Considerations In The Time Of Tariffs: Workplace Management Through A Downturn

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Escalating trade restrictions and the implementation of tariffs have created uncertainty for Canadian employers, particularly those who may be heavily reliant on U.S. trade. While the impact of tariffs may not be immediate, the unpredictability surrounding them is already having noticeable effects. Canadian employers of all sizes need to assess their workforce requirements and plan for the consequences tariff uncertainties could have on their workplaces, from layoffs to terminations to possible alternatives using government resources. Being proactive is the best approach in light of the mercurial nature of Canada's leading trading partner. Taking no action is not an option.

This article outlines some helpful considerations for employers in regard to navigating potential workplace issues, reducing workloads and scaling their workforce to meet current demands.

Right-Sizing the Workplace

Employers never voluntarily choose to lay off or terminate employees. It is a difficult decision to let go of employees who are integral to the business and have worked hard for the organization. However, if necessary, employers do have some options, each with its own benefits and risks.

Layoffs: Where the employment agreement expressly provides for a right of temporary layoff, under the Ontario *Employment Standards Act* ("**ESA**"), an employer may temporarily lay off employees for a period of 13 weeks in a 20-week period or 35 weeks in a 52-week period, provided that benefits are continued. If the employee is not recalled to employment after that period, however, the ESA deems a termination to have occurred as of the first day of the layoff, in which case statutory termination pay and, if applicable, severance pay are owed.

However, absent the right to lay off set out in an enforceable employment agreement, the employee may claim "constructive dismissal," which at law may result in the employee claiming damages, including reasonable notice at common law, as if they had been terminated.

Changes in Salary or Hours: Another option is to reduce hours or salary/wage rate of employees. However, facing an economic downturn does not allow employers to unilaterally reduce hours or change salary without the employee's consent or agreement. As happened during the COVID-19 pandemic, many employers negotiated temporary measures, with a reduction in hours or pay to address business slowdown and/or inactivity. If this is an option agreed on with the employee, it should be carefully documented in writing. Alternatively, a unilateral reduction may also result in an allegation of constructive dismissal, as above. While there is no hard and fast rule, courts have generally considered cumulative reductions to wages/compensation and benefits in the range of 10 to 15% to trigger a constructive dismissal. Before taking this action, consult legal counsel.

Termination: It may be that the business requires permanent downsizing. If necessary, employers should review the employment agreements of all employees whose employment may be terminated. Ensure that the termination provisions are compliant with current common law requirements, which have changed significantly over the last five years. If enforceable, an employer can provide minimum statutory entitlement. If not, the employer will be required to provide reasonable notice, or pay in lieu of such notice at common law, which is significantly higher but subject to the employee's obligation to mitigate their damages by seeking replacement employment. Again, considering this option with a lawyer to assess possible liability for common law notice is critical, both to limit the impact to the workplace and make the most cost-effective decisions for the business.

A point of caution: If a large downsizing is contemplated, employers should understand that the mass termination provisions under the ESA provide employees with a greater right to notice where 50 or more employees are dismissed at a single establishment within a rolling four-week period.

Voluntary Leaves of Absence or Resignation Agreements: Employers can also consider offering select employees the opportunity to go on an unpaid leave of absence to reduce their payroll liabilities. Alternatively, offering employees the option to voluntarily resign in exchange for financial compensation may provide your business with some cost certainty moving forward.

Resources and Assistance

Given the current economic and political climate, it is expected that all levels of government will address the economic impact of the imposition of tariffs. Currently, there are programs which can assist employers immediately.

Work-Sharing Agreements: Canada's federal government recently announced temporary amendments to the Employment Insurance ("**EI**") Work-Sharing Program. Eligible employers experiencing a decline in business of at least 10% caused by factors beyond the employer's control, such as lost contracts or unexpected market changes, may qualify for work-sharing arrangements, which permit a temporary reduction in employees' hours of work to avoid a temporary layoff.

The program provides partial coverage of employees' lost wages due to a reduction in work, covering up to 55% of their income, up to the maximum EI benefit.

Temporary Changes: From March 2025 to March 2026, businesses impacted by tariffs can qualify with just one year of Canadian operations and a minimum of two employees who are eligible for EI. Agreements must last at least six weeks and can now be extended for up to 76 weeks. Eligibility has also been broadened to include non-profits, charities and businesses with a smaller decline in activity.

Government Relief

To assist Canadian businesses impacted by tariffs and trade escalations, the federal government recently announced an additional $6 billion in aid and subsidy programs. Employers may be eligible to receive “favourably priced loans” through the Business Development Bank of Canada. Alternatively, employers may be able to collaborate with Export Development Canada to expand business into new markets. For additional information, please see the Department of Finance Canada’s press release available here.

Conclusion

Most employers realize that a downturn in the economy is cyclical and often a necessary occurrence. However, the charged political climate and the uncertainty it creates mean that the immediate impact may be significant, and for that reason, we expect concerted governmental action in response.

However, in the short term, careful planning and an assessment of costs and legal risks are the most proactive steps employers can take, while also relying on their governments to assist where possible.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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