The U.S. tariff effect: Ensuring the health and safety of a reduced workforce part I

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A continuation in our U.S. tariff effect series, a national analysis of the impact of tariffs on Canadian employers.

With the imposition of tariffs by the current U.S. Administration on the horizon, including increased tariffs on steel and aluminum imports recently announced, employers may be faced with difficult decisions regarding workforce reductions.

As discussed in our first article of this series, temporary layoffs are one strategy that employers may use to manage financial strain caused by tariffs while maintaining flexibility for future recovery. Although implementing temporary layoffs are subject to limitations (contained in provincial employment standards legislation) and may raise constructive dismissal risks, they remain a viable alternative to outright termination of employment where there is a possibility that the business will resume at full capacity in the near term.

But what happens to employees who must continue to work as though there was no reduction in workforce?

Employers will have an ongoing obligation to ensure the health and safety of its workplace and workforce under applicable occupational health and safety legislation. One of the pressing concerns is ensuring workplace health and safety when fatigue and burnout can become commonplace, particularly if the workforce is reduced and additional pressure is placed on employees to continue operations. Equally important, operations may be required to do more with less. Employers facing economic pressure and uncertainty are unlikely to refuse business, and thereby oblige their employees to work more. This may include overtime and, while most provincial legislation limits how much overtime can be done by an employee on a weekly basis, certain provinces also recognize the right for these employees to work more than the limits imposed by the law. Therefore, when faced with the threat of losing their jobs, it can be expected that employees will work longer hours and, at the same time, face the very real likelihood of burnout and workplace accidents.

In addition, employers faced with increased concerns surrounding production demands, will hire quickly and not necessarily hire candidates with proper and required skills. This,

too, will increase the risk of work accidents for not only existing employees (who will be forced to cover for the lack of skilled workers), but also for the new candidates who will be asked to perform work that they are not properly trained for.

These issues may also have a significant impact on management employees and the demands made on them.

Considering the above, we have attempted to assist employers in navigating these uncharted waters by compiling a list of best practices to help mitigate workplace health and safety risks in respect of reduced workforces.

Workplace Health and Safety Policy and Training

Employers should ensure they have a Workplace Health and Safety Policy and Program in effect and make employees aware of and ensure understanding of the policy and program. Consideration should also be given to upgrading these policies and programs considering changes to the workplace set out above. Among other things, the policy should clearly set out the employer's obligations to ensure the health and safety of its workforce and the realistic expectations of the employees. Moreover, there should be a contact person listed in the policy in charge of receiving and responding to employee questions or concerns. If possible, we also recommend offering a refresher course for employees on this policy and associated program.

Depending on the nature of the business, newly hired employees should be contacted on a continual basis and questions and/or concerns raised by these employees must be answered quickly and completely. This can be achieved where the employer, employees and the union (if applicable) are working together. Referring to our first issue, all parties should be working together and ensuring that both the viability of the operations and the fulfillment of reasonable health and safety concerns are both carefully handled.

It starts with basics: employers should be looking at their policies and programs now to consider what needs to be done. While this is not easy to ascertain unless employers really understand how their operations will be impacted by tariffs, there are many things that employers can do now to make the required steps attainable.

Health and Safety Representative or Joint Health and Safety Committee

Depending on the province in which an employer operates, there are provisions which set out when a health and safety representative or a joint health and safety committee or their equivalents are required. Therefore, we recommend that employers review their head count in the province(s) they operate to ensure they have the requisite representative or committee in place. In addition, employers may contemplate the creation of these roles even if not required under the applicable provincial law. This type of action by an employer will demonstrate its commitment to health and safety and will allow the employer to attract people to apply and show unions that the employer is serious about ensuring health and safety. This makes dialogue and involvement easier,

and drives engagement more generally, leading to more effective recruitment and retention.

There is, however, one concern to consider. Once the workplace returns to how it operated prior to the tariff imposition, the employees and the union must understand, while commitment to health and safety remains, actions which exceed provincial requirements may disappear or, at least, be rolled-back to existing provincial requirements. Therefore, employers must consider these steps very carefully and have frank and open discussions with their employees or unions before any steps beyond the requirements of the provincial legislation are undertaken.

These steps are consistent with the role of health and safety in today's workplace. Health and safety representatives and joint health and safety committees ensure that health and safety is an ongoing discussion. They are tasked with many roles including, but not limited to (i) evaluating, monitoring and following up on workplace hazards; (ii) monitoring the effectiveness of workplace safety programs in place; and (iii) responding to worker complaints and suggestions regarding safety and health.

It is imperative that these systems are in place and functioning to ensure a comprehensive understanding of the workplace, the hazards within, and the health and safety of employees. This also includes the mental health of employees in the workplace. This is even more important where the workplace involves issues set out at the commencement of this article.

Assessment of Workplace Hazards

Employers should ensure that a recent assessment of workplace hazards has been conducted. If one has not recently been conducted, such an assessment should be undertaken. It is essential that the assessment be conducted in the context of a reduced workforce, particularly where it constitutes a significant change in the workplace. Specifically, there may be hazards that only become hazards with a reduced workforce (e.g., working alone). Understanding the hazards present in the workplace, and how these hazards may pose a greater risk with a reduced workforce, will allow employers to better mitigate against these risks. In addition, employers can better educate both existing and new employees as to what risks exist and what can be done to minimize these risks. Education becomes one of the most important steps that employers can take at these times.

Internal Hour Tracking Systems and Employee Information

To prevent employee burnout, employers should ensure that proper internal hour tracking systems are in place. This is also consistent with employment standards legislation which requires that employers record all hours worked by employees. In some provinces, like British Columbia, employment standards legislation prohibits employers from assigning excessive hours of work or hours that are detrimental to an employee's health or safety. With a reduced workforce, hours of work and, specifically, excessive working hours and time off between shifts, will be some of the biggest concerns. Moreover, employers should ensure that all employee contact information is

up-to-date and request that employees provide any revisions as soon as possible. Updated information will allow for effective communications between employers and employees. Again, certain provinces allow employees to effectively waive the statutory protections and work more than the hours established under the provincial standards legislation. It has been recognized in Quebec, for example, that employees can waive the overtime limits and work more than the hours set out in the legislation. Therefore, employers who have operations in more than one province should consult with counsel to learn what the law says regarding the right to work beyond the limits imposed regarding overtime limits. Once this is known, and the volume of work is known, this may allow the employer to decide where work should be sent and where additional employees may be hired.

Employers in Ontario with 25 or more employees should also be sure that their Right to Disconnect Policy is in place, as prescribed by the Ontario *Employment Standards Act, 2000*, and that employees are aware of the same.

Now, more than ever, employee hours and the ability to spend quality time away from work will be paramount. All of these issues result in additional pressures on employees, their managers and their mental health. In our next article we will address and focus on health and safety in turbulent and uncertain times with a focus on psychological safety and mental health.

Stay tuned for the next article in our series on The U.S. Tariff Effect, a continuation of health and safety in a reduced workforce, focusing on psychological safety and mental health.

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