



PAUL LALONDE

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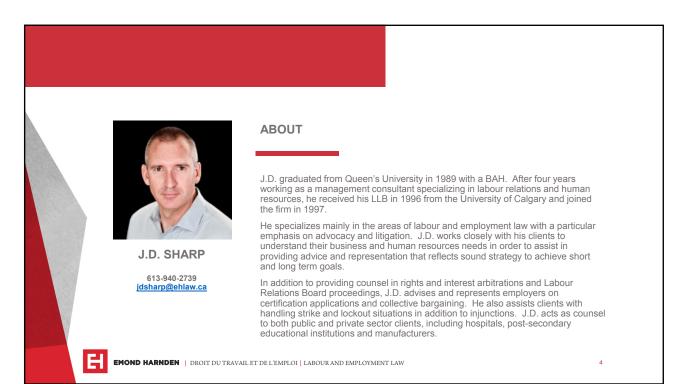
ABOUT

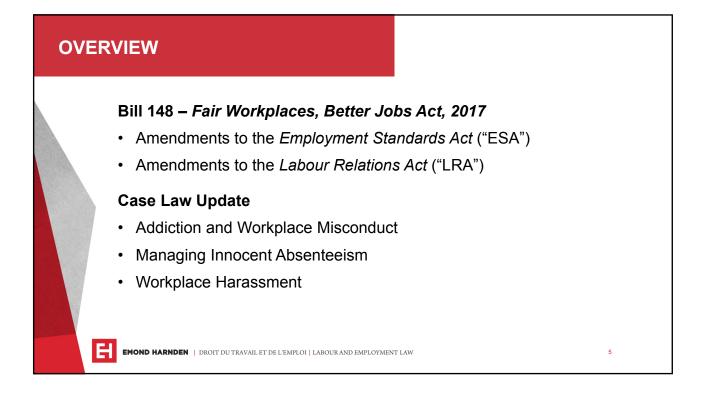
Paul has experience representing both public and private sector employers in a wide range of labour and employment matters. He provides advice and representation in occupational health and safety prosecutions, WSIB claims, arbitration proceedings, wrongful dismissal litigation, and employment standards and human rights complaints. He also helps employers develop and implement strategies to minimize the costs associated with WSIB claims and terminations, and in achieving compliance with occupational health and safety, privacy, human rights, and employment standards obligations.

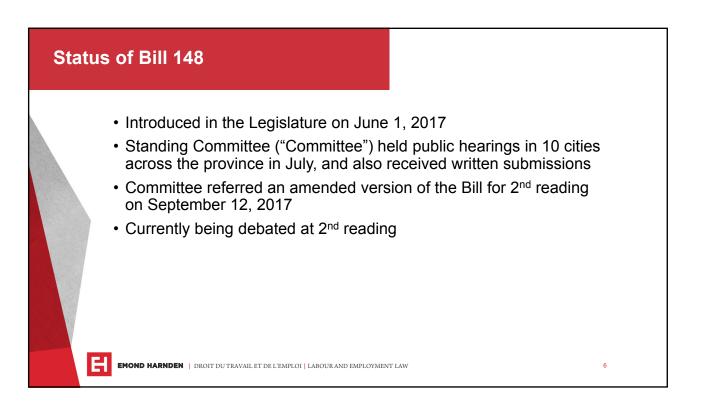
Paul also provides strategic advice and counsel to businesses on how to respond to union organizing campaigns, and represents employers in the litigation that often arises following an application for certification. He is particularly experienced in guiding construction industry employers through the special rules and procedures particular to their sector.

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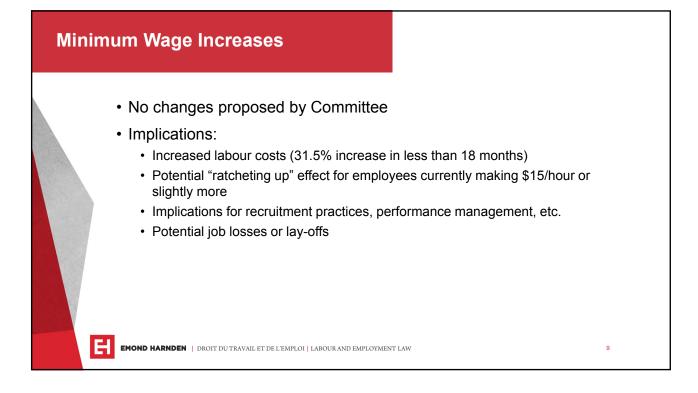


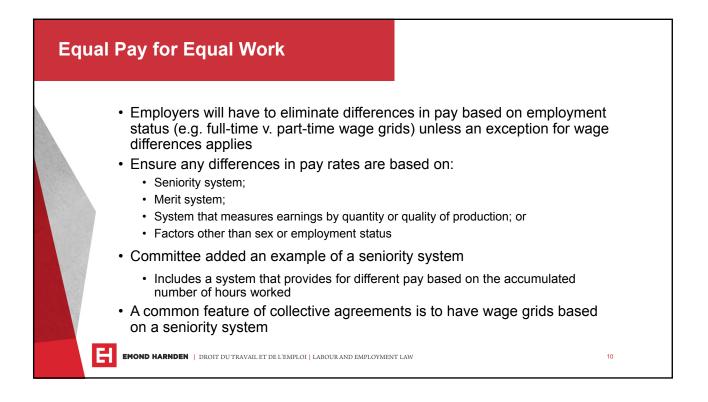


Bill 148 ESA Amendments

Key Amendments Made to Bill 148 by Standing Committee

- · Equal pay for equal work
- Scheduling/on-call rules
- · Substitute holidays
- Pregnancy and parental leave
- Personal emergency leave
- Domestic or sexual violence leave
- Employer record keeping

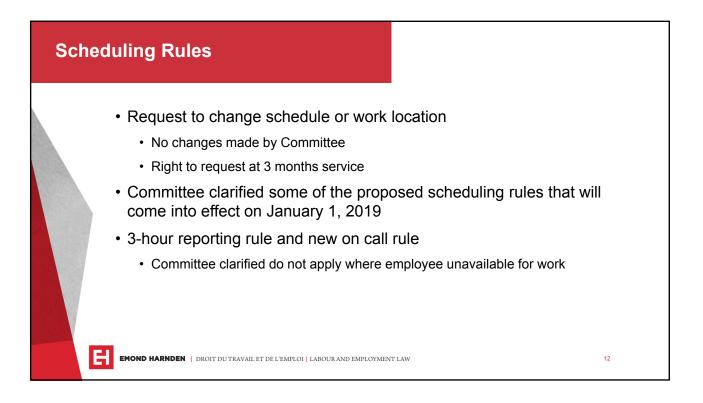


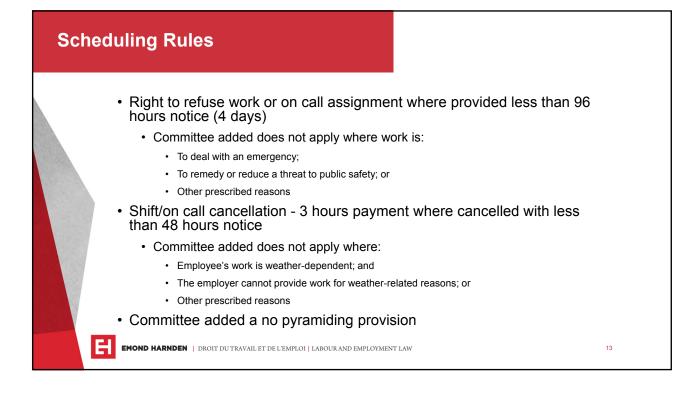


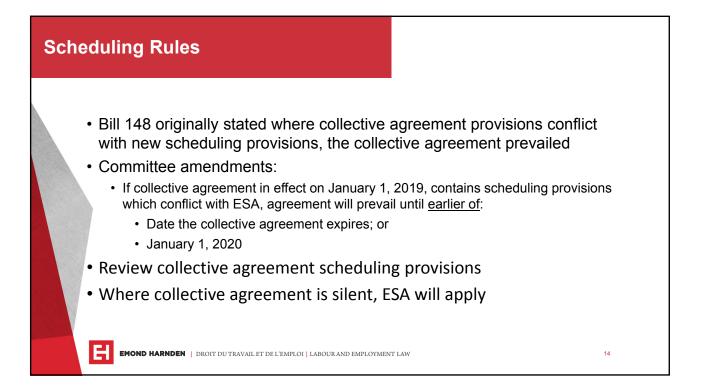
Equal Pay for Equal Work Transitional Period

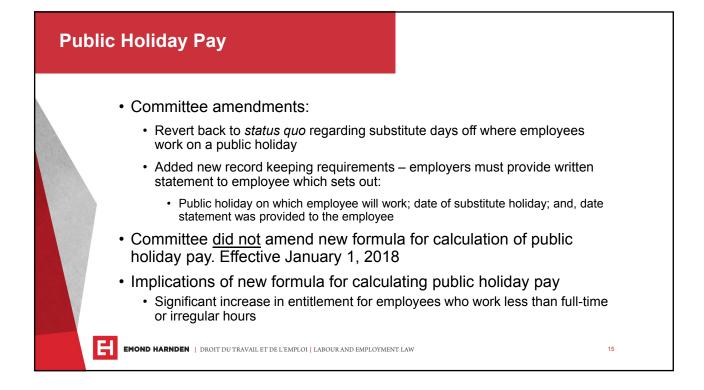
- Committee shortened transitional period
- If collective agreement in place on April 1, 2018, contains provisions that permit different rates of pay based on employment status in conflict with the ESA, collective agreement will prevail until the <u>earlier of</u>:
 - · Date the agreement expires; or
 - January 1, 2020
- Don't wait start considering how to adjust wage grids now!
- · May need to negotiate new pay grids with union

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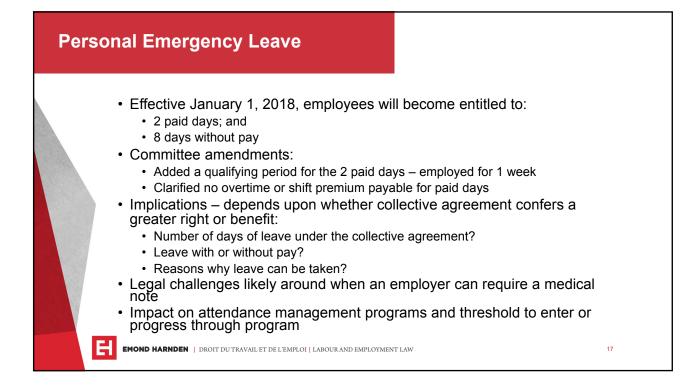


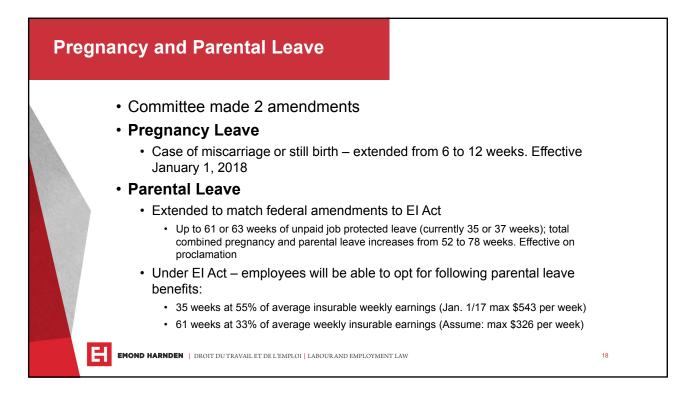


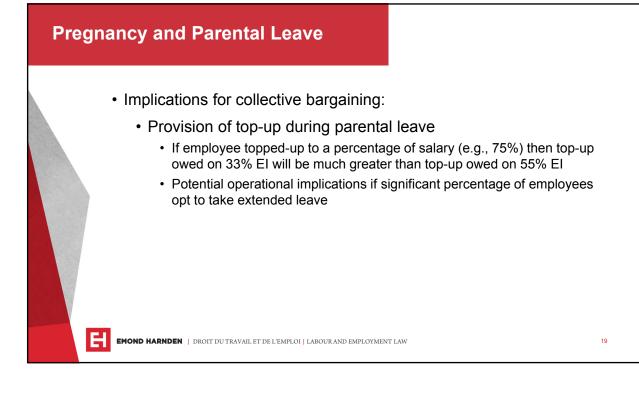


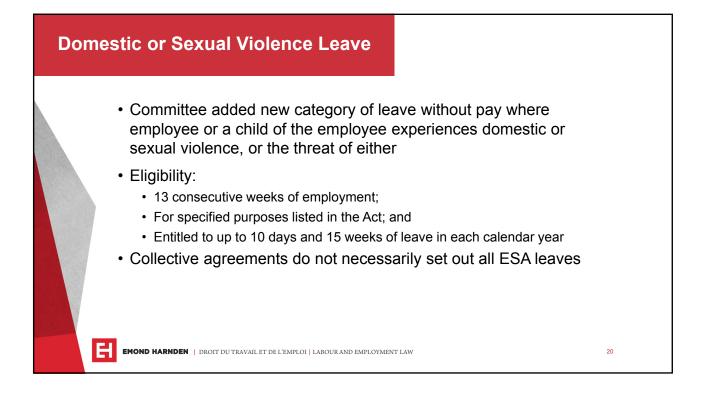


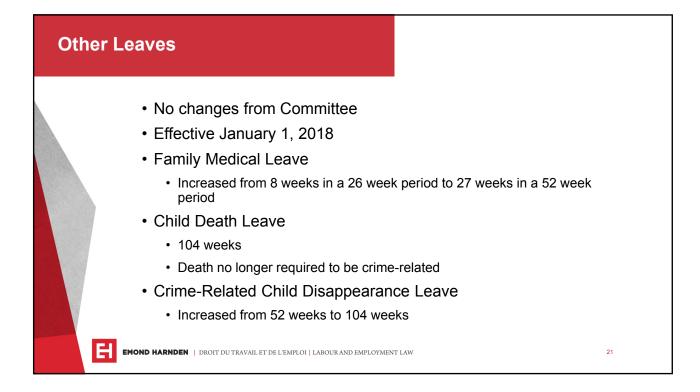


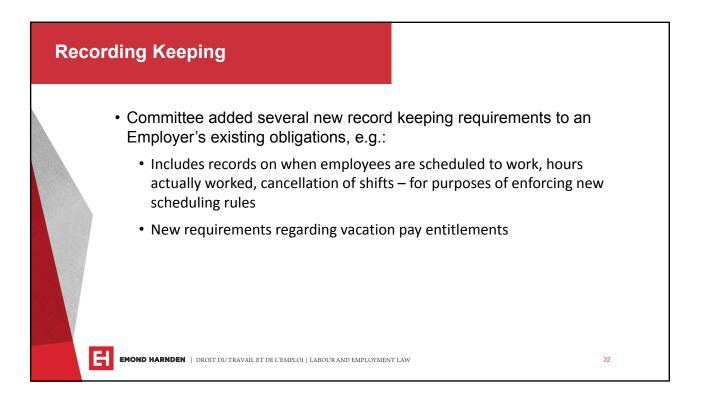


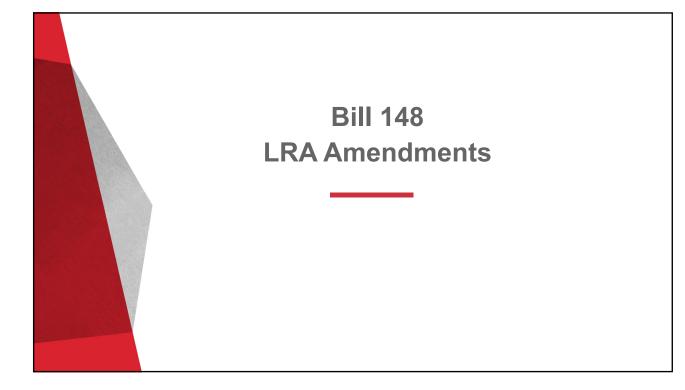










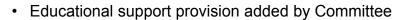




· Applies to non-certified workplaces/employees

- A union can apply for an order requiring an employer to provide a list of employees
 - An employee list includes names, phone numbers, and personal email addresses
- A union must show at least 20% support of the proposed bargaining unit
- Committee amendments require employers and unions to ensure the security/confidentiality of the list
- · Deemed to comply with privacy legislation





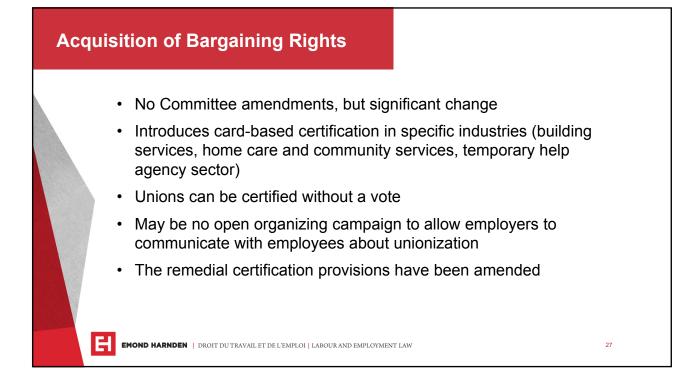
- · Applies following a union's notice to bargain
- · May apply where there is first contract arbitration
- Either party can apply for educational support in labour relations/collective bargaining
- A first collective agreement mediator will make educational support available

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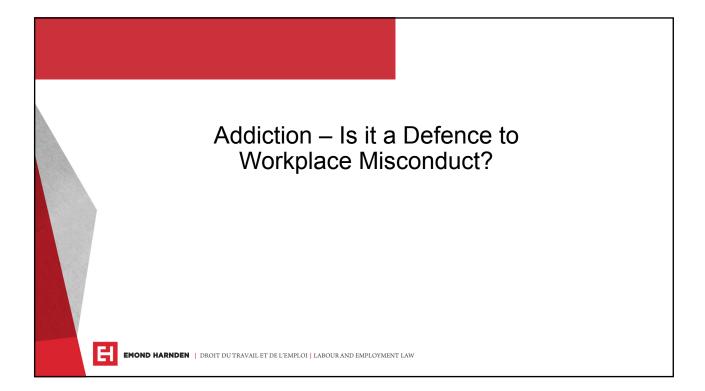
Consolidation of Bargaining Units After Certification

- Committee removed proposed amendment to allow OLRB to review and change structure of existing bargaining units where it determines they are no longer appropriate
- New OLRB power to consolidate units after a successful certification remains
- The goal is to develop effective collective bargaining relationships

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Cambridge Memorial Hospital and ONA, 2017 CanLII 5289 (Randall)

Facts:

- RN had 28 years of service and clear disciplinary record
- · Stole opioids from the employer Hospital
- Only after further investigation did Hospital learn she had been stealing for some time, and diverting opioids from patients
- Discharged for just cause
- ONA argued that arbitrators have agreed: a non-disciplinary approach applies and the Hospital has a duty to accommodate

Cambridge Memorial Hospital and ONA, 2017 CanLII 5289 (Randall)

Findings:

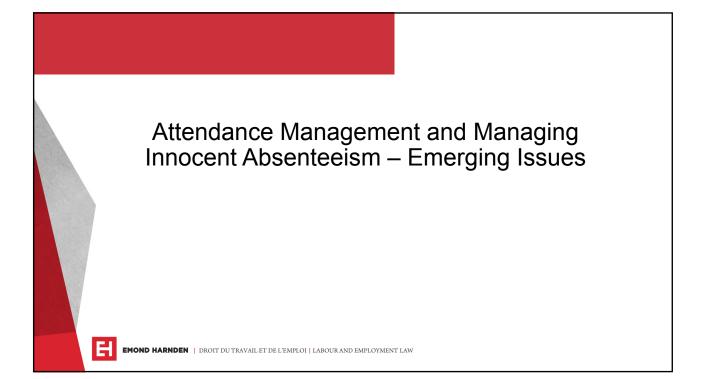
- · Just cause dismissal upheld
- Arbitrator preferred a line of cases from British Columbia (the "Hybrid Approach") to the Ontario line of cases:
 - "I don't accept that...establishing a nexus between the addiction and the misconduct is, in itself, a defence to termination...it is not prima facie evidence of discrimination..."
- Considered the grievor's addiction, and found her misconduct was **not** caused by addiction-related compulsion
- The grievor's failure to admit the full extent of her misconduct meant her discharge could not be mitigated

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Cambridge Memorial Hospital and ONA, 2017 CanLII 5289 (Randall)

Practical Implications:

- · Addiction is not a "get out of jail free card"
- Arbitrators are more likely to apply this approach when the employee has only disclosed an addiction after being caught
- As an employer, how can you assess the nature of an employee's addiction and whether it has compelled them to engage in misconduct?



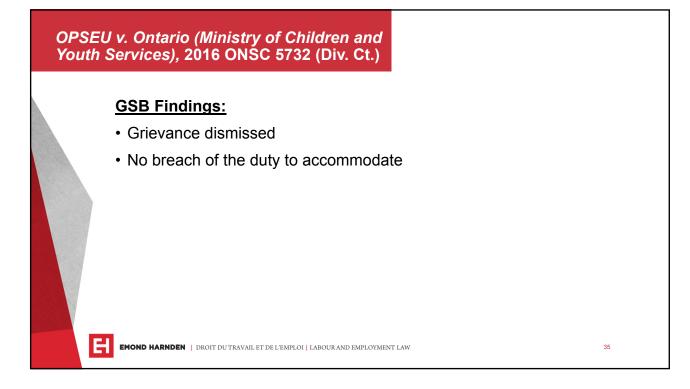
OPSEU v. Ontario (Ministry of Children and Youth Services), 2016 ONSC 5732 (Div. Ct.)

Facts:

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- Youth services worker with chronic degenerative back condition suffered from erratic flare ups
- · Absenteeism of 70 absences/year; 25% above institutional average
- Employee rejected accommodation proposals as had no particular "workplace barriers"
- Once there was no suggestion that his absenteeism would improve in the foreseeable future, employer terminated employee for innocent absenteeism

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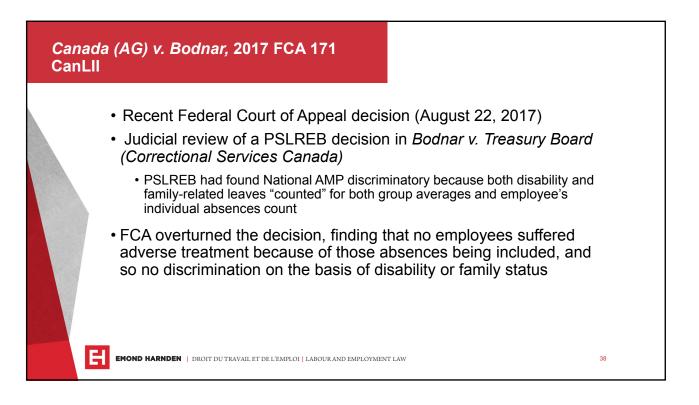


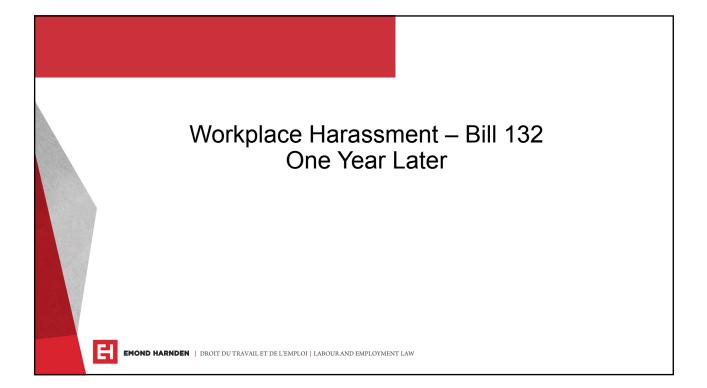


Findings on Judicial Review:

- The GSB's decision was reasonable
- The duty to accommodate does not require employers to permit employees to be regularly absent from the workplace
- The duty to accommodate does not change the fact that it is the employee's duty to perform work in exchange for remuneration; the duty does not allow employees to avoid holding up their end of the bargain

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ONA v. Humber River Regional Hospital, August 3, 2017 (Goodfellow)

Facts:

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- An RN filed 20 allegations of harassment against her manager, including allegations that she had been "singled out for excessive scrutiny" and that the manager had a "personal issue" with her, as well as discrimination on the basis of disability
- The employer Hospital investigated and found the allegations
 unsubstantiated
- ONA grieved, alleging that the Hospital's investigation had been biased and in breach of its own policies

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ONA v. Humber River Regional Hospital, August 3, 2017 (Goodfellow)

Practical Implications:

- When it comes to actions that may constitute harassment, management is held to a standard of reasonableness - not perfection
- · Investigations similarly require good faith, not perfection
 - That being said, investigation best practices should still be applied, including:
 - Appointing a skilled, neutral investigator
 - · Maintaining confidentiality to the extent possible
 - · Ensuring the respondent knows the case against them
 - · Interviewing all relevant witnesses
 - Reviewing all relevant documents

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AN INTEGRAL PART OF YOUR TEAM

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