FTR Now

Anticipating the Impact of U.S. Tariffs and Work Slowdowns in Ontario: Temporary Layoffs, Individual and Mass Terminations, and Alternate Measures

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As discussed in our *FTR Now* of February 6, 2025, we are living through a period of economic uncertainty and mounting anxiety. In addition to managing worker anxiety, Ontario businesses must be prepared to meet economic challenges that may lay ahead, including decreased demand and corresponding production and operational slowdowns. Many employers are considering temporary layoffs and mass terminations, as well as exploring alternative strategies to meet these challenges. This article explores these options, their implications and the legal considerations involved.

To learn more, join us at our complimentary webinar, Managing the Workplace in Economic Uncertainty, which will take place on February 20, 2025.

Temporary Layoffs

Temporary layoffs are often used by employers to manage work slowdowns when they wish to maintain employment relationships with affected employees. Work and pay are suspended for a defined or temporary period of time with the expectation that affected employees will be returned to work and full hours once business conditions improve. While this is a well-known phenomenon in a unionized setting, it is less common when dealing with individual employees not subject to a collective agreement.

As many employers learned during the pandemic, under the Ontario *Employment Standards Act, 2000* (*ESA*), a layoff is considered temporary if it does not exceed 13 weeks in any consecutive 20-week period or 35 weeks in any consecutive 52-week period if certain prescribed circumstances are met. Upon the conclusion of the temporary layoff, employees are expected to return to their position or an equivalent role. If a layoff extends beyond the temporary period prescribed under the *ESA*, it is deemed a termination of employment and can trigger an employer's obligation to provide employees with their minimum entitlements under the *ESA*, including termination and severance pay, if applicable.

Notwithstanding the language of the *ESA*, Ontario employers do not necessarily have the right to unilaterally implement a temporary layoff.

In a unionized workplace, the collective agreement will often define what constitutes a layoff, including the circumstances under which layoffs can occur, and will typically prescribe the process that an employer must follow when imposing layoffs. This may include an obligation to provide notice to, or consult with, the union in advance of any layoff being implemented and to advise of the duration of the layoff. The collective agreement may also establish various employee rights that impact the layoff and recall process such as seniority, bumping rights and recall rights.

In a non-unionized workplace, employers must be aware of the impact of both contract law and the common law in the absence of an enforceable contract. Where employees are employed pursuant to an enforceable employment agreement, the terms of that agreement may guide an employer's ability to unilaterally implement a temporary layoff. The absence of a temporary layoff provision in an employment agreement can raise significant concerns for employers as employees may claim breach of contract if their employment contract does not contemplate layoffs or temporary cessation of work. Similarly, in the absence of a contract, the common law may provide a foundation for employees to claim constructive dismissal if significant layoffs are unilaterally implemented by their employer. In both cases, in response to a temporary layoff, employees may be able to treat the layoff as a termination of employment and seek termination and severance entitlements under the *ESA*, their employment agreement and/or the common law.

Individual and Mass Termination

In circumstances where an employer must permanently reduce its workforce, it may look to termination of employment as the only viable option. Employers of unionized workplaces will be required to comply with both the *ESA* and any prescribed obligations under applicable collective agreements, which may include initiating layoffs by seniority, adhering to bumping rights, paying financial compensation, and considering recall or re-employment rights, if applicable.

In non-unionized workplaces, termination entitlements will be governed by the employee's individual employment agreement where an enforceable contract provision exists. Absent an employment agreement containing an enforceable termination provision, an employee's termination entitlements will be determined by the common law, and at a minimum, must meet minimum entitlements under the *ESA*.

In some cases, the economic pressures an employer faces may require it to implement a large-scale workforce reduction. Under the *ESA,* a "mass" termination, also known as a group termination, occurs when an employer terminates the employment of 50 or more employees at an employer's "establishment" within a four-week period.

The *ESA* mandates specific requirements for mass terminations in Ontario. Unlike with individual terminations where notice periods under the *ESA* are based on an individual's length of service, the notice period for those being terminated as part of a mass termination will be based on the number of employees being terminated and will range from 8 to 16 weeks.

Employers in both unionized and non-unionized environments must also provide written notice to the Director of Employment Standards (Director) and the affected employees, in addition to any individual notices of termination. Significantly, any notice of termination provided to employees will not take effect until the Director has received the prescribed written notice.

Alternate Measures

Employers may also consider alternate measures to address work slowdowns. These measures can help maintain workforce stability and morale while navigating economic challenges.

Alternate measures may include:

- **Reduced Work Hours**: Implementing a reduction of work hours to reduce labour costs. While this can be an option for employers to consider, it may pose a risk of constituting a temporary layoff under the *ESA* or a potential constructive dismissal at common law, depending on the extent of the reduction in hours.
- **Job Sharing**: Introducing job-sharing arrangements to spread work among employees and avoid layoffs. While this may pose similar risks to a reduction of work hours, an employer may also be able to participate in an Employment Insurance Work-Sharing Program.
- **Voluntary Leaves of Absence**: Offering employees voluntary unpaid leaves of absence or sabbaticals to reduce payroll costs temporarily.
- **Voluntary Separation from Employment**: Offering employees the option to voluntarily resign in exchange for a financial payment.

While alternate measures may be a useful way to reduce cost, they should be handled carefully to avoid inadvertently exposing an employer to unintended legal liability.

Conclusion

There are many responses available to employers when planning in the face of the current economic uncertainty. Employers should consider all options available, assessing the risks and benefits of each, before settling on a course of action. These assessments will be different from employer to employer, but prudent employers will develop strategies well in advance of being forced to implement them. Hicks Morley is here to assist you in assessing your company's unique circumstances and developing a strategy that meets your objectives.

For more information about possible strategies for your workplace, please join us at our complimentary webinar on February 20, 2025 or contact your regular Hicks Morley lawyer.