

Pensions will challenge in 2012

Employee pensions promise to dominate British Columbia's labour landscape in the coming year, according to Vancouver employment lawyer Larry Page.

"Given demographics, and the increasing percentage of the population nearing retirement, I see this as the major issue to be dealt with by employers, union and non-union, but particularly for large employers in the private sector," Page said in an interview, where he was asked to name the top five labour issues facing B.C. employers in 2012.

Human rights disputes involving perceived disabilities, social media in the employment setting, off-duty criminal conduct by employees, and workplace bullying and harassment also made the list.

But nothing is as potentially explosive as the pension issue, which Page predicts could result in widespread strikes and industrial actions similar to those experienced by Air Canada in recent months.

At the heart of the conflict is a push by unions and non-unionized workers for improved pension plans while companies, particularly large-scale employers, look to scale back on costly plans in favour of less-expensive options.

The contentious issue of pensions was behind a three-day strike by 3,800 customer service and call centre staff at Air Canada in mid-June. It was resolved after their union, the Canadian Auto Workers, and the airline agreed that existing employees would not see a change in their benefit plan, while a different plan for new hires went to binding arbitration.

Page said the province — and the country — should brace for similar disputes to arise over the coming year.

"The pension plan liabilities are getting to be so large and introduce so much risk that it is affecting the abilities of employers to get financing for their normal business activities," he said.

Other major issues facing employers in the coming year include:

- **Perceived disability:** Page said most B.C. employers know that they are not to discriminate on the prohibited grounds set out under human rights legislation, such as gender, race or physical or mental disability.

"But we've seen a lot of cases recently where employers make an assumption that someone is not capable of doing the job, even though the person has no actual disability," he said.

In one recent example, an overweight man was awarded \$2,000 after he was refused work as a traffic flagger by his employer on the grounds he was too fat, and unable to stand for the length of time the job demanded. The B.C. Human Rights Tribunal found the man was not technically disabled, and his boss's actions — based on a perceived disability — amounted to discrimination.

Page said employers need to be making better-informed decisions based on “actual facts, rather than jumping to conclusions” to save themselves costly legal challenges.

- Social media: Managing social media use — and misuse — by employees is expected to remain a significant challenge for employers over the coming year.

“The continuing theme that we see is employees, in blogs or Facebook or other things they post on the Internet, keep taking shots at their employer or fellow employees, and, of course that is a public statement of their views,” said Page.

- Off-duty conduct: Legal fallout from the Stanley Cup riot is expected to bring the issue of an employee's off-duty conduct to the forefront of labour issues in 2012.

Page said local employers will undoubtedly look to distance themselves from accused rioters.

But it's not as simple as firing someone, or even refusing to hire a person in the first place. Rather, an employer must be able to show there is a link between the person's criminal conduct and his or her employment.

If a person employed in a retail shop is convicted of break and enter or property damage, for instance, that could well harm an employer's reputation or be viewed as inconsistent with its corporate image.

“You can imagine cases where that wouldn't be the case, depending on what the person is doing and the nature of the business, but in many cases it would be a factor,” Page said.

- Bullying and harassment: While not new to the workplace, bullying and harassment are likely to become high-priority issues in the coming year as employees continue to gain awareness of their rights.

Recent allegations of sexual harassment and bullying made by female members and former members of the RCMP will likely serve to keep the issue in the public spotlight well into the future.

“The bottom line is, employers have to realize they are responsible for the atmosphere in the workplace and responsible for ensuring there is a safe and respectful environment in the workplace,” Page said.