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Doing Business in a New Reality Webinar Series

Remote Work

Labour, Employment and Human Rights Group

JUNE 3, 2020



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Doing Business
in a New Reality



Remote Work Webinar

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Opening Remarks & Introduction



[Mathias Link](#)

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▼ Welcome!

We hope you are keeping well and safe.

Fasken is committed to providing legal insight into the new and changing issues which are arising.

Please visit our [Coronavirus \(COVID-19\) Knowledge Centre](#) and subscribe to [The HR Space](#) bulletin for the latest legal information and updates.

Outline for today

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▼ Agenda

Opening Remarks & Introduction Mathias Link (5 mins)

- | | |
|--|---|
| 1. Health and Safety Obligations and Human Rights Issues Regarding Remote Work
Rhonda Grintuch (15 mins) | 2. Lessons Learned from Remote Work During COVID-19 and Extending Remote Work Arrangements
Mathias Link (15 mins) |
| 3. Preparing a Remote Work Policy
Lorene Novakowski (15 mins) | 4. Managing Remote Employee Performance
Bonny Mak (15 mins) |

Q&A All Speakers (23 mins)

Closing Remarks Mathias Link (2 mins)

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Health and Safety
Obligations and Human
Rights Issues Regarding
Remote Work



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General Workplace Considerations

- ❖ Occupational Health and Safety
- ❖ Human Rights
- ❖ Harassment, bullying and violence

How do these considerations apply in a remote work environment?

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▼ General Considerations

Occupational Health and Safety

- ❖ Health and safety obligations extend to the remote workplace.
- ❖ Assess and report risks and hazards
- ❖ Ergonomic considerations

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▼ General Considerations

Occupational Health and Safety

- ❖ Provide appropriate training for managers and employees
- ❖ Develop protocols for reporting work-related incidents or injuries or for cases of emergency

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▼ General Considerations

Occupational Health and Safety

❖ Consider guidance from government authorities on **adapting policies** to remote work arrangements. See, for example:

- ✓ **British Columbia:** <https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/health-safety-responsibilities-when-working-from-home>
- ✓ **Alberta:** <https://open.alberta.ca/dataset/f1e33f8b-e58c-4813-9b36-848d0d3f90c9/resource/e093812f-e98e-4b04-8594-94d989a753bc/download/lbr-working-from-home-during-pandemic-2020-04.pdf>

▼ General Considerations

Occupational Health and Safety

❖ Consider guidance from government authorities on **adapting policies** to remote work arrangements.

See, for example:

- ✓ **Saskatchewan:** <http://www.worksafesask.ca/covid-19/what-employers-should-do/>
- ✓ **Federal:** <https://www.ccohs.ca/oshanswers/hsprograms/telework.html>

▼ General Considerations

Human Rights and Accommodation Obligations

- ❖ Consider **job-protected leaves** under employment standards legislation
- ❖ Consider requests for **modified work arrangements**
- ❖ Take an **individualized** approach
- ❖ Evaluate requests for accommodations in **good faith**. **Grant accommodations**, where appropriate, up until the point of “undue hardship”

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▼ General Considerations

Discrimination, Bullying and Harassment

- ❖ Laws prohibiting discrimination, bullying and harassment apply **regardless of the medium**
- ❖ Address **“virtual” conduct** in your workplace violence, bullying and harassment policies
- ❖ Have a process for **complaints and investigations**

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Lessons Learned from Remote Work During COVID-19 and Extending Remote Work Arrangements



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Lessons Learned from Remote Work During COVID-19

- ❖ Employees can work remotely on a regular basis...and do so successfully.
- ❖ **Reaching out** to employees to help them feel connected is critical. This can include regular team or group meetings or one on one conversations.
- ❖ Although they can present their own challenges, **video conferencing options** are powerful tools to keep employees connected to their employer and to each other and can help overcome the impersonal tone of email.

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▼ **Lessons Learned from Remote Work During COVID-19** cont'd.

- ❖ Remind your employees of the importance of maintaining **work-life balance** and encourage your employees to set personal boundaries so that they turn off work at a regular time.
- ❖ Be aware of your employees' **responsibilities outside of work hours** and how those may impact their remote work.
- ❖ Shift from time-focused approach to **results-focused mindset** can help employees address the above challenges.

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▼ **Considerations For Making A Temporary Remote Work Arrangement Permanent**

- ❖ The ability to work remotely on a permanent basis is still largely industry dependent (Stats Can survey).
- ❖ Do not make a decision based on COVID-19 remote work experience alone - employees' response during emergency situation may not be sustainable.
- ❖ Just because you can have employees work remotely on a permanent basis doesn't mean you should.

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▼ Considerations For Making A Temporary Remote Work Arrangement Permanent cont'd.

- ❖ Decision should be based on business and operational needs post-pandemic, not prior to the current crisis, in order to support the business' recovery and future growth.
- ❖ Weigh the positive and negative impact of permanent remote work arrangements including with respect to:
 - ✓ Long-term innovation and growth
 - ✓ Employee social Interaction and morale
 - ✓ Workplace culture

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▼ Preparing a Remote Work Policy



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▼ Remote Work Policies

- ❖ Most common form of telework is working from home (“WFH”)
- ❖ Certain important legal and practical considerations for employers should be addressed in telework policy
 - ✓ Confirm that any WFH must include a separate written remote work agreement between the employee and the employer

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▼ Remote Work Policies cont’d.

- ❖ Policy should reserve right to determine how work will be performed in the future
- ❖ Set expectations for:
 - ✓ The current state;
 - ✓ When schools and child care centres re-open;
 - ✓ When physical distancing measures are relaxed; and
 - ✓ Post-pandemic, when restrictions no longer exist.

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▼ Remote Work Policies cont'd.

❖ Technology, Equipment, Materials and Supports

- ✓ Employers should ensure that employees are equipped with devices needed to meet work responsibilities
- ✓ Set out ownership and acceptable use expectations of devices, and what technology-related purchases and expenses are eligible for reimbursement.

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▼ Remote Work Policies cont'd.

❖ Confidentiality/Security Standards

- ✓ Set clear expectations for ongoing protection of company property and confidential information, and include processes:
 - ❑ in the event of a possible or known security breach;
 - ❑ for the disposal or destruction of company records and information.

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▼ Remote Work Policies cont'd.

❖ Hours of work

- ✓ Set out parameters around working hours and overtime

❖ Employee status, entitlements, and conditions

- ✓ Be clear that status, leave entitlements, and wages are not altered by WFH
- ✓ Be clear that workplace policies and conditions of employment continue to apply

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▼ Remote Work Policies cont'd.

❖ Occupational Health and Safety

- ✓ WCB liability will continue to apply during the remote work schedule
- ✓ Set out that company will not be responsible for any non-work related injuries that may occur at home
- ✓ Ensure that WFH will not breach the terms of their household insurance policies

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▼ Remote Work Policies cont'd.

❖ Occupational Health and Safety

- ✓ Employers should ensure that they have a basic health and safety policy for WFH
 - ❑ Should require employees to conduct an assessment of their workplace and report hazards
- ✓ On-site visits
 - ❑ Should advise that joint on-site safety and suitability visits by employer may be performed to ensure basic safety standards met

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▼ Managing Employee Performance



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▼ Challenges

- Face-to-Face Supervision
- Access to Information
- Training
- Isolation
- Conflict
- Distraction

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▼ Strategies

- Reset perceptions about remote work
- Cultivate trust
- Set and communicate expectations
- Structured communication
- Opportunities for informal communication

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▼ Issues Affecting Performance

Working (from home)
parents

Having difficult
conversations remotely

Look out for burnout

Vacation

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▼ Tax Issues Related to WFH

Employee Home Office Expenses –
Allowances, Reimbursements and
Deductibility

Work From Home Tax Relief – \$500 Non-
Taxable Reimbursement for Personal
Computer Equipment

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▼ Research on Remote Work

[Latest Work-At-Home/Telecommuting/Mobile Work/Remote Work Statistics](#) (Global Workplace Analytics)

[Does Working from Home Work?](#) (Stanford University)

[How Companies Benefit When Employees Work Remotely](#) (Harvard University)

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▼ Q&A and Closing Remarks



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▼ Questions & Answers

Some questions were provided in advance, and several were received during this session.

We will try to answer as many questions as possible.

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▼ Closing Remarks

- ✓ Questions & Answers (Q&A)
- ✓ Please consult Fasken's [Coronavirus \(COVID-19\) Knowledge Centre](#)
- ✓ Subscribe to Fasken's [The HR Space](#) bulletin for continual updates on these matters and more

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▼ **Closing Remarks**

Thank you for attending!

Please keep well and safe!

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Biographies



Areas of Expertise

Labour Relations and Collective Bargaining | Labour, Employment & Human Rights | Employment Advice and Litigation | Labour Mergers and Acquisitions | Human Rights | Executive Compensation and Incentive Plans | Pensions and Benefits

Education

2019, Certificate in law, Pension Law, Osgoode Hall Law School at York University

2008, BCL / LLB, McGill University

2005, BA (Honours), University of Toronto

Jurisdictions

Quebec, 2012 | Ontario, 2010

Languages

French | English

Rhonda Grintuch is a lawyer with the firm's Labor, Employment & Human Rights group. With a practice covering all aspects of employment law, she provides employers strategic advice on hiring, lay-offs and dismissals, human rights, and federal and provincial employment standards. Clients also benefit from Rhonda's advice on labour relations matters, including grievance arbitration and union certification.

Over the course of her practice, Rhonda has developed particular expertise in health law, including the administration of healthcare institutions and mental health law.

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Areas of Expertise

Labour, Employment & Human Rights | Labour Relations and Collective Bargaining | Human Rights | Employment Advice and Litigation

Education

2002, LLB, University of Victoria
1995, B Comm, McMaster University

Jurisdiction

Ontario, 2003

Language

English

Mathias Link has advised and represented employers with respect to labour, employment and human rights law matters for more than 15 years. His practice includes defending employers in wrongful dismissal actions, human rights complaints, grievance arbitrations, certification applications, unfair labour practice complaints, claims under the *Employment Standards Act, 2000* and *Canada Labour Code* as well as disability benefits claims related actions.

Mathias acts as lead spokesperson in collective bargaining on behalf of employers and assists employers with negotiation strategy and providing ongoing advice regarding collective agreement administration.

Mathias also provides clients with strategic advice with respect to the employee related aspects of corporate restructurings, drafts employee and independent contractor agreements and reviews and provides advice concerning workplace policies in areas such as the duty to accommodate, harassment and discrimination.

Mathias spent a year as in-house counsel with one of North America's largest financial institutions. There, he provided legal and practical advice on matters focusing on employment law, human rights, employment contracts, privacy legislation and disability benefits claims.

A regular contributor to publications including the Ontario Bar Association's Labour Section Newsletter, Mathias also writes for Lawyer's Weekly, Law Times and Lexpert Magazine, and Canadian Labour and Employment Law for the U.S. Practitioner.





Bonny Mak (麥嘉欣)

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Areas of Expertise

Labour Relations and Collective Bargaining | Labour, Employment & Human Rights | Employment Advice and Litigation | Human Rights | Transportation | Retail | Health | Life Sciences | Energy | Agribusiness, Food & Beverage

Education

2006, JD, University of Toronto

1999, B Comm (Hons), Industrial Relations Management, University of British Columbia

Jurisdiction

Ontario, 2007

Languages

English | Chinese (Cantonese)

Bonny Mak advises and advocates for employers. Having practised exclusively labour, employment and human rights law for over a decade, she is experienced in a broad range of industry sectors, issues faced by employers, and legal proceedings. The majority of her work is in support of companies that are national in scope, in which she leverages both her own expertise and that of Fasken's national labour, employment and human rights team.

Advisory Work

Bonny supports employers in major initiatives impacting employees including: reduction in force, closure of business, sale and acquisition of business, implementation of new or changed policies, and response to union organizing campaigns. Recent examples include:

- Supported the closure of retail and manufacturing operations of a U.S. based client in 3 provinces involving the termination of 240 employees, from which no litigation arose
- Supported the negotiation of a closure and severance agreement between a service industry client and its union
- Formulated a strategy for client in building services sector to stay union free in contract bidding and subcontracting



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Areas of Expertise

Labour, Employment & Human Rights | Human Rights |
Privacy and Cybersecurity | Employment Advice and
Litigation | Life Sciences | Agribusiness, Food & Beverage

Education

1991, LLB, University of British Columbia

1980, BSc, University of British Columbia

Jurisdiction

British Columbia, 1993

Language

English

Lorene Novakowski is a leading labour, employment and privacy lawyer with a primary focus on providing strategic and timely advice to businesses and employers. She has extensive experience in employment and privacy litigation, appearing at all levels of court including the Supreme Court of Canada.

Lorene advises clients on employment termination issues and administration of collective agreements, and represents employers at the Labour Board, at labour arbitrations, in court, and in human rights complaints.

Working closely with the firm's Technology group, she provides advice on employment contracts and consultant agreements, non-competition clauses, and employment standards compliance.

Lorene combines her keen interest in privacy law to assist clients on a vast array of privacy issues including implementing privacy policies and procedures, compliance, and strategic advice in the event of a privacy breach. She is also the regional Lead of the firm's Privacy & Information Protection group.

Clients value Lorene's rapid and effective response to their significant cybersecurity and data breach matters through her management of forensic investigation teams, development of crisis communications and notification strategies, and legal risk management.

Lorene has also acted as counsel in inquiries before the Office of the Information and Privacy Commissioner, both in public sector and private sector matters and in judicial review applications before the BC Supreme Court and Court of Appeal.

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- Revamped a transportation industry client's alcohol and drugs policy, including the introduction of a requirement that employees in safety-sensitive positions self-report alcohol or drug addictions to the employer
- Advised a service industry client with salesforce in 8 provinces on changes in sales compensation structure and deferred commissions
- Analysis of retiree benefits buyout scheme under consideration for unionized and non-unionized employee groups potentially impacting thousands of retirees
- Supported distribution centre client in staying union free in the face of an aggressive 3-year campaign by a union

On a day-to-day basis, Bonny helps clients manage their employees and resolve workplace issues. She brings a pragmatic approach to disability management, discipline and termination, investigation of internal complaints, and the development of employment policies and procedures. She has delivered numerous training sessions on union organizing and certification, disability management, workplace harassment and human rights.

Advocacy Work

Bonny represents employers before the Human Rights Tribunal of Ontario, the Canadian Human Rights Commission, the Ontario Labour Relations Board, labour arbitrators, unjust dismissal complaint adjudicators, and courts. Recent examples include:

- Securing dismissal of 10 human rights complaints in 2018-19 before the Human Rights Tribunal of Ontario and Canadian Human Rights Commission without proceeding to hearing or investigation
- Represents a hospital in 9 complaints made by current and former employees to the Human Rights Tribunal of Ontario alleging systemic racial discrimination
- Successfully defended a discharge grievance for a transportation industry client
- In 2018-19, settled 8 grievances, 6 wrongful dismissal actions, and 5 human rights complaints



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