Temporary Layoffs Of Professionals Hired On A Yearly Basis May Terminate Their Employment Contracts

July 04, 2018

In its 2016 decision in *Groupe Lelys* c. *Lang* ("*Lelys*"), the Québec Court of Appeal seemed prepared to allow employers to temporarily suspend employees, even when their employment contracts contained no clause providing for such temporary layoffs. In that case, the Court of Appeal held: [translation] "laying off for economic reasons is a current and accepted practice in Québec." For more information on this judgment, please read our April 2017 bulletin, "The Legality of Temporary Layoffs in Light of Decisions Recently Rendered in Québec and in Ontario."

Recently, the Superior Court revisited this question in its decision in *Stepanian* c. *Réseaux sans fils Calamp inc.* (2018 QCCS 611) ("*Stepanian*"). In this case, the employer, facing a slowdown in its operations, was obliged to temporarily layoff three of its professional employees, who had been hired to work on a year-to-year basis. This occurred shortly after a decision was made to relocate them. Several months later, the affected employees filed an action before the Superior Court against their former employer, on the grounds that they had been constructively dismissed.

One of the issues the court had to determine was whether the temporary layoff of the employees concerned consequently terminated the employment relationship between the parties.

The Superior Court determined that the employment of the three employees in question had been terminated by the employer's decision to lay them off temporarily. The court concluded that because the employees were not obliged to accept any substantial change in their working conditions that would result in their being relegated to a "passive availability" status, entailing suspension of their on-the-job performance and thus the loss of their salaries.

Additionally, the court drew an important distinction between the layoff of those three professional employees, who had been hired on a yearly basis, and who had never before experienced any shortage of work, and laying off hourly-paid workers performing their tasks in a cyclical marketplace. Contrary to the facts in *Groupe Lelys*, in which the laid off employee had been warned before being hired about the uncertain nature of the

employment, the cyclical, temporary layoff of the employees involved in the *Stepanian* case was not provided for in their working conditions.

Consequently, moving forward, it will be even more important for employers to consider including a clause permitting temporary layoffs in their employee contracts to avoid action that may be taken in a difficult economic or administrative situation from being found to be tantamount to constructive dismissal.

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