Sladen Moore LLP
Chartered Professional Accountants

Partners and Principals:

Steve Cousins, CPA, CA, B.Comm.*
Courtney Satchell, CPA, CA, BBA *
Daniel Robert, CPA, CA, BBA *

*providing professional services through a corporation

3005 35th Avenue
Vernon, B.C V1T 2S9

Telephone: (250) 545-0754
Fax: (250) 545-8689
E-Mail: info@sladenmoore.com

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MANAGEMENT

Return to work raises crucial legal questions for organizations

Reviewing and updating workplace policies are a key priority for employers.

As employees return to the workplace, there are many questions around the legal ground rules for employers. Adding to the challenge is the fact that there are few, if any, legal precedents to guide organizations in these unprecedented times. "There's not a lot of clarity at this point," says Emily Siu, a lawyer at the SpringLaw employment law firm in Toronto. Here are three key issues keeping employers up at night.

The shift comes with consequences, experts say. According to **new research** from Robert Half Canada, more than half (56 per cent) of employers say the cost of making a bad recruiting choice is higher than it was pre-pandemic.

Still, given that remote work is likely here to stay for many and that virtual hiring offers access to larger talent pools, we are likely to see more, rather than less, remote recruiting going forward.

Here are four tactics that can help you make the right hire.

1. Workplace safety

Health Canada's ongoing guidance on COVID-19 prevention includes **a layered approach of common practices** – keeping interactions to a minimum, avoiding crowds, masking, hand hygiene and respiratory etiquette – along with vaccination. The common practices can easily be adopted into workplace safety policies, but actually mandating vaccination is something each employer will need to weigh out carefully. The nature of their industry and the working conditions will influence this discussion. Whether to implement a workplace vaccination policy is definitely front and centre of employers' conversations, says Howard Levitt, of Levitt

Sheikh Chaudhri & Swann (LSCS Law). Many of the legal decisions moving forward will depend on whether the courts will consider safety more important than individual privacy, he says.

“Employees that don’t get vaccinated have a mistaken sense that privacy and human rights are valid legal arguments. Although privacy rights apply, they are trivial compared to the overriding safety considerations, so have no legal impact. As a result, vaccination policies are legally permissible, particularly if employees are working closely together or in situations in which working from home is not an option.”

2. Accommodating exceptions

As with any employment situation, there will be exceptions that need to be addressed.

“Employers should not discriminate against employees who have legitimate human rights reasons for not getting vaccinated,” says Siu. “These workers should be accommodated up to the point of undue hardship for the employer.”

This specifically pertains to people with medical conditions or religious reasons for not getting vaccinated. “However, they must be substantive reasons, not simply a matter of minor medical issues or a personal opinion, particularly one recently adopted rather than genuine adherence to an organized religion, which bans vaccinations as a significant tenet,” says Levitt.

If an organization decides to implement a vaccine policy, protocols will need to be established around employees who are not vaccinated, adds James Fu, partner with Borden Ladner Gervais (BLG) in Toronto. “Will there be different rules for distancing and masking? Should employers have badges or stickers to designate who is vaccinated? Each organization will have its own culture and approach.”

3. Employment terms

The impact of COVID-19 has also opened the doors to potential constructive and wrongful dismissal actions, particularly for remote workers not wishing to return to the workplace. As such, employers need to be mindful of the terms of employment on record. In many cases, these may need to be updated and signed to accommodate the current climate and requirements.

“Employers can provide a time frame for the employee to return to work,” says Levitt. “If they refuse to return, then the employer has the right to terminate their employment.”

Siu confirms she is seeing a strong interest on the part of employers around return-to-work requirements. “It’s really dependent on circumstances, such as the safety of the work conditions, the employer’s capacity for risk and the industry,” she says.

4. How employers can minimize their risk

There are both legal and practical measures employers can take to mitigate potential risks. For example, they can:

- Review workplace policies, taking into account all the current factors and circumstances, as well as local law requirements, and then adjust their policies accordingly.
- Be transparent about opening plans with employees. Providing clear direction reduces the chances of potential legal challenges.
- Ease the employees return to the workplace and be supportive during the transition. “Returning requires time for adjustment,” says Siu. “Considering the employees’ needs can go a very long way to avoiding resignations or tricky legal proceedings down the road.”
- Take all reasonable measures to create a safe work environment. Prepare a safety plan and ensure it is up to date with current health guidelines. Employers are legally required to have a safety plan that can be provided to visiting health and safety inspectors.

Given the lack of legal precedents, employment issues will be determined on a case-by-case basis. In the meantime, Levitt notes, “What employers should be doing is decide what they want to do and build a legal strategy around that.”

TAXATION

How to check if you have unclaimed cheques from the CRA

The Canada Revenue Agency (CRA) has accumulated more than $1 billion over the past 20 years in uncashed cheques issued to taxpayers. Find out how to access your account and never miss a payment again.

An overwhelming majority of Canadians now file their taxes electronically. Last year, in fact, 90 per cent chose that method.

Even so, some taxpayers haven’t yet registered for direct deposit (or did so only recently), so the government may still be sending them cheques instead.

Unfortunately, many of those cheques don’t ever get cashed: a good number end up lost, stolen or destroyed, or are sent to an address that is no longer valid.

The issue at hand

Every day, nearly 1,700 cheques issued by the federal government (amounting to around $500,000) join the pile of payments that have never been claimed. In all, nearly $1.1 billion in government-issued cheques are waiting to be cashed.

CRA launched its uncashed cheque tracking tool in February 2020 to “help taxpayers get their money back,” explains Sylvie Branch, media relations officer with the CRA. But despite its efforts, only around 692,000 cheques (totalling $183 million) were claimed between February 10, 2020 and December 31, 2020.

“The number of [uncashed] cheques continues to grow,” says Branch. “A substantial proportion of these are income-tested payments (including family and child benefits) to individuals with household incomes below specified thresholds. And goods and services tax/harmonized sales tax (GST/HST) credit payments account for almost half of all uncashed cheques on the list.”

As for the amounts involved, Branch says consolidated data indicate that the average value of an uncashed cheque is around $150. “And some cheques date back to 1998,” she adds.

How to check your online CRA account

Here’s how to determine whether any of the 7.7 million cheques issued are in your name:

1. Go to the CRA website and choose “My Account” (see details on creating an online account below). Log in and select “Uncashed cheques” from the bottom of the list under “Related services.” This page will display the relevant amounts.
2. To claim an uncashed cheque, request a duplicate payment by selecting and completing the displayed form. If you’re registered for direct deposit, the CRA will deposit the payment into your account. If not, it will issue a new cheque and mail it to the address on file, but only if you (or your authorized legal representative) request it.

The CRA will never reissue and send you a cheque on its own initiative because “government cheques have no legislated expiry date,” explains Branch. “They are considered uncashed if they are not deposited within six months of their original issue date.”

It’s worth noting that if you owe money to the CRA, the total owed will be reduced by that amount.

How to register for an online CRA account

The easiest way to make sure you never miss a payment again is to register for “My Account” and sign up for direct deposit. (As Branch points out, registration for direct deposit registration can now be done **on the CRA website** using your banking credentials.)

Step 1: Create your login credentials

To register, you will have to choose a user ID and a password on the CRA website. To obtain them, you will need to enter your social insurance number, date of birth, current **postal code** and an amount you entered on one of your income tax and benefit returns (for the current tax year or the previous one).

After you complete this step of the registration process, you will have access to limited information on “My Account” (i.e., eight out of 45 services available).

Step 2: Register with CRA security code

Within 10 business days, you will receive a security code that will give you access to the full range of **services offered** on “My Account.” You will then be able to access several detailed documents (income tax return summaries, notices of assessment or reassessment, and information related to RRSPs, TFSAs, and Home Buyers’ Plans, etc.) and register for direct deposit.

You can also install the **MyCRA mobile app** to log in to “My Account” (or the **MyBenefits CRA mobile app** to view details on your benefit payments and credits).

Access to “My Account” also allows you to use “**Autofill my return**” when you efile your return using certified software. Routine processing of electronically generated T1s takes two weeks, 95 per cent of the time. Allow 10 to 12 weeks for the processing of paper-filed returns.

You’ve just learned CRA intends to review your tax return. Now what?

By educating yourself on the process and making sure you have all your important records on hand, you can save yourself a lot of unnecessary worry.

You filed your return on time, but now you have received a letter from the Canada Revenue Agency (CRA) asking for more info about the return. Should you be concerned? Not necessarily. As long as you have kept the information the CRA needs to review, the process can be smooth and headache free.

Here’s what you need to know.

How are returns selected for review?

As Jean-Sébastien Gosselin, founder and president of JSG CPA, points out, individuals are generally less likely to be selected for review than businesses because the amounts involved are smaller.

“However, since tax returns are completed on the basis of voluntary disclosure, the public would lose confidence if there was no system of accountability,” he says. “Everyone is presumed to know the law.”

Sylvie Branch, media relations adviser at the CRA, adds that while a small number of returns are selected at random, most are chosen “using a sophisticated system that incorporates multiple factors to identify returns with the highest potential for misstatement.”

It’s important to note that **being reviewed** once doesn’t mean you won’t be reviewed again. “Although returns are selected taking into account the results of previous reviews (to avoid repeated reviews of compliant taxpayers), it is possible for a taxpayer to be selected several years in a row, depending on their compliance history and the types of claims made on their returns each year,” says Branch.

In the event of a review, it’s also important to distinguish what will be examined according to the types of returns that are likely to be selected. “Income and expenses, for example, will be examined more closely for self-employed workers, who are more targeted than employees,” says CPA Marc-André Couët, auditor, assurance manager at JSG CPA.

In addition, certain types of deductions or credits may be reviewed as well, such as donations and medical expenses, adds FCPA Bruce Ball, vice-president of taxation at CPA Canada.

Couët agrees. “When individuals request large donations or large medical expenses, the government requests a copy of either the donation receipt or the medical bills along with the details,” he says.

Here are other things the CRA may review for accuracy:
1. Capital gain related to the disposition of property for taxpayers who flip real estate.
2. Consistent losses from self-employment income to check if there is a reasonable expectation of profit in the future, for those who report losses year after year.
3. Vehicle expenses for business purposes for those who claim 100 per cent of their expenses, to make sure their numbers are accurate.
4. If an income-splitting system is in place, salary reasonability will be checked for those who have family members as employees, to ensure that the expense is fair and reasonable in relation to the workload and compared to other employees.

“There is also a good chance that CRA will ask for proof if [you are] claiming a foreign tax credit,” adds Ball.

How do reviews differ from audits?

Although there are several types of reviews, the process itself is simple and fast in comparison to an audit.

The review process starts when the taxpayer receives a letter from the CRA explaining that they want to verify the accuracy of certain information, such as the amounts entered, says Gosselin. “Even if tax filing was done perfectly,” adds Ball, “there will still be spot checks to make sure the deduction or credit actually exists. In some cases, the CRA just wants a copy of the receipts, like donations.”

“However, in some cases,” adds Gosselin, “taxpayers who file their own returns may not have all the information to know which expenses are deductible and how to calculate them.”

Branch notes that these errors occur mainly in the initial claims for certain new deductions, such as medical expenses, tuition fees and moving expenses. There are many reasons why adjustments may be made, particularly since the CRA has to comply with a variety of tax laws (such as the ***Income Tax Act*** and Income Tax Regulations, as well as provincial and territorial income tax laws), which require that it request supporting documents.

While a review might be completed in a few weeks, an audit can take months or even years, says Gosselin. “Audits are initiated when something comes to the CRA’s attention, such as an indication of fraud, a serious omission or a major error,” he says.

One major red flag that can trigger an audit, says Gosselin, is a mismatch between a taxpayer’s declared income and their lifestyle – especially if they are also a shareholder of a company and there is a discrepancy between their return and that of the company.

If that is the case, the taxpayer can possibly be asked to provide almost all of the information used to complete the return. From there, the CRA can keep requesting additional supporting documents until it is satisfied that it has everything it needs to issue a new notice of assessment.

"In rare cases, the CRA may even request access to all of a person's bank accounts, as well as those of spouses and children," says Gosselin.

Of course, in some cases, there may be a perfectly reasonable explanation for some incongruities. "A person might have won the lottery, received a gift or borrowed money," says Gosselin. This is why it is important to keep records on these items, explains Ball, in case the CRA does ask.

"While an audit often creates stress for the taxpayer, remember that the auditor is a human being who's trying to understand the financial story of the years passed," says Gosselin. "Communication is key: you need to understand what made them think something was wrong and cooperate."

What can you do to prepare?

The CRA has up to three years (sometimes up to **four years**) from the date of the original notice of assessment to carry out a review but, in the case of suspected fraud or misrepresentation, there is no limitation period.

"That's why keeping a digital record of everything, especially a justification of every single deposit in your personal bank account, is a good idea," stresses Gosselin. "Without proof, the situation can become complicated, and a harmless transaction can be difficult to trace and justify years later."

Gosselin adds that the same principle applies when you lend money to a loved one. "You are allowed to do this, and without charging interest, but how will the auditor know whether the repayments are income?" he says. His advice: "Keep tangible records of all unusual banking transactions, both deposits and withdrawals, for at least seven years."

How will the pandemic affect process?

Just as the pandemic has changed so many taxpayers' ways of working, so will it bring its own set of complications for CRA auditors this year. In lieu of on-site visits for comprehensive audits, explains Branch, the CRA is encouraging virtual meetings. "In-person meetings are reserved for exceptional circumstances," she says.

"The CRA will still presumably send letters for reviews," says Ball.

Also, since a number of new programs were introduced this year, it remains to be seen how CRA auditors will deal with certain issues, like for those who have claimed home office expenses. As Gosselin points out, "We don't know how far they will go in verifying that those who received it were entitled to it," he says.

Given that it's impossible to answer these questions for the time being, it's probably best to adopt a wait-and-see attitude, just as Gosselin intends to do.

In the meantime, you can help yourself by checking your records and backup. That way, you'll be prepared no matter what kinds of questions come your way.

WEALTH MANAGEMENT

5 financial mistakes to avoid when you’re young

As a fresh graduate, saving for the future can be hard to envision. But being money-wise in these earlier years can have exponential pay-offs in your later years.

According to experts, avoiding several spending traps when you're early in your career can help set you up for a more stable financial future.

1. Accumulating credit card debt

Spending within your means may seem obvious, but when you’re fresh out of school and looking for a job, this can be challenging.

“I think a lot of young people, even in university, don't really have steady employment and end up spending more than they would have spent in cash,” says CPA David Trahair, a personal finance expert and author of CPA Canada’s free practical guide, Survive and thrive: Move ahead financially after losing your job.

Credit cards in and of themselves aren’t bad – in fact they’re a helpful way to establish a credit history – but it’s important to understand what you’re signing up for. High-interest rate cards can accumulate debt quickly, if you’re not paying down the balance each month, Trahair says. Spending only what you can afford – or only what you must, where possible – can set people up for better financial health, since they are actively trying to keep balances low.

If you do find yourself in a position where you need to take on debt, try to use a **lower interest rate, point-free card**. “The benefit of the points rewards is often less than one per cent a year,” says Trahair. “It doesn't make sense to carry a balance when the credit card rate is as high as 20 per cent or more.”

Another option is to obtain an unsecured line of credit, he says, to avoid high-interest rate credit cards. However, without having previous past credit to build up a good credit score, a parent may have to guarantee the credit card or loan to qualify the candidate.

2. Investing before paying off debt

While the idea of saving and growing money is attractive, investing money only makes sense if your credit card debt is paid down, says Trahair.

“When you’re in credit card debt, the company is charging you interest,” he says. “To save, you’re taking money that would otherwise be spent to pay down that credit card.” With companies charging between 20 to 24 per cent interest, credit card debt quickly accumulates.

“People like the idea that they have savings,” says Trahair. “They’ll say, ‘So I owe $10,000, but I have $2,000 of savings.’ They’re in worse shape than the person that only has $8,000 on that credit card [because of the accumulating interest]. The best investment is paying down that credit card debt.”

3. Delaying life insurance investments

Often when you’re young, obtaining a life insurance policy isn’t top of mind – but it should be, says CPA Garth Sheriff, who runs CPD consulting firm Sheriff Consulting.

“Theoretically, it’s when you’re the healthiest,” he says. “You’re more likely to get a lower premium plan and, if you get something that you can lock into, it can also be a savings return vehicle. It's not only a safety net, but it also builds equity.”

Plans such as **universal life insurance** and whole life, he says, work like investment policy funds that have a cash surrender value – meaning you don't just acquire funds in death, but the cash value builds up as savings. Each plan has its own risk tier, so be sure to research the appropriate plan and available options, he says.

4. Not setting an end goal

Understanding why you are trying to save money leads to a more successful outcome, says Trahair. While this goal may be different for everyone, ultimately, each person has a life target they want to meet, whether it's buying a home or planning for retirement.

"The best thing you could do for your personal finances is track where your money's going," he says. Trahair recommends using free budgeting apps or those available through banking services to help identify spending habits.

Budgeting, he says, requires historical information. But, if you're just graduating or starting out on your own, you won't have this data. If you track your spending even for just one month, you'll reveal a strong financial picture, as most people tend to have the same habits (save for the odd month where there may be a big-ticket item purchase or vacation, etc.), he says.

Reducing the number of spending sources is also advised. "If you have three or four bank accounts and three or four credit cards, this exercise is going to be very difficult," he adds.

5. Living paycheque to paycheque

This is the least desirable scenario for anyone. Sheriff recommends striving for six months to a years' worth of funds if possible – and start that saving habit when you're young. Having a financial safety net has the added benefit of improving your borrowing power in the future.

"That early time in your life, as you're building your credit history and your ability to borrow, is really important," he says. "Even if you don't know what your plan is."

Whether you're saving for an additional designation or taking a year off, Sheriff says being prepared for the unexpected can help you remain in good financial standing and possibly avoid additional stress and debt, adding, "You never know what life is going to throw at you."

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