58.8% to \$23,099 million from \$14,543 million; and departments' capital and operating spending and payments to Crown corporations

rose 3.8% to \$41,237 million from \$39,735 million.

Consumer Price Index: November

The Consumer Price Index (CPI) in November was 115.2 (2002 = 100), up 0.5% from the previous month's 114.6 and up 1% from 114.1 in November 2008. The main factor in the bump in the annual inflation rate was due mainly to higher gasoline prices. The latest CPI on a 1992 base is 137.2.

Securities Transactions: October

Foreign net investment in Canadian securities in October is estimated at \$5,814 million, compared with a net investment of \$13,272 million (revised from \$13,590 million) in September and a net investment of \$2,744 million in October 2009. Foreign investors continued to adjust their holdings of Canadian debt securities to longer term instruments, including \$6 billion in bonds to their portfolios while disposing of \$1.6 billion of money market instruments. Investment in private corporate bonds was a sizable \$1.8 billion.

Meanwhile, Canadian residents reduced their net holdings of foreign securities, all in equities, by an estimated \$4,196 million in October, compared with a net reduction of \$4,720 million (revised from \$4,805 million) in the previous month and a net reduction of \$12,285 million in October 2008. Canadians disposed of U.S. government debt securities, mainly two- and five-year bonds. They also trimmed their holdings of money market instruments by \$363 million and the rest of their activity was a

reduction in holdings of mainly European banks' commercial paper.

International Investment: Q3

Canada recorded an estimated negative net international investment position (NIIP) of \$84.3 billion at book value (BV) in the third quarter of 2009. The latest quarter's balance compares with a negative \$34.8 billion at the end of the previous quarter and a negative \$66.5 billion owed at the end of the third quarter of 2008. Expressed as NIIP with portfolio investment at market value (NIIP/PI), the deficit at the end of the latest quarter was \$47.2 billion at market value (MV), compared with an \$8.7 billion deficit (revised from \$3.1 billion) at the end of the previous quarter and a \$15.1 billion deficit at the end of the third quarter of 2008.

Net Worth: Q3

National net worth fell by an estimated 1.3% in the third quarter of 2009 to some \$5,890 billion, unadjusted for seasonal variation and equivalent to \$173,900 *per capita*. That compared with \$5,965 billion (revised from \$5,937 billion) or \$176,800 (revised from \$176,100) *per capita* at the end of the previous quarter and \$5,942 billion or \$177,600 *per capita* at the end of the third quarter of 2008. The latest quarter's net was the result of an estimated 0.6% dip in national wealth to some \$5,938 billion from the previous quarter's \$5,990 billion (revised from \$5,942 billion), and compared with the year-earlier \$5,958 billion. Net foreign debt in the latest quarter decreased by \$49 billion compared with a \$10 billion (revised from \$4 billion) decrease in the previous quarter, and a \$15 billion decrease a year earlier. The overall 2008 totals were: net

worth, \$6,030 billion; *per capita*, \$180,000; national wealth, \$5,976 billion; and net foreign debt, \$54 billion.

International Travel: October

Statistics on "long-term" travel (stays of more than one night) to and from Canada in October continued to trail year-earlier levels. Cumulative data for the first 10 months of 2009 also were down from the same period of 2008, except for Canadians' travel to non-U.S. destinations.

Bankruptcies: October

There were 9,245 bankruptcies in October, compared with the previous month's 12,792 and the year-earlier 9,468, according to the Office of the Superintendent of Bankruptcy (www.strategis.ic.gc.ca). The latest total includes 8,816 consumer bankruptcies, against 12,305 in the previous month and 8,972 a year earlier. October also saw 429 corporate bankruptcies, against 487 and 496, respectively. There were 121,779 bankruptcies overall in the 12 months ending October 31, up 30.8% from the year-earlier 93,085; the 116,139 consumer bankruptcies in the latest 12-month period represented a 33.6% increase from 86,911 a year earlier, while the 5,640 corporate total was down 8.6% from 6,174.

October sectoral breakdown: Agriculture, Forestry, Fishing, and Hunting, 8; Mining and Oil and Gas Extraction, 6; Utilities, 1; Construction, 70; Manufacturing, 50; Wholesale Trade, 26; Retail Trade, 63; Transportation and Warehousing, 33; Information and Cultural Industries, 2; Finance and Insurance, 14; Real Estate and Rental and Leasing, 14; Professional, Scientific, and Technical Services, 29; Management of Companies and Enterprises, 2; Administrative and Sup-

port, Waste Management and Remediation Services, 26; Educational Services, 4; Health Care and Social Assistance, 5; Arts, Entertainment, and Recreation, 4; Accommodation and Food Services, 53; Public Administration, 1; and Other Services, 18.

Composite Index: November

The smoothed version of the Composite Leading Indicator in November is estimated at 225.7 (1992 = 100), up 1.3% from October's 222.7 (revised from 222.4). The advance was led by household demand, while the recovery of U.S. demand boosted Canadian manufacturing. Growth was widespread; for the first time in more than two years, none of the components declined. The following, with percentage changes from the previous month, are seasonally adjusted at annual rates where applicable. The unsmoothed version of the Indicator is estimated at 233.2, up 3.1% from 226.1 (revised from 225.5).

Industrial Wages: October

The average industrial wage in October was a preliminary \$831.17, seasonally adjusted, compared with the previous month's \$828.51 (revised from \$830.68) and the year-earlier \$818.36. The workforce totalled a preliminary 14,521,000 in October, compared with the previous month's 14,486,500 (revised from 14,465,700) and the year-earlier 14,913,900.

Manufacturing: October

Sales and inventories reported by 21 major manufacturing groups on a seasonally adjusted basis were both up in value in October from the previous month's revised values, but unfilled orders and new orders were

down. All remained below year-earlier values. Most of the latest month's sales gains were in the manufacturing sector, principally the aerospace products and parts group and petroleum and coal products.

October sales were up from September in seven of 12 regions but, again, all were below October 2008 values.

Productivity: Q3

Seasonally adjusted labour productivity in the third quarter of 2009 slipped by an estimated 0.2% after rising and falling by 0.1% since the second quarter of 2008. The second quarter posted a 0.1% rise (revised from no change as originally estimated). In the United States, meanwhile, business labour productivity grew by an estimated 2.1% in the latest three-month period after a 1.7% rise (revised from 1.6%) in the second quarter and a 0.1% rise in the third quarter of 2008.

Industrial Capacity: Q3

Canadian industries, excluding farming, used an estimated 67.5% of their production capacity in the third quarter of 2009, compared with 67.7% (revised from 67.4%) in the previous quarter, and 78.9% in the third quarter of 2008. Gains in the manufacturing sector – partly due to improvement in the output of transportation equipment, chemical products, and wood products – were moderated by slippage in machinery and primary metals manufacturing, and were more than offset by a general decline in the non-manufacturing section. It was the ninth consecutive quarterly drop and the usage rate remained the lowest since data collection began in 1987. The overall 2008 average was 78%.

(Investment & Capital Stock Division, Statistics Canada, Ottawa; telephone (613) 951-9690.)

Wholesale Trade: October

Wholesalers did an estimated \$41,101 million worth of business in October, seasonally adjusted, up 0.3% from the previous month's \$40,976 million (revised from \$41,019 million), but down 8.6% from the year-earlier \$44,950 million. Their inventory value was estimated at \$54,018 million at the end of October, down 1.5% from the previous month's \$54,816 million (revised from \$54,953 million) and down 6.5% from the year-earlier \$57,803 million.

Motor Vehicles: October

The 123,608 new motor vehicles sold in Canada in October was a 1.9% drop from a year earlier even though sales value rose 2% to \$4,035,834. The average price in the latest month was \$32,650, comprised of averages of \$26,246 for passenger cars and \$38,978 for all other vehicles.

Housing Starts: October

Canada Mortgage and Housing Corporation (www.cmhc-schl.gc.ca) estimates that there were 157,300 housing starts in October, on a seasonally adjusted annual basis, compared with 149,300 (revised from 150,100) in September.

Housing Sales: November

Sales of existing housing in Canada's 25 major markets in November rose by 72.3% from a year earlier to 39,111 units, the Canadian Real Estate Association (<http://www.crea.ca>) reports. Total sales value rose 104.2% to \$12,950,700,000,

an average value of \$331,128 which was 18.5% higher than in November 2008.

Petroleum Sales: October

Sales of refined petroleum products in October totalled 8,863,600 cubic metres (m³), down 3.3% from the year-earlier total. Cumulative sales for the first 10 months of 2009 were down 5.4% from a year earlier at 81,464,200 m³.

Natural gas sales in October were 5.2% above year-earlier levels at 5,076,011,000 m³; however, cumulative sales were estimated to be down 7.2% at 53,980,204,000 m³.

Retail Sales: October

Retail sales in October are estimated at \$35,295 million, seasonally adjusted, up 0.8% from the previous month's \$35,000 million (revised from \$34,935 million), but 1.4% below the year-earlier \$35,781 million.

Graduate Tuition

Full-time graduate students saw their 2009-2010 tuition fees rise by an average 4.7%, to \$6,008 from \$5,737 in the previous academic year. Ontario tops the graduate tuition fee rankings this year at an average \$8,642, up 4.7% from 2008-2009, while Quebec graduate students continue to pay the lowest fees in the country, an average of \$2,316 despite a 4.4% increase. Newfoundland and Labrador and New Brunswick have frozen fees at an average \$2,443 and \$5,070, respectively. The other provincial averages (percentage increase from 2008-2009) are: Nova Scotia, \$8,068 (4.3); British Columbia, \$7,668 (2); Alberta, \$5,150 (4); Manitoba, \$3,976 (4.5); Saskatch-

ewan, \$2,855 (3.4); and Prince Edward Island, \$2,786 (4.5).

The largest tuition fee hikes for undergraduate students have been in agriculture, natural resources, and conservation faculties – up 15.7% from 2008-2009 at \$4,535 this year. However, master business of administration programs top the graduate tuition list at \$30,653 (up 2.5%) for executive MBAs and \$20,564 (up 6.1%) for regular MBAs. Other faculties' averages (percentage increase) are: pharmacy, \$6,384 (3.1); business management and public administration, \$5,996 (4.1); miscellaneous health, parks, recreation, and fitness, \$5,456 (7.1); nursing, \$5,089 (4); education, \$4,979 (6); engineering, \$4,786 (4.2); physical and life sciences and technology, \$4,635 (4.5); architecture and related, \$4,440 (3.4); mathematics, computer, and information sciences, \$4,424 (3.4); social and behavioural science, \$4,146 (3.9); visual and per-

forming arts and communications technologies, \$4,404 (3.5); humanities, \$3,909 (3.8); law, \$3,902 (3.4); veterinary medicine, \$3,703 (10.9); and dentistry, \$3,289 (3.7).

(For more details: Client Services, Education Statistics Division, (800) 307-3382 or (613) 951-7608, or education@statcan.gc.ca.)

Household Spending: 2008

Personal taxes accounted for 20.5% of the average Canadian household's spending in 2008, which rose 2% from 2007 to \$71,360, below the average Consumer Price Index of 2.3% for 2008. Shelter costs were not far behind at 19.9% of overall outlay while transportation, food, and clothing accounted for 13.6%, 10.4%, and 4%, respectively. Average personal taxes rose 1.1% from 2007 to \$14,600, but remained well below the

1996 peak of 22%. Shelter costs rose 4% to \$14,180, mainly due to increased spending on rental accommodation; transportation rose 3.5% to \$9,710 as most component costs rose; food costs rose 1.8% to \$7,440. Average household spending on mobile telephones and other electronics continued to rise in 2008, but the outlay on reading materials declined.

("Spending Patterns in Canada 2008" is available from the Publications module at www.statcan.gc.ca. Additional information: Income Statistics Division, (613) 951-7355.)

Lending Rates

The Bank of Canada's lending rate and overnight target remain at their respective fixes of 0.5% and 0.25%, set last April 21.