



# ARE YOU CANADA READY?

Strategic tips to minimize risk and maximize return for U.S. businesses entering Canada



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## ARE YOU CANADA READY?

### STRATEGIC TIPS TO MINIMIZE RISK AND MAXIMIZE RETURN FOR U.S. BUSINESSES ENTERING CANADA

#### A SPECIAL CERIDIAN SOLUTIONS REPORT

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For many American business owners, Canada is the great northern frontier. A land rich with attractive prospects and new opportunities. It is the natural next step for expansion beyond the U.S. border and marketplace. There is a common assumption, however, that Canada is much like a 51<sup>st</sup> state, with similar laws, business processes, human resources structures and compliance requirements governing business activities. Opening your doors north of 49 is too often anticipated to be a fast, simple, no-brainer transition.

**The truth is otherwise.**

Contrary to popular perceptions, Canada is not simply another prosperous, English-speaking nation like the U.S. While one of the world's most stable economies, it is also a complex, unique, demographically-diverse and fully-bilingual nation with its own intricate set of requirements, legislation and processes, each one varying depending upon which province your business is physically located in.

**THIS CERIDIAN SOLUTIONS REPORT IS YOUR OFFICIAL GUIDE TO DOING BUSINESS AND PAYING YOUR EMPLOYEES IN CANADA.**

## I. OVERVIEW OF CANADA

Let's begin with a big picture view. In covering the basics about Canada's structure, size, economic outlook, workforce and position on the global stage you will have a framework to aid you in preparing for business migration.



Toronto, ON

### i. SIZE & SCOPE

Canada is the second-largest country in the world. Far bigger in geographic size than the U.S., it covers an area of more than 6 million square miles but has a smaller population of little more than 33 million people—about the population of California! Almost 1/3 of the country still remains largely undeveloped and roughly 50% of its population resides within about 35 miles of its southern boundary with the United States—most in the busy industrial corridor between Windsor, Ontario and Quebec City, Quebec. Only six cities in Canada actually have a population of over one million: Toronto, Ottawa, Vancouver, Montreal, Calgary and Edmonton.

Ontario is by far the largest province in terms of population; the second is Quebec. Between the two of them, they constitute about two-thirds of the total population of the country and also two-thirds of the total gross domestic product of Canada.

The economies of those two provinces, which are perhaps the most important to the nation, vary substantially from that of the Midwest and the Northeast United States. While in the west, you will find the mining, oil & gas, and agricultural sectors predominate, in the east it is finance, technology and manufacturing. Toronto and Montreal are the banking and finance hubs of the country and also have a very strong presence in the manufacturing industry.

### ii. ECONOMY AND TRADE

As one of the eight largest economies of the industrialized countries, Canada is a member of the world's Group of Eight (G8) industrialized nations. As much as 75% of Canada's exports go to the United States, 8% to the European Community, 3% to China and 2% to Japan. We are famous for some excellent technological innovations, such as RIM or the BlackBerry, as well as sharing franchises for several NBA and NHL teams.

The Toronto Stock Exchange (TSX) and the TSX Venture Exchange rank third among North American exchanges and eighth among world stock exchanges in terms of market capitalization. In fact, there are more resource company stocks listed on the TSX than anywhere else in the world.

**Since 2010, Canada has been facing some challenges in the global trade/financial market environment that include:**

- economic slowdown in foreign markets, particularly the U.S., which is affecting Canada's exports
- tighter credit conditions and equity market losses resulting from global financial market upheaval
- a drop in prices for some Canadian-produced commodities

**On the other hand, trends positively impacting the Canadian business environment include:**

- increased mergers & acquisitions activities, particularly in the oil & gas and mining sectors
- very good financial results for many of Canada's natural resource companies
- low interest rates
- availability of credit
- a more robust economy in comparison with other industrialized countries
- less dramatic banking losses than recently experienced by other countries

### iii. LOW COST & BUSINESS COMPETITIVENESS LEADER

According to a recent KPMG report, Canada also ranks high when it comes to "low cost of doing business" and overall competitiveness. Among mature markets, the United Kingdom, the Netherlands, and Canada are currently the low-cost leaders, with business costs five percent or more less than the United States.

In addition, the Global Competitiveness Index (GCI), by the World Economic Forum (WEF), and the World Competitiveness Yearbook (WCY), by the International Institute for Management Development (IMD), both examine broad ranges of economic, institutional, and social factors in order to produce overall competitiveness indices by country. Among the 14 economies analyzed in this report, the United States, followed by Germany, Canada, and the Netherlands, offer the most broadly competitive business environments.

### iv. EDUCATED AND SKILLED WORKFORCE

Canada boasts a highly educated workforce with 20% over the age of 24 holding university degrees and 16% holding a college degree. Companies like Microsoft and many big Telco companies have come to Canada to set up research and development arms expressly because of the quality of the workforce. This is a population pool that is very focused on certain industries. For example, the telecom industry is aligned to the City of Ottawa – Canada's own Silicon Valley.

### v. POLITICAL STRUCTURE

Canada is a federal state, with governmental jurisdictions divided among a national government, 10 provincial governments and three territorial governments.

The federal government has legislative jurisdiction over:

- the regulation of trade and commerce
- banking and currency
- bankruptcy and insolvency
- intellectual property
- criminal law, and
- national defence



The provincial governments have legislative jurisdiction over:

- real and personal property
- civil rights,
- education
- health care
- intra-provincial trade and commerce

Note: Certain aspects of these provincial powers are delegated to municipal governments which enact their own bylaws.

## vi. BILINGUAL NATION

When coming to Canada, you are entering a fully-bilingual country with mandatory language requirements around the use of both French and English. You may think it is the same as Spanish in the U.S., but in Canada, including French in many advertising and business communications is not optional, but a legal language requirement. In addition, the English language spoken here follows the British system; for example 'centre' instead of 'center'.

### FAST FACT:

When establishing or acquiring a business in Canada, you must be concerned with the federal laws as well as the laws of the province(s) within which your business will be conducted.

In nine of the 10 provinces (and in the three territories) legal systems are based on common law. In Quebec, the legal system is based on civil law.

### Legislative differences between Canada and the U.S.

- Statutory holidays
- Taxes
- Workers compensation
- Family leave
- Health insurance – This changes constantly and the onus for compliance resides with individuals and businesses, not the government
- Business-related issues
- Time off for voting
- Snow days
- Two official languages

### a. COMMUNICATION REQUIREMENTS

As a requirement, all businesses within Canada are legally obligated to communicate and market in both official languages. This means many things will have to be translated and you will be required to provide support to your employees in their language of preference. When print publications or advertisements for recruitment are run in Quebec, they have to run in French first and then in English. These are just subtle differences that you may not even be aware of, but if you get caught, the fines could be quite substantial. Please note: this even pertains to signs on a store or restaurant.

### b. DEMOGRAPHIC BREAKDOWN

Quebec comprises approximately a quarter of the Canadian population and is about 75% French speaking, with French being the first language. The city centres of Quebec City and Montreal comprise a very large Anglophone population, known as a first language English population as well as bilingual English and French. However, there are a lot of legislative differences in Quebec that require employers to use French as their first official language when communicating with employees.

## vii. DATA PRIVACY & PIPEDA

In Canada, the way you treat your clients' information matters a little more. Here, your business will have to comply with the Personal Information Protection and Electronic Documents Act (PIPEDA) which regulates how you may collect, use and disclose the personal information you gather from your customers in the course of commercial activities. PIPEDA principles were developed by businesses, consumer organizations, government and others along with the Canadian Standards Association to create a

voluntary national standard for personal information based on 10 core principles. These principles have now been incorporated into federal law which gives individuals the right to access and request correction of the personal information these organizations may have collected about them. PIPEDA breaches or failure to comply can result in fines of up to \$100,000 depending upon the severity.

## II. HUMAN RESOURCES MANAGEMENT: LEGAL DIFFERENCES AND RISKS

One of the most treacherous areas for U.S. businesses to navigate when launching a company office or branch in Canada is the observance of Canadian human resources laws and procedures. The employment and management of a Canada-based workforce is a challenge fraught with costly pitfalls, complexities, compliance requirements and risk.

Let us take a look at some of the key differences and “red flag” areas:

### i. TERMINATIONS AND SEVERANCE COMPENSATION

The concept of “employment-at-will”, which allows an employer in the United States to terminate an employment relationship unilaterally without notice and without legal consequences, generally does not exist in Canada. Each jurisdiction, instead, has enacted legislation prescribing certain minimum standards for employment relationships within that jurisdiction. These standards include requirements for notice of termination, or pay in lieu of notice. **Be forewarned that these are minimum requirements only, and courts have broad discretion to award damages for additional notice of termination (known as wrongful dismissal claims) which typically far exceed the statutory minimum standards.**

Generally, statutory notice of termination is calculated on a sliding scale based upon length of service. Additionally, in cases of mass termination, a number of provinces, including Ontario, prescribe a longer minimum period of notice for all terminated employees, regardless of their length of service.

**“One of the most striking differences in HR legislation is that your employee will be entitled to severance compensation on termination of the employment relationship,” says Stuart Ducoffe, a lawyer with e2R Solutions, a Toronto-based legal-HR consultancy. “Whereas in the U.S., an employee can be here today and gone tomorrow at no cost to the employer, this is definitely not the case here in Canada.”**

**“The courts in Canada in awarding damages in wrongful dismissal cases, will often issue orders for severance compensation in excess of 24 months for long service employees,” says Ducoffe. “So in not complying, you will attract significant liability.”**

### ii. EMPLOYMENT CONTRACTS

How can you eliminate the risk of the wrongful dismissal claim or avoid large mandatory payouts altogether? According to Ducoffe, you would be well-advised to enter into an employment agreement directly with your employee that limits his or her entitlement upon termination.



While employees can rely on this employment agreement to enforce rights, by far the most important advantage to employers is that it will limit the scope of the package they receive upon termination. While as an employer, you cannot contract out of the minimum requirements set out in the various employment law statutes, both parties can, however, agree to cap such payments at the statutory minimums or slightly above. It also enables both parties to articulate other workplace expectations such as compensation, vacation, hours of work, reporting structures and other factors important to a particular workplace.

### iii. MINIMUM STANDARDS FOR OTHER PAYMENTS

In addition to minimum requirements for certain payments upon termination, employment standards legislation also prescribes minimum standards for such employment terms as payment of wages, paid vacation, public holidays, overtime pay, pregnancy and parental leave and the number of hours employees are permitted to work per week.

### iv. MATERNITY/PARENTAL LEAVE LAWS

Maternity/Parental leave is significantly different in Canada than in the U.S. For example, when somebody qualifies for maternity leave and/or parental leave there is a qualification process where the federal government provides partial income replacement. This partial income replacement can have a duration of up to one year and in the case of Quebec even longer. This will have a significant impact on scheduling and workforce planning issues for your business. In short, you really need to think about all of these things when you are working with people and employees in Canada. Remember, as an employer, you will be obligated to give the employee back the job they had before, or a comparable job at the end of their leave period.

### v. HUMAN RIGHTS LEGISLATION

Employers be forewarned: Canada has far more prohibited grounds (such as race, colour, sex, or religion) when it comes to laws regarding discrimination. In a Canadian job interview, for example, you cannot ask a candidate's race, religion or even questions as innocent as what high school they attended or marital status. And that is just the tip of the iceberg.

Most importantly, your business will run the risk of legal action should you fail to hire or decide to terminate an employee based on demographic considerations—such as age, race or sexual inclination. This also extends to taking sufficient action to protect your employees within the workplace from abuse and harassment,

#### a. A LANDMARK CASE FOR GENDER EXPRESSION

In Canada, each province has human rights codes. For example, in the province of Ontario, landmark legislation was recently passed: On June 15, 2012, the Ontario Human Rights Code was expanded to enshrine “gender identity” and “gender expression” as a protected ground of discrimination. What does this mean for you, the employer? These changes expand the scope of your obligation to accommodate as well as ensure a harassment-free environment. As an employer, you need to enforce workplace policies that capture the scope of this new protected ground of discrimination.

#### b. ORGANIZATIONS OF ALL SIZES MUST COMPLY

While human rights legislation statutes also exist in the United States, complying with them is often only a legal obligation for larger organizations. For instance, The Americans with Disabilities Act (ADA) applies only to companies with 15 or more employees. Similarly, the Age

#### FAST FACT:

Whereas in the U.S. only those companies with a certain number of employees are obligated to meet human rights requirements, in Canada, all employers regardless of employee numbers are required to comply.

Remember, it can take just one employee incident to trigger a human rights violation.

Discrimination in Employment Act (ADEA) affects only those businesses with 20 or more employees. Even more surprising, The Family and Medical Leave Act of 1993 (a federal legislation) applies only to those businesses with 50 or more employees.

#### vi. PROVINCE TO PROVINCE DIFFERENCES

As we have mentioned in our Canada overview, every province in Canada has different legislation. You are all-too familiar with the differences in legislation that exist from state to state—and it is the same in Canada. In coming to Canada, bear in mind that you are not only entering a foreign jurisdiction, but also a country where each province has its own set of complex laws and potential legal pitfalls. Needless to say, you cannot possibly operate safely here without getting some sound legal and HR advice.

**“Another common misconception is that Canada is a kinder, gentler and less litigious nation,” says Ducoffe. “Many U.S. business owners don’t think of it as a place where you could potentially face significant damage rewards yet this is more frequently the case.”**

**“A recent 1.2 million judgment against Walmart Canada following a bullying incident illustrates the dangers.”**

#### vii. BILL 168

A good example of recent legislation affecting employers in Ontario is Bill 168 although similar legislation is now in many Canadian provinces. On April 20, 2009, the Ontario Government introduced the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009 which amends the Occupational Health and Safety Act to impose new obligations on employers with respect to workplace violence and harassment.

### Human Rights in Canada and Bill 168

Some shocking recent awards:

- > *Bullying claims cost Walmart Canada \$1.2 m and the manager \$250,000*
  - In the biggest such award in Canada and the first decision where a bullying claim has succeeded against an employer, a colossal judgment of \$1.46 million was made in favour of a former Walmart Canada assistant manager in Windsor, Ontario—proof of the power of Bill 168
- > *\$800,000 awarded in damages for wrongful dismissal in BC*
  - Earlier this year, Larry Higginson was dismissed from employment after working at a BC saw mill for 34 years and subsequently launched a lawsuit for wrongful dismissal. In its decision, the Court held that allegations against Mr. Higginson were false and that the Company engaged in acts intended to induce Mr. Higginson to quit in order to avoid termination pay.
  - The Court awarded damages totaling approximately \$800,000— including the largest punitive damages ever awarded in a Canadian employment law case.

### III. CANADIAN TAX LAWS



There are major challenges your business will no doubt face around navigating the intricacies of the Canadian tax system, especially as it pertains to human resources management. One area worthy of mention is the major legislative pitfalls around U.S. employees working in Canada. It is not as simple as just crossing the border, family in tow. Serious consideration must be given as to how this individual will be taxed as fines can be substantial. Cross border employment taxation is a very complex issue and few legal entities fully understand it. This is not an area you want to assume risk, so it is advisable to look for outside regional expertise.

In fact, in terms of continuous legislative changes, about every six months or so, the Federal Government and/or the provinces will change parts of tax code, legislative compliance requirements, etc. As a result, there is a definite need to continuously stay on top of all the changes that exist from a provincial and federal tax perspective. (For information on how an international payroll provider can help expressly with this challenge, see section IV. iii. on page 8.)

Income taxes are imposed at the federal level, as well as by the various provinces and territories. The combined federal and provincial rate of income tax imposed on corporations varies widely depending on the nature and size of the business activity carried on, the location of the activity and other factors. The federal government has enacted legislation that provides for a gradual reduction of the federal general corporate income tax rate through 2012. In 2011, the highest combined rate of income tax applicable to non-Canadian-controlled private corporations was about 32.5%, while the lowest such rate, applicable to the ordinary business profits of such a corporation, was about 26.5%.

It should be mentioned that tax credits and other incentives are also available in certain circumstances to reduce the effective tax rates.

### IV. PAYROLL MANAGEMENT

We have dealt briefly with some of the most notorious pitfalls around hiring, management, termination and taxation legislation in Canada. Let us now explore the full sweep of challenges facing American HR and payroll managers tasked with managing and paying staff within Canadian borders.

Be aware that in Canada some of the statutory holidays are different. For instance, Thanksgiving is usually the second week in October as opposed to the third week of November. Canadians celebrate July first not July fourth, as their national day and many provinces support their own holidays like the recently announced family day for Ontario. It is very hard to understand these legislative issues if you are not living there and functioning in it every single day. In addition, workers compensation is handled at a provincial level. So, if you have staff within multiple provinces, you have to deal with different bodies to get all this consolidated.

#### i. BANKING, PAYROLL AND GOVERNMENT REMITTANCES

Another big difference is the Canadian banking system. It is significantly more regulated and centralized than in the U.S. with six major banks dominating the landscape. Another interesting difference is that Canadian employees tend to be more “banked” than those in the United States. In doing business in Canada, this will impact the way you pay your Canadian employees who each have their own preferred banking institution. Typically, payment will be by direct deposit to their bank account. Cutting a cheque or paying with pay cards is a real exception. This can be a real pain point for American payroll professionals who have to accommodate these new widely divergent practices.



Your Canadian payroll solution will shield you from risk and keep you compliant by automatically remitting to different bodies, including the government, seamlessly. This is standard in Canada.

A major payroll challenge pertains to the frequency of remittances to the government. In Canada, depending on the size and sector of your organization, your frequency of remitting to the government can change frequently and the government ordinarily does not notify you if and when your remittance requirements have changed. They will simply expect your organization to comply. That is a paramount caveat when it comes to managing payroll because organizations are fairly dynamic and they do change, so their remittance requirements change on a regular basis as well.

For this reason, it is highly recommended to look at a Canadian-based (or cross border-based) payroll solution to simplify the entire process. The good news is that in Canada, when you purchase a payroll solution, worry-free money movement, bank deposits and all government remittances are part of it.

## ii. HEALTH BENEFIT DIFFERENCES

In Canada, the provinces individually pick up the tab for basic health care services for employees in Canada. However, as time passes the cost of service delivery increases which is driven largely by demographic factors. In terms of insurance, the Canadian market is dominated by 3 insurance carriers (Great-West Life, Sun Life, and Manulife) who account for 62% of the total market.

With all these striking differences, daunting hurdles and legislative complexity, the question to consider when entering the Canadian market is not whether to outsource your legal, HR and payroll management, but how much of it? And how to select partners you can trust? This last question in particular, we will address in this final international payroll solutions section.

## iii. INTERNATIONAL PAYROLL SERVICES

When it comes to managing your people in Canada, paychecks are only part of the process. Few business owners are really interested in learning the intricacies of a Canadian T4, or a Relevé 1 in Québec. Realistically, your own payroll experts will likely have never heard of a "Record of Employment" nor will they be current with all the complex legislation (which varies from province to province) around vacations, sick days and statutory holidays. In short, you are facing big costs up front — and a long ramp up time.

For all these reasons, payroll should be one of the first functions you outsource. After all, do you really want to invest in the expensive software and infrastructure? Or recruit the expertise to oversee it for a hefty salary? Successful businesses don't.

**In outsourcing your payroll to a reliable Canadian payroll services supplier, you will ensure:**

- **Canadian Legislative Compliance & Risk Mitigation** — Your outsourced partner will handle your Canadian government payroll inquiries/audits as well as the required tax filing.
- **Contingency and Continuity** — payroll data retention guaranteed
- **Efficiency** — with more time for your key personnel to focus on their areas of expertise
- **Cost-control and savings** — Proven to significantly reduce your costs and improve your ROI
- **Industry-leading best practices** — if you choose your payroll partner wisely
- **Single Point of Contact** — to reduce complexities between countries
- **Quick set-up** — 30 days from agreement to first live pay run

### End-to-end payroll coverage with self-serve options

Today the best Canadian Managed Payroll Solutions cover your payroll process from end-to-end. It's a wonderfully simple system where every pay period you simply email in the hours worked plus any employee changes and they do the rest. You may also be pleasantly surprised to know that the best-in-class solutions also offer you self serve options. That means your employees can easily access certain areas of the system to make select changes themselves, relieving pressure on your US-based HR and payroll team

#### What to look for in an International Payroll Services Provider:

- In-country expertise for local legislation, tax, social security regulations and statutory reporting requirements
- Local employees who understand cultural issues facing employees in each country
- Global management infrastructure providing consistent service levels and practices in each country
- Consolidated reporting on all countries operations
- International Funds Transfer
- Multi-lingual services in a range of languages

#### Proven ROI

Outsourcing your payroll is not just an efficiency booster. It will also significantly impact your bottom line. Statistics show that some businesses have actually achieved as much as a **172% return on investment** by fully outsourcing their payroll function to leading Managed Payroll Solutions Company in Canada. And in terms of cutting costs, we have seen SME businesses realize **savings of up to 60%**.

#### iv. CHOOSING YOUR PARTNERS WISELY

When it comes to the bigger picture of outsourcing, Canadian companies offer superior expertise and cost advantages. The incentives to source services in Canada can vary, however, and largely depend on the quality and extent of the due diligence and the preparatory work which precedes the negotiation. The early involvement of experienced outsourcing counsel, preferably from the outset of the transaction can facilitate the required due diligence and the structuring of the outsourcing transaction, and help the parties to avoid problems that could have been more effectively and efficiently addressed if identified earlier.

The selection process is the vital step. It is important to take your time in order to isolate a credible supplier that is a good fit for your business—with strong referrals from people you trust.

#### Key areas to investigate in order to make an informed outsource partner decision include:

- **Geographic coverage** — Make sure your outsourced partner of choice has offices in different regions to help facilitate transactions and provide local support to your Canadian staff
- **Industry reputation and knowledge depth** — for example, is your payroll provider of choice known for cross border and regional payroll solutions?
- **Capabilities & expertise** — Be sure to check the qualifications and certifications of the support team or the individuals that will be performing some of these functions for your business
- **Type, quality and up-to-date tools and applications** — for example, does the payroll system they use speak to your time and attendance systems and to your cross border performance management systems?
- **Commitment to quality control and continuous improvement**

## V. SERVICE LEVEL AGREEMENTS (SLAS)

Finally, it is essential to be diligent in probing into all areas—quality, reputation & capabilities—to ensure that you are minimizing the risk with a vendor that will be performing those mission-critical responsibilities for you in the Canadian market. It is equally important to get it all in writing (who is doing what, what is included and where accountability lies) so you are assured of getting exactly what you pay for with no loopholes. Without a carefully worded contract or service level agreement (SLA), you could end up shelling out for a service you did not order—or not receiving a service or safeguard you assumed was part of the deal.

## IN CONCLUSION

If you are planning the move to Canada within the next few years or sooner (or if you are already paying employees in Canada) now is the time to ensure that your business has a solid foundation for future success. At the end of the day it doesn't matter how good your finances are, how viable your business goals or passionate your vision, without a deep knowledge of the complexity of the Canadian legal landscape and a good human resources foundation, you have a house of cards that is set to topple.

Devote the time to human resources capital management and, if you do, you will reap the benefits and have a prosperous, compliant and healthy Canadian operation.

**This white paper is provided by Ceridian Solutions, a leader in international HR and payroll solutions serving more than 100,000 businesses and 25 million employees in over 50 countries worldwide.**

## ABOUT CERIDIAN CANADA

Ceridian Canada is a human resources solutions provider that helps customers optimize their workforce, reduce costs and save time by finding, paying, developing and engaging their talent. With over 40 years of experience, proven expertise and recognized service excellence, Ceridian Canada is a trusted partner to 43,000 Canadian customers. Ceridian's solutions include payroll, Dayforce Human Capital Management, HR information services, recruitment and staffing services, Employee Assistance Programs, training and more. With offices from coast to coast, Ceridian Canada provides services to more than three million Canadians. Ceridian Canada was established in 1968 and is based in Toronto, Ontario.

**FOR MORE INFORMATION ABOUT OUR FULL SUITE OF HUMAN CAPITAL MANAGEMENT SOLUTIONS, PLEASE CONTACT CERIDIAN AT: 1-877-237-4342 OR VISIT WWW.CERIDIAN.CA.**

