Johnston Beaudette
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Business Matters

JUNE 2017

VOLUME 31 | ISSUE 3

MANAGEMENT

Cannabis 101

The pending revision of Canada's marijuana laws will affect the workplace.

Liberalisation of Canada's marijuana laws appears to be imminent. The *Cannabis Act* is currently expected to become law in 2018 and will decriminalize certain activities and make marijuana more widely available under a controlled production, distribution and sales system. Whether or not you agree with the intent of the proposed *Cannabis Act*, the loosening of the laws governing the sale and use of marijuana raises important questions for businesses regarding health, safety and legal liability.

Most provincial and territorial occupational health and safety regulations require an employer to take all reasonable means to ensure the protection of their workers. The employer also has a reasonable expectation that employees should not be impaired on the job. The question then becomes when are employees impaired and whether, if they believe themselves to be impaired, they are required to inform their employer.

Employer Responsibility

All employers recognize that, if an employee is incapacitated to the extent that they cannot perform their assigned tasks, the employer is required to either allow a leave of absence or find a task within the organization that allows the employee to rehabilitate so as not to create safety or health issues for other workers.

Employers may have to pay for medicinal marijuana.

It may come as a surprise to employers to discover that, in the event an employee is injured on the job, the employer, as part of the restitution/rehabilitation package, could be required to pay for the employee’s use of prescribed medicinal marijuana. This would not be dissimilar to the payment for any other medication that may be required to assist an injured employee in getting back to work.

Employment Agreements

Employment agreements usually address issues such as alcohol, the use of smartphones while driving and sexual harassment. These agreements reflect management's due diligence in acting to avoid or mitigate huge losses from lawsuits against the company. Even though both employees and employers have a responsibility to ensure a safe workplace, the employer, its management and directors bear the ultimate legal responsibility.

In the matter of marijuana prescribed by a doctor for pain relief, employees may be unable to travel to jurisdictions with criminal laws for possession. Not only does this cause concern for the employer, but it may also jeopardize an employee's future if arrested, charged and convicted by a foreign government. A prohibition on future travel for work in such jurisdictions may never be lifted.

Drug Testing

The employer has a responsibility to establish the grounds for any proposed drug testing. Some businesses have employment agreements that require drug testing to ensure employees are not impaired. The liberalisation of the marijuana laws creates a whole new area of uncertainty as to whether an employee is impaired. Random drug testing of employees can become problematic. If the employee refuses and they are fired, they might sue for wrongful dismissal. Further, some chemical components of marijuana, as for some other drugs, may linger in the employee's system and be picked up by the test even though the person is no longer impaired.

Review Your Contracts

Your business may have employee contracts which stipulate that substance abuse is not allowed on the job site. What happens in the event one of your employees is on medicinal marijuana? Is this in violation of the contract? Is this in violation of safety regulations? Is it a violation of the Charter of Rights and Freedoms?

Owner-managers are well advised to seek professional assistance as well as legal advice to review all:

- contracts with companies and government agencies from whom they receive contract work
- employment contracts
- policies and procedures on the safe use of machinery and equipment
- protocols for detecting impairment and the penalties and/or sanctions that may need to be rewritten
- medical insurance policies
- insurance policies for third-party liability or vehicle insurance that may contain caveats that cancel payout in the event of drug use
- in-house education programs to make sure workers know how to recognize their impairment and when to communicate their inability to perform their tasks safely.

It is difficult if not impossible at the present moment to determine the consequences of legalizing marijuana and its impact on employers, employees and existing contractual arrangements with contractors, subcontractors, government and regulatory authorities, both within our borders and without.

Examine Procedures and Protocols

Good business practice suggests that owner-managers become proactive and educate themselves on the effects the pending legislation may have on their business. Procedures and protocols may have to be changed or new ones created to ensure a workplace that accommodates the health concerns of the workers without compromising the safety of the workplace.

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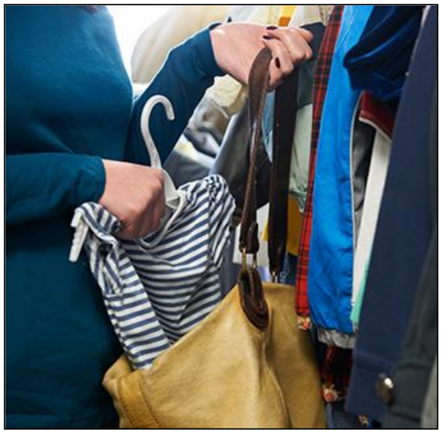
MANAGEMENT

The Five Finger Discount



Shoplifting can ruin your business.

Fred Tarasoff loves music. In fact, he used to own a record store, but had to go out of business in 1989 in large part because of inventory losses through shoplifting. Then he was assaulted by a shoplifter while he was running a health food store. Since that time, he has devoted himself to researching shoplifting and the retail industry in order to develop training programs to prevent and detect shoplifting. He currently works closely with law enforcement, industry associations and security firms to fight this crime. In the course of this work, Mr. Tarasoff has developed a simple way to calculate the losses suffered from shoplifting.

According to Mr. Tarasoff, even if your business has excellent controls, you can expect losses will approximate 1% of gross sales. Thus, if your retail store sells $600,000 a year, at least $6,000 will be missing from your sales figure. But, if your business does not have good controls, losses could be as high as 8% or $48,000 on $600,000 of gross sales. If your store works on a 20% gross margin your business is out $38,400 (i.e., 80% the sales loss of $48,000).

Deterring Theft Starts with Good Management Practices

- Adequate staff is essential. One person in the store is simply not enough people to work the cash register and watch the customers.
- If you can only afford one sales representative in the store, they should lock the door as a matter of policy when they have to take a break.
- Greet each customer. This is not only good public relations, but it indicates to the potential shoplifter that you are aware they are in the store.
- Provide a receipt to each purchaser. Post a policy statement that refunds will not be provided without proper receipts. This will prevent thieves from attempting to return stolen merchandise later for a cash refund.
- Make sure your staff knows the prices of all items. This will help employees to determine whether lower-price tags have been switched to higher priced items.
- If the package has been opened by the customer, be sure it is reopened by the cashier to prevent product substitution or the theft of other merchandise hidden in the package.
- An open bag with your store name on it is the perfect shoplifting tool. Seal all bags with store seals to ensure that other items cannot be placed in the bag as the customer exits your store.
- Do not stereotype customers by appearance. That gruff looking character may be honest while the nicely dressed family of three may be a team of professional shoplifters.
- Do not age discriminate. Statistics indicate that 25% of thefts are committed by those in their teens or younger, but 75% is committed by adults.

Support trained staff with physical theft deterrents.

Physical Deterrents the Next Line of Defence

- Staff training to reduce potential shoplifting must be supported with physical theft deterrents.
- Ensure every part of the store can be seen by sales staff at all times. Blind spots, dressing rooms and tall shelving units make theft easy.
- Users of dressing rooms expect privacy, but there can be no such expectation on the store floor. Security cameras should be placed strategically to monitor the floor area. A large monitor at check out will provide live video from every camera to enable cashiers to view suspicious actions.
- Placing mirrors to view blind spots is an alternative to cameras although not as effective since staff cannot always be watching.
- Expensive merchandise should be looped through an alarm box or fitted with Radio Frequency Identification (RFID) devices that sound an alarm as soon as the product is removed from its packaging or its shelf space.

Please Leave the Store

You have the right to ask someone to leave your store. Most merchants are hesitant to do this because they do not wish to create conflict or negative publicity. Nevertheless, you are well within your rights to ask someone to leave and inform them that if they return, they will be trespassing. Do not provide a specific reason. Above all, never suggest they are stealing and do not physically touch them. Such actions will not only escalate the situation but could result in legal actions against you. If an individual refuses to leave, contact the police and have the individual removed. Most provinces will have a trespass act that provides you with grounds to inform the unwanted customer either in writing or orally that they are not welcome on your premises. The wording will read something like the Ontario *Trespass to Property Act (1990)*:

2. (1) Every person who is not acting under a right or authority conferred by law and who,
    (a) without the express permission of the occupier, the proof of which rests on the defendant,
        (i) enters on premises when entry is prohibited under this *Act*, or
        (ii) engages in an activity on premises when the activity is prohibited under this *Act*; or

    (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier, is guilty of an offence and on conviction is liable to a fine of not more than $10,000.

Detaining the individual on suspicion of theft without immediately calling the police is unwise since it risks a charge of "forcible confinement" under the Criminal Code. Consult with your lawyer to establish how and on what grounds your staff can approach and temporarily hold any suspected shoplifter.

Train Staff

Store staff are the frontline in shoplifting prevention. Educating staff in anti-shoplifting procedures combined with a one-time installation cost of physical deterrents should return your inventory costs and profit to their normal levels.

TAXATION

The Tax Refund Myth

A "tax refund" is really just the CRA giving you back your own money.

"The government gave me money back" is a common phrase often heard after the April 30 or June 15 filing deadline. The truth is that the government is not being charitable; it is only refunding the tax that you or your employer had overpaid throughout the year.

Because the rate of tax withheld at source throughout the year may be different than the tax rate applicable to your actual taxable income (after taking into consideration all other income and deductions), you might have remitted more money to Ottawa than was necessary. Your "tax refund" is the difference between your remittances and your actual tax liability.

One of the biggest misconceptions is that, upon filing of their personal income tax returns, people with a lower income will likely receive a tax refund while people with a higher income will usually end up owing tax. This is not necessarily true because the tax refund/liability is not based on your income level but rather on the difference between the remittances paid compared to the actual tax liability.

How It Works

For example, assume Mrs. A, who normally earns a $200,000 annual salary, only worked six months during 2016. Mrs. A's employer would have withheld taxes based on the $200,000. However, since Mrs. A worked only half the year, her actual 2016 income was $100,000. Because the tax remittances calculated on $200,000 were higher than the actual taxes applicable on the $100,000, Mrs. A will receive a tax refund.

On the other hand, assume Mr. B has two jobs each paying $30,000 throughout 2016. Mr. B's employers would have withheld taxes based on Mr. B's actual income of $30,000 from each of them. However, Mr. B's actual income for 2016 was $60,000. Because the sum of the two tax remittances calculated on $30,000 earned from each employer would be lower than the actual taxes applicable on the $60,000, Mr. B will likely have to pay additional taxes.

In order to avoid such differences between the withheld taxes and the actual tax liability, everyone should review their current personal and taxable income situation to determine whether they can reduce withholding taxes to minimize the cash advance provided to the treasury. It is very important that your employer be aware of any other sources of income you may have or other deductions to which you are entitled, so that all of it can be considered when determining the appropriate amounts to be withheld.

What Should I Consider?

Here are some of the personal tax credits that your employer should consider in reducing the amount of withholding taxes to be remitted:

- Are you eligible for an age amount (e.g., tax credit available for those 65 or older)?

- Are you eligible for a spousal credit (i.e., if the spouse's income is under the basic personal amount)?
- Are you (or your children) enrolled at a university, college or other educational institution and are eligible to receive tuition credits?
- Are you (or your dependants) qualified for a disability amount?

Before you approach your employer to reduce source deductions, consider the total of all deductions allowed as well as your individual tax bracket. On the one hand, there is little to be gained in cash flow savings if the overall taxable income reduction is miniscule. On the other hand, if the gain could be substantial, taxpayers should make every effort to minimize the tax dollars advanced to the Canada Revenue Agency (CRA). At the same time, taxpayers should understand the rules and regulations that accompany an attempt to reduce deductions at the source.

Make sure your TD1 information is correct.

Be Informed

The CRA requires that employees complete a TD1 form when starting employment. Make sure the information provided is correct from the start to enable payroll to make the correct calculations for source deductions. Correct information regarding spousal amounts or caregiver amounts makes a difference to non-refundable tax credits and the calculation of source deductions. If life circumstances have changed, submit a revised TD1 form.

CRA Form T1213

Should you have significant deductions available in any given year to reduce the withholding taxes at source, file a "Form T1213 Request to Reduce Tax Deductions at Source" (see CRA website for the forms). Regulations require that this form be submitted each year; however, if similar circumstances will exist for two consecutive years, you can apply for two years as long as you submit one T1213 form for each year. Given the CRA's response time, it may be advisable to consider the two-year option and provide such data to the CRA before the end of 2017 so that it will become effective January 1, 2018. When you receive the letter of approval from the CRA, submit it to your employer to reduce the source deduction amount or adjust your instalment payments as required. Some of the tax deductions that can reduce the tax withholding at source are listed below:

- Will you be contributing a lot of money to your RRSP for the next few years?
- Are there significant child care expenses?
- Are you making any support payments?
- Does your employee contract or self-employment require you to pay for work-related expenses such as vehicle, lodging, supplies, or tools?
- Will you split pension income with a spouse in a lower income bracket?
- Are you anticipating costly moving expenses when moving for employment reasons?
- Do you have non-capital losses you can carry forward for a number of years?
- Do you pay significant brokerage fees to manage your investment portfolio?
- Have you borrowed for investment purposes?
- Have you purchased rental properties that will create rental losses for the foreseeable future?

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CRA Interest Percentages

In the event you do not make sufficient source deductions or instalment payments, the CRA will charge you with interest and penalties of 5% on overdue income taxes. If you are overzealous and overcontribute to the treasury, the prescribed rate for refunds of overpaid tax is 3% for individuals.

Example

A single adult in Ontario earning $100,000 employment income had source reductions for 2016 of approximately $24,829 or $2,069 per month. If the anticipated RRSP contribution for 2016 was $12,000, the tax liability would have been $19,763 (using 2016 tables), an annual cash flow reduction to the CRA of $5,066 ($422/month).

If other factors increased the overall deductions to $20,000, total source deductions drop to $17,127 and thus reduce cash outflow to the CRA to approximately $7,702 ($642/month).

By filing the T1213 form, the foregoing scenario anticipates two-year reductions in cash outflow to the CRA ranging from $10,132 to $15,404. Rather than waiting for a lump-sum refund at the time of filing, these funds could be received each month and used to pay down a mortgage, reduce high-interest debt or invest in additional RRSP, Tax Free Savings Account (TFSA) or make other investments.

Keep Cash Advances to a Minimum

As personal debt and the cost of living rise, taxpayers should consider the financial advantages of ensuring cash advances to the treasury meet their obligations and nothing more. The advantages of reviewing the impending 2018 and 2019 taxation years with your CPA and forecasting the potential to put money in your pocket sooner, rather than later, is certainly worthwhile.

TECHNOLOGY

Connecting for Profit

WiFi offers new retail marketing strategies.

The use of cut-out and email coupons to create consumer awareness of your business and your products has been around for a long time, but their effect on your revenue and profit is notoriously hard to measure. Some marketers are now hoping to get around this problem by offering WiFi services to their in-store customers to get them to stay within the store environment. This idea is based on the well-tested principle that the longer a person stays in the store, the more likely they are to buy something. In fact, a recent survey has shown that 62% of customers will linger longer in shopping environments that provide free WiFi. The same study showed that half of those customers actually spend more money while they remain in the store.

Let’s Use WiFi

This system works by informing the walk-in customer they have access to free WiFi as an incentive to stay in the store. It does not matter whether the person is using a smart phone, tablet or computer; WiFi is platform agnostic and will work with almost any mobile device.

Implementations vary; however, most businesses either post a passcode, issue temporary time-limited codes (e.g., on the receipt) or leave the network open (i.e., without a passcode) but require the user to accept terms and conditions before accessing the Internet. Each approach has its pros and cons. If your business does not have the in-house expertise, there are companies that will set up and/or operate your WiFi network on your behalf. In either case, when a customer accesses your WiFi, they have provided either tacit or explicit approval for your business to pick up passive information about them. If you do not require the user to accept your terms and conditions, it is a good idea to have this information posted in your office or on your website. Do not forget to include provisions for capture, retention and analysis of the customer data.

Once the shopper is registered, the retailer has an opportunity for target marketing based on the interest the shopper is showing in products within the store. Incentives such as discounts can then be offered for use while the person is in the store or for an extended period. Electronic coupons can be customized to the user; if they get stale dated they simply disappear from the recipient’s device.

This system also collects data on customers.

This system collects data on the customer that lets you know how many times they have been on your premises and how long they spent there each time.

No Need to Download Your Apps

The simplicity of this approach is that the customer does not have to download your company's Apps; you attract clients on a voluntary basis by simply *offering* them your WiFi. You can thus build a customer list of persons who have already shown an interest in your products and entice them back by sending them specials or having them review products on your log-in page.

This innovation has revived the interest in flyers and the use of coupons by reaching potential customers through devices that everyone has in their hand, purse or pocket.

Protect Your Business

It is a good idea to block illegal websites and services, such as torrent sites. If users access these sites using your WiFi, they may consume your bandwidth and slow down the service for your other customers. Content owners also do not take kindly to piracy, and may target the connection where the activity originated (i.e., your business); it is best to try to avoid potential hassles, fines or legal issues.

Worth Checking

Assuming your small business already has WiFi, and estimating an initial set-up cost of about $250 for communication hardware and a daily operating cost equivalent to a few cups of coffee, it is worth an owner-manager's time to investigate whether this application will help their retail business.