



Navigating Labour Challenges Through COVID-19

Revised Temporary Layoff Rule

- 120 days previously allowed
- Bill 24 which was given Royal Assent on June 26, 2020 now allows for 180 days
 - Must be COVID-19 related

Resetting the 120/180 Days

- Call the employees back at least 7 days prior to the end of the 120/180 day period, re-employ them for at least 7 days.
- If the work is not there, you can reinstitute another 120/180 day temporary layoff by providing 7 days notice
- There is no reason you cannot provide the employee the 7 day re-layoff notice either on their call back letter or on their first day of work.

120 Day Ministerial Order

- The ministerial order expires August 14, 2020
- Once it expires the 120 days temporary layoff will not be effective anymore
- At this point, we are unsure how Bill 24 will effect things. Ie. Will it expire?
- Bill 24 does state that the reason for the temporary layoff must be COVID-19 related

What happens if you let the 120/180 days expire?

- You are deemed to have terminated the employee
- Payment pursuant to the code and common law reasonable notice would become due to the employee, unless an employment agreement provides otherwise

What are the Alberta Labour Standards Notice Period Requirements?

ss. 54-61.1 of the
Employment
Standards Code

56 To terminate employment an employer must give an employee written termination notice of at least

- (a) one week, if the employee has been employed by the employer for more than 90 days but less than 2 years,
- (b) 2 weeks, if the employee has been employed by the employer for 2 years or more but less than 4 years,
- (c) 4 weeks, if the employee has been employed by the employer for 4 years or more but less than 6 years,
- (d) 5 weeks, if the employee has been employed by the employer for 6 years or more but less than 8 years,
- (e) 6 weeks, if the employee has been employed by the employer for 8 years or more but less than 10 years, or
- (f) 8 weeks, if the employee has been employed by the employer for 10 years or more.

What Common Law Severance Could Look Like

- Absent an employment agreement, setting an employee's severance, it is very difficult to opine on as every case is treated individually dependent on factors like age, seniority, management level, years of employment, etc. If you do not use the above language then it is really something that an employer needs to talk to a lawyer about in each instance. A rough although not entirely useful guideline is one month of pay for each year of employment.

Sample Wording for an Employment Agreement

- Termination: You agree that your employment can be terminated for the following reasons and on the following basis:
- The Company shall have the right to terminate your employment immediately for cause without any notice or any payment in lieu of notice to you. "Cause" means: (i) any breach by you of any of the Company's policies, (ii) an act of misconduct, or intentional action, or negligence, by you that is harmful to the Company's business, (iii) your criminal conviction for which you are not pardoned, or (iv) any other conduct that Canadian courts have found amounts to just cause for termination.
- The Company shall have the right to terminate your employment at any time without cause by providing you with pay in lieu of notice equal to X weeks of your annual base salary for each full year of your employment with the Company. You agree that payment of this amount shall constitute full and final settlement as between the Company and yourself of any claims for severance, reasonable notice or payment in lieu of notice arising from the termination of your employment, and you fully and finally release the Company from any such claims, including any claims under the Employment Standards Code, upon receiving this payment.
- You also have the right to terminate your employment at any time for any reason by providing the Company with two (2) weeks written notice of the termination of your employment.
- *NOTE: If an employer wishes to further limit severance obligations, you can do so by having the employee agree that their only entitlement is to the notice required by the Employment Standards Code.*

Providing Working Notice in Lieu of Severance

- Working notice is no different than paid notice so as long as you are meeting your obligations under the Code; A CAVEAT – many employers do not want to provide working notice as then you have a disgruntled employee around for a period of time. Paying them out as per above usually makes much more sense.

What Terms Should be Included in an Employment Agreement?

- That is huge topic and really depends on how detailed the employer wants to be. It could be no more than three pages for a general run of the mill employee or up to 30 pages for a senior executive who has much more responsibility and you really need to nail them down for non-compete, non-solicitation, confidentiality, etc. reasons. That is why there really is no “one size fits all” agreement.



Questions?

Timothy Chick, LLM

Counsel

Langford Law

Direct 587-323-5902

timc@langfordlaw.com

Langfordlaw.com