

EMPLOYMENT ISSUES

IN A FALTERING ECONOMY



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In most businesses, wages and benefits dominate the expenses that must be covered every month. In times of economic weakness those and other expenses must be controlled in an effort to ensure the viability of the business. Unfortunately, wage and benefit expenses are more difficult to deal with than many others. A business cannot simply decide not to pay its employees, and letting staff go can lead to very significant severance and legal expenses.

An employer can terminate the employment of any employee at any time for any reason or no reason, as long as reasonable notice is provided of the termination, or the equivalent severance is paid to the employee. The law of severance in Canada can be generous to employees, and the amount of notice or severance that must be provided can sometimes be shocking to employers.

The *Employment Standards Act* (the “Act”) is a provincial law that provides the statutory *minimum* notice or severance that must be provided to an employee on the termination of their employment. The Act provides that after one year of service an employee is entitled to one week of severance for every year of service, up to a maximum of eight weeks. This statutory minimum is not, however, the end of the story! Many, if not most, employees are entitled to more severance, and in some cases considerably more severance, than the Act requires.

The Courts have decided that a departing employee is entitled to “reasonable” notice of the termination of their employment, or severance pay in lieu of such notice. What is reasonable will depend on all of the circumstances. Basically, the Courts will try to determine the approximate length of time that the particular employee, in his or her personal circumstances, should take to find a reasonably equivalent position. Various factors will be considered, including the length of service, the importance of the employee’s job to the business of the employer, the age of the employee, the state of the job market for their particular skills, and other factors. An older employee with a significant management position and several years of service can be entitled to up to two years’ notice or severance! “Reasonable notice” will depend on the individual facts of each case.

Employees dismissed for cause are not entitled to notice or severance. It is, however, very difficult to establish cause for the termination of an employee. Employers who allege cause inappropriately can be subject to punitive or exemplary damages, or to the payment of additional severance as punishment for their “bad faith” behaviour.

It is important for employers to obtain skilled legal advice on the appropriate notice period or severance in the case of the proposed termination of any employee before terminating such employee, and not to simply rely on the provisions of the Act! Likewise, it is important for terminated employees to ensure that their rights are protected and that they receive the notice or severance to which they are entitled. The employment lawyers of Baker Newby LLP will be pleased to provide that advice to either employers or employees upon request.