The U.S. tariff effect: Mass terminations in Ontario – Rights, risks and responsibilities

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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 President Trump imposing tariffs on Canadian goods, many employers are asking about their obligations in the event of an economic downturn, with the potential for layoffs or mass terminations.

The Ontario *Employment Standards Act, 2000* (the ESA) layoff and mass termination provisions can be technical and complex. It is important to understand and comply with the rules and obligations under the ESA to avoid potential increased and unexpected liabilities.

ESA temporary layoffs

Employees who are placed on a temporary layoff will be deemed terminated once the threshold for a temporary layoff period is triggered (13 weeks on layoff in any consecutive 20-week period, which can be extended to 35 weeks in any consecutive 52-week period in certain circumstances).

ESA notice of termination and severance entitlements

Subject to certain limited exceptions, all employees are entitled to minimum statutory notice periods upon termination of employment under the ESA. In the absence of a mass termination, the statutory notice period is based on the employee's years of service and can be up to eight weeks after eight years of service. In addition to notice (or pay in lieu with benefit continuance), employees with five or more years service with an employer that has a payroll of greater than $2.5 million are entitled to statutory severance pay, calculated at one week's pay for each year of service, up to a maximum of 26 weeks of pay.

ESA mass terminations

Under the ESA, a "mass termination" occurs when an employer terminates the employment of 50 or more employees at the employer's "establishment" within a four-week period. The four-week period is a "rolling window", with a mass termination occurring on the first occasion of 50 or more employees being terminated within the same four-week period. This could happen in various situations, such as downsizing, restructuring, or a company-wide closure.

"Establishment" includes multiple locations in the same municipality where the employer carries on a business through more than one location. It can also extend to multiple facilities outside of a municipality, if the employees have contractual bumping rights to those facilities.

The mass termination provisions do not apply if the number of terminated employees is 10 percent or less of the employees employed for at least 3 months **and** the terminations are not caused by the permanent discontinuance of the employer's business at the establishment.

In the event of a mass termination:

1. With limited exceptions, the ESA notice of termination/termination pay entitlements increase for all employees who are terminated as part of a mass termination to eight, twelve or sixteen weeks; and
2. The ESA requires the employer to provide the Director of Employment Standards with a Form 1 - Notice of Termination, which must be posted in the workplace(s) and written notice to the affected employees must be given as well. Importantly, failure to file the Form 1 can be costly, as the notice of termination clock only starts ticking when it is submitted.

Notice period for mass terminations

The notice period required for mass termination overrides the individual ESA notice period, and is the same for the entire group, regardless of length of service. The required ESA notice periods correspond with the following breakdown:

- 50 to 199 employees: at least 8 weeks notice;
- 200 to 499 employees: at least 12 weeks notice; or
- 500 or more employees: at least 16 weeks notice.

Employers have the option of requiring employees to work during the notice period (working notice) or, alternatively, pay the termination pay in lieu of notice (with benefit continuance). Statutory severance pay would also be owing if the thresholds noted above apply.

Of note:

- The ESA provides for minimum entitlements only. Contractual and common law reasonable notice obligations for non-union employees will still have to be considered.
- With respect to unionized employees, any notice, consultation, layoff, recall and seniority provisions in a collective agreement will have to be carefully applied.

As briefly described in this alert, mass terminations require careful attention to detail under the ESA. By understanding the ESA's requirements and providing the proper notices, employers can minimize legal risk.

If you are concerned about the potential of a mass termination or need assistance with compliance under the ESA, please contact your BLG lawyer or any member of our Labour and Employment Group who will provide guidance and support.

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