

Employment issues for Self Storage Operators in Canada

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United States self storage operators are crossing the northern border to expand their businesses and although they may find similarities with how self storage generally operates in Canada as compared to the United States, there are certainly particularities which may affect their operations. One key difference is in the area of employment law.

Most significantly, Canada is not an “at will” jurisdiction. In the United States, the concept of “employment at will” is based on the understanding that an employee may quit his job at any time for any reason and that the employer has the equal right to terminate an employee at any time for any reason. However in Canada, the Courts have consistently held that every contract of employment, whether in writing or not, includes an implied term that no employee will be dismissed without reasonable notice or compensation unless the employer can establish justifiable cause for termination. In the event of such dismissal without cause, the employer will be held liable for the economic consequences suffered by the employee and the courts are sometimes forced to decide what period of notice is reasonable and the amount of compensation the employee is entitled to in lieu of notice. Any award is reduced by any employment income the terminated employee may have earned during the period of reasonable notice. That is not to say that employees cannot contract out of their right to receive reasonable notice. However, such notice must be at least equal to the minimum statutory notice periods provided within the laws of the particular province. The Supreme Court of Canada has

ruled that any contract of employment that attempts to contract out of minimum statutory notice periods will be considered void and unenforceable. A properly drafted Canadian employment agreement should include a contractual dollar limit to claims of lack of reasonable notice for termination.

A recent case in British Columbia provides a good example of this difference in employment rights. The case is Pires v. Vectis Technologies, Inc., 2008 CarswellBC 1424 (B.C.S.C.). In the case Pires, a senior engineer, left his company to join a start up enterprise in a similar business. Pires signed an employment agreement which provided him, upon termination without cause, “prior written notice of three months plus three weeks for each complete year of employment with the company to a maximum of one year.” When the new company began to suffer financial problems, Pires was fired, allegedly for negotiating with the company’s investors for a larger share of ownership with the company. The Court found that Pires was entitled to the compensation set forth in his employment agreement, specially holding that the pretense for the termination was not a sufficient cause for termination. Instead, the Court believed that Pires was dismissed simply because the company had run out of money.

Whether in the United States or Canada, an employment agreement is an essential requirement between a self storage operator and its managers. The use of an employment agreement is a successful way to not only communicate to the employee the benefits of their employment, but most importantly to define the expectations of the job. Commonly, an employment agreement will set out the specific duties of the self storage manager. It is this list which then creates the basis for measuring the manager’s job performance.

Examples of the written job duties might include the following:

- a) Employee shall be responsible for showing clean, empty storage units to potential customers by walking potential customers to storage space and back to rental office;
- b) Employee shall be responsible, after renting storage units, for thoroughly completing the rental agreements, receipts, journal sheet, ledger card, and insurance addendum;
- c) Employee shall be responsible for collecting all rent including, but not limited to, accepting rent and following up on delinquencies, posting rent and miscellaneous income receipts, making bank deposits daily or when receipts are on hand, and reporting of income collection to Manager on a daily basis as needed;
- d) Employee shall be responsible for managing the bookkeeping system or computer system as designed and controlled by Employer, and preparing and mailing weekly and monthly reports on a timely basis as specified by Employer;
- e) Employee shall be responsible for properly operating any computer, printer, and gate interface equipment;
- f) Employee shall be responsible for walking the Facility for daily security checks. Should the security of the Facility be threatened, Employee shall immediately report such a threat to local police authorities, it being expressly agreed and understood that in no event shall Employee take any other action in connection with a threat to the Facility's security or the safety of the Employee;
- g) Employee shall be responsible for timely sending required tenant legal notices, making telephone calls to collect past-due rent and documenting these calls on tenant ledger cards or in computer;
- h) Employee shall be responsible for preserving the office in a clean, organized, business-like manner. This includes keeping windows, store front door, flooring, restrooms, and area outside around rental office clean.

In addition to listing job duties, employment agreements should also outline the benefits provided to the employee for proper job performance. Separate from an explanation of the compensation to be paid and incentives relating to bonuses, the employment agreement can be used to set out other employment benefits such as health insurance and vacations. Generally, an employment agreement can be use to clarify a number of issues between the operator and its employees. The more issues that are resolved up front, there is less for possible misunderstanding and dispute. So, for example, the following are provisions that can be included in standard employment agreements:

Recording of Conversations. In the event Employer provides Employee with any

review or critique of Employee's performance under this Agreement, or Employer or any of its representatives visits or calls the facility posing as prospective tenants, Employer reserves the right to, and Employee agrees that, Employer may tape record such conversations. Such tape recording shall be the sole property of Employer and will not be disclosed to any third party except in the case of judicial or other legal proceedings where such conversations may be at issue.

Background Checks and Credit History Checks: Background and credit history checks are a condition of this employment.

Drug Testing: Employer reserves the right to perform random drug testing at its discretion.

Smoking on the Premises: No employee, under any circumstance, is permitted to smoke within the residence, the office or any of the storage units.

Uniforms: Any facility clothing or uniforms provided for the Employee's use must remain the property of the Employer and shall be returned upon termination of employment. Employer reserves the right to withhold any final wages needed to replace said uniforms.

Company Property: Upon the termination of this Agreement, for whatever reason, Employee shall return to Employer all customer lists, books, records, keys, and any other property of Employer which is in Employee's possession at the time of termination, it being understood that all such lists, books, records, keys, and other property shall remain the exclusive property of Employer.

U.S. companies that use the same employment agreements or handbooks for their Canadian employees as their U.S. employees may simply find that their documents are unenforceable in Canada. Notwithstanding any employment agreement that may exist, Canadian law strongly favors employees in the context of employer bad conduct. No employment agreement will defeat a justifiable claim against a Canadian employer who has treated is employees unfairly, especially in the context of job terminations. Canada has pro-active employment and pay equity laws protecting women, racial minorities and persons with disabilities. The government and each province have passed statutes that restrict an employer's ability to discriminate among employees based upon race, sex,

religion, national origin, age, or physical disabilities. The main goal of Canada's proactive equity laws has been to require employers and trade unions to jointly take proactive steps to identify and redress discrimination in recruitment, treatment, compensation, promotion, and retention of employees who historically may have been disadvantaged in the workplace.

The search for self storage managers can be a challenging process. Operators are commonly looking for individuals who are equally comfortable with renting units as they are selling boxes and can handle sophisticated computer systems while coping with difficult tenants. United States companies hiring managers to work in Canada must be cognizant of the differences to laws that establish the relationship between employers and their employees in Canada. Although certain elements may be similar, such as the use of an employment agreement, many issues are different, such as the rights of employees during termination. Accordingly, operators must be prepared to seek counsel to assist them as they travel over the border to open their self storage facilities.

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