

The U.S. tariff effect: A multi-part analysis of the impact on Canadian employers

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The Trump Administration's decision surrounding the potential imposition of new tariffs in the near future has introduced significant uncertainty for Canadian businesses, employees and trade unions alike. While much of the focus has been on trade and economic policy, these measures also have critical implications for employment and labour law issues.

For many employers, particularly in manufacturing, steel, aluminum and other export-dependent industries, it can be expected that tariffs will increase costs, disrupt supply chains and create financial pressures that may necessitate workforce adjustments. Employers may also face challenges related to collective bargaining, contract renegotiations, and compliance with employment standards legislation. In addition, employers often enter into contracts based on fixed costs or, at least, costs which will vary slightly, but certainly not to the tune of 25 per cent.

In a series of articles, BLG will address and explore the key labour and employment law considerations for Canadian businesses in anticipation of these potential new tariffs and their impact on Canadian employers. In the first article of this series, we look at what employers should consider in managing temporary layoffs and provide suggestions for addressing employees' concerns as the U.S. government's tariff policies evolve. While it appears there may be a 30-day reprieve with respect to the tariffs – this provides employers with time to strategize how these potential tariffs will affect their business and their employees.

Part 1 – The U.S. tariff effect: Managing temporary layoffs and navigating alternatives

Temporary layoffs

Employers may anticipate resorting to temporary layoffs as a short-term solution to manage financial strain while maintaining flexibility for future recovery.

In most Canadian provinces governed by common law, employers do not have an automatic right to impose temporary layoffs unless it is expressly provided for in an

employment contract, a collective bargaining agreement, or established as an industry practice. Without such provisions, a temporary layoff could be considered a constructive dismissal, triggering severance obligations.

While Québec operates under a different legal framework, claims of constructive dismissal can also be made by employees who are temporarily laid off.

Additionally, provincial employment standards legislation limits the duration of temporary layoffs, beyond which employees' employment is deemed terminated, requiring payment in lieu of notice or severance pay.

Moreover, certain provincial employment standards statutes impose additional obligations in mass termination situations. For example, in Québec, these requirements may be triggered if at least ten (10) employees in the same establishment are terminated or laid off for six (6) months or more within a two (2) consecutive month period. In B.C., these requirements are triggered if more than fifty (50) employees are terminated within a two (2) month timeframe.

While employers may want to act quickly, careful consideration should be given before workforce adjustments are implemented and should involve an evaluation of the actual economic impact of the tariffs.

Force majeure and key takeaways following the Covid-19 pandemic

Canadian case law has consistently confirmed that the Covid-19 pandemic did not relieve employers of their obligations under employment standards legislation, including the obligation to provide individual or collective termination notice, severance pay, or indemnity in lieu of notice.

Considering these decisions, employers will have to be careful not to use the evolving economic climate as an excuse to not respect minimum employment standards entitlements (notably in a context where a layoff becomes permanent). Employers should also consider conducting thorough risk assessments as short-term cost-saving measures that do not ensure legislative compliance could lead to heftier long-term costs that disrupt management's costing models.

Given these legal nuances, employers should carefully assess their obligations before implementing temporary layoffs. If tariffs are implemented and economic pressures mount, businesses may eventually need to convert temporary layoffs into permanent workforce reductions.

As such, employers will be forced to consider this possibility and potential alternatives from the outset in order to minimize legal and financial exposure and business disruption. As we will be addressing in a subsequent article, such alternative measures could include reshaping current work conditions, which entails its own set of legal considerations necessary to avoid negative exposure.

In any case, given the uncertainty as to the full application of these measures, it would be premature to proceed with workforce reductions given that employers may not have the necessary data to accurately assess the financial impacts on their operations and

costs at this stage. Early and ongoing monitoring, analysis and contingency planning are therefore key for employers to mitigate risks.

Communication with employees

Considering the evolving information and announcements regarding the delayed imposition of tariffs, employees will undoubtedly have concerns, questions and apprehensions regarding the future of their employment. In this difficult context, the importance of timely and effective communications with employees cannot be overlooked. Indeed, it is our view that more will be gained by employers who are transparent with their employees and take the time to explain to them how these changes impact the business and the employees. **Therefore, please:**

1. **Evaluate before implementing.** Reassure employees that the company will carefully gather and evaluate all information before implementing any decision, thereby ensuring well-informed decisions.
2. **Avoid speculation and focus on confirmed facts and decisions.** Given the fast evolution of the U.S. Government's announcements and the reactions on the part of Canadian governments at various levels, we highly recommend keeping close tabs on the latest updates to communicate accurate information to all parties. Suppositions should be avoided in this context to avoid causing undue stress. Acting on rumours and unconfirmed social media must be avoided until the reported information is validated.
3. **Emphasize collaboration and employee engagement.** In a context where ensuring productivity will be as important as ever, remind employees that their collaboration and dedication will be crucial in navigating upcoming challenges. Therefore, try to create a pattern of encouraging input and sharing information either through fixed meetings with your employees or a system of questions and answers which employees raise. Listen and respond to employees' concerns. It is important that employees feel their perspective is valued and considered.

Up next

As we receive updates on the Trump Administration's decisions regarding the implementation of tariffs and the reactions of the federal and provincial governments of Canada, BLG will continue to monitor how employers can be proactive and exercise vigilance in the management of their workforce. We believe this will help you keep employees informed and help them understand what is happening and how it may affect them.

We will, therefore, address key considerations surrounding various topics in our future articles such as:

1. Suggesting systems which facilitate the planning and management of modified work arrangements and conditions to ensure adaptability and flexibility.
2. Anticipating evolving labour relations, including considerations surrounding changes in working conditions in a unionized context, bargaining strategies, dispute resolution measures, and mitigating risks of labour disputes. More specifically, we will address how embracing transparency and an open dialogue with the union can strengthen trust in the employer's decisions.

3. Adapting to increased labour mobility within Canada. This will require the assistance and cooperation of provincial governments. In fact, the ability of employees to work in other provinces is likely to be expanded on and policies which support isolationism will likely be avoided and replaced.
4. Best practices in workplace health and safety and risk mitigation in the context of additional strains on a reduced workforce. While appropriate communication channels may help address employee concerns directly, employers should anticipate and plan for an increase in health and safety risk factors that may be brought on by increased workloads or changing roles.

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