

COVID-19 and Relief From Mass Termination Rules



Canadian businesses have suffered severe financial distress due to COVID-19. Many employers have been forced to lay off their employees hoping they would only be required to do so temporarily. It has become clear that the statutory periods for temporary layoffs have not provided many employers with adequate time to weather the storm. By necessity, some employers must now look beyond temporary layoffs to the implementation of a mass/group termination in order to survive the catastrophic financial impact of the pandemic.

In a previous Insight, we provided a detailed review of the legislative requirements and time periods for temporary layoffs in Canada, including information about any relief from those requirements that has been made available to employers during COVID-19. In this Insight, we provide a review of the legislative requirements and time periods for mass/group terminations in the Canadian common law provinces (*i.e.*, we do not review Quebec) and pursuant to the *Canada Labour Code*, including information about any relief from those requirements that may be available. Beyond statutory requirements, an employer may also have common law or contractual obligations.

Mass/Group Terminations

In Canada, employment standards legislation generally requires employers to provide a notice period of substantial length before a mass termination is effective. This requirement may be fatal to a business that has experienced significant revenue reductions. Employees remain on the payroll during the notice period, often causing businesses to sink deeper into financial distress. Examples of businesses that have experienced significant revenue reductions due to COVID-19 include the retail, restaurant, airline, hotel, and car rental industries, and many within these industries will undoubtedly be forced to implement mass terminations.

Set out below is our province-by-province and federal summary.

Ontario

Legislative requirements for mass terminations

In Ontario, despite the individual written notice of termination that an employer is required to give upon terminating the employment of an employee who

has been continuously employed for three months or more, an employer is required to give notice of termination if it terminates the employment of 50 or more employees at the employer's establishment in the same four-week period.¹

An employer's establishment is a location at which the employer carries on business. If an employer carries on business at more than location, separate locations constitute one establishment if (a) the separate locations are located within the same municipality, or (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract, enabling the employee(s) to displace another employee of the same employer.²

The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
At least 8 weeks	50 to 199
At least 12 weeks	200 to 499
At least 16 weeks	500 or more ³

The employer must provide the notice to the Director of Employment Standards in a form approved by the Director. The form approved for this purpose is entitled "Form 1." The following information must be included in the notice:

- Employer's name and mailing address.
- Locations where the employees whose employment is being terminated work.
- Number of employees working at each location who are paid
 - on an hourly basis,
 - on a salaried basis, and
 - on some other basis.
- Number of employees whose employment is being terminated at each location who are paid
 - on an hourly basis,
 - on a salaried basis, and
 - on some other basis.
- Dates on which it is anticipated that the employment will be terminated.
- Name of any union representing any employees whose employment is being terminated.
- Economic circumstances surrounding the terminations.
- Name, title and telephone number of the individual who completed the form.⁴

The information in the notice may also include:

- Any consultations that have been or are proposed to take place with communities in which the terminations will take place or with the affected employees or their agent in connection with the terminations;
- Any proposed adjustment measures and the number of employees expected to benefit from each; and
- A statistical profile of the affected employees.⁵

The notice of termination will be deemed not to have been given until the Director receives this information.⁶

On the first day of the notice period and throughout the notice period, the employer must post in the employer's establishment the prescribed information in

a form approved by the Director, in at least one conspicuous place where it is likely to come to the attention of the affected employees.⁷ In addition, the notice must be given in writing, addressed to the employee who is being terminated, and served on the employee in accordance with requirements set out in the statute.⁸

During the group termination notice period, the employer:

- Must not reduce the wage rate or alter any other term or condition of employment;
- Must in each week pay the wages the employee is entitled to receive, which may not be less than their regular wages for a regular work week. (If the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer must pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given.); and
- Must continue to make whatever benefit plan contributions that are required to be made to maintain the employee's benefits under the plan until the end of the notice period.⁹

The employer must also pay minimum severance to terminated employees who were employed by the employer for five years or more where:

- The severance occurred because of a permanent discontinuance of all or part of the employer's business at an establishment and the employee is one of 50 or more employees who have their employment relationship severed within a six-month period as a result; or
- The employer has a payroll of \$2.5 million or more.¹⁰

Variance or exemptions from mass termination requirements

Mass termination notice requirement will not apply if:

- The number of employees whose employment is terminated at the establishment is not more than 10% of the number of employees who have been employed there for at least three months; and
- The terminations were not caused by the permanent discontinuance of part of the employer's business at the establishment.¹¹

If this exception applies, the individual notice provisions will apply instead of the mass termination rules.

In addition, an employer may terminate the employment of an employee without notice or with less notice than is required under the group termination notice requirements if the employer:

- Pays termination pay to the employee in a lump sum equal to the amount the employee would have been entitled to receive had notice been given; and
- Continues to make the benefit plan contributions it is required to make to maintain the benefits the employee would have been entitled to had they continued to be employed during the notice period.¹²

British Columbia

Legislative requirements for mass terminations

In addition to the employer's liability, if any, to the employee in respect of an individual termination,¹³ if the employment of 50 or more employees at a single location is to be terminated within any two-month period, an employer must give written notice of group termination to affected employees, a union representing them, and the Minister of Jobs, Tourism and Skills Training. The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
8 weeks	50 to 100
12 weeks	101 to 300
At least 16 weeks	301 or more

The notice of group termination must specify the number of affected employees, the effective dates of the terminations, and the reasons for termination. If an employee is not given notice of a group termination as required, the employer must give the employee termination pay instead of the required notice or a combination of notice and termination pay.¹⁴

Variance and exemptions from mass termination requirements

An employer and any employee may join in a written application to the Director for a variance of notice and termination pay requirements for group terminations.¹⁵ To apply, a letter must be delivered to the Director signed by the employer and a majority of the employees affected by the variance and it must include specific information set out in the applicable regulations.¹⁶

The Director must be satisfied that a majority of employees who will be affected by the variance are aware of its effect and approve the application, and that the variance is not inconsistent with the purposes of the Act. Furthermore, the Director must be satisfied that the application will facilitate:

- The preservation of the employer's operations,
- An orderly reduction or closure of the employer's operations, or
- The short-term employment of employees for special projects.

The Director is entitled to specify that a variance applies to only one or more employees, or expires on a specific date, or to attach conditions to the variance. The employer must display a copy of the Director's determination in respect of the variance application in each workplace, in locations where the determination can be read by any affected employees.¹⁷

If an employee is covered by a collective agreement containing any provision relating to notice and termination pay requirements for group terminations, the variance provisions under the statute will not apply.

In addition, mass termination notice requirements do not apply to an employee who is employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than a receivership action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act.¹⁸ Provided the COVID-19 pandemic is interpreted as "an unforeseeable event" that makes an employee's employment contracts "impossible to perform," this exception

to the requirement to provide notice of a mass termination may be available during the pandemic.

In addition, notice of mass termination requirements do not apply to an employee:

- Employed under an arrangement by which
 - the employer may request the employee to come to work at any time for a temporary period, and
 - the employee has the option of accepting or rejecting one or more of the temporary periods.¹⁹
- Employed for a definite term;²⁰
- Employed for specific work to be completed in a period of up to 12 months;²¹
- Employed at one or more construction sites by an employer whose principal business is construction;²² or
- Who has been offered and has refused reasonable alternative employment by the employer.²³

If an employee who is employed for a "definite term" or "specific work" continues to be employed for at least three months after completing the definite term or specific work, their employment is deemed not to be for a definite term or specific work, but rather to have started at the beginning of the definite term or specific work.²⁴

Furthermore, notice of mass termination requirements do not apply to an employee who:

- Is offered and refuses alternative work or employment made available to the employee through a seniority system;²⁵
- Is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation;²⁶ or
- Is laid off and does not return to work within a reasonable time after being requested to do so by the employer.²⁷

Alberta

Legislative requirements for mass terminations

An employer is required to give notice of termination to the Minister if it intends to terminate the employment of 50 or more employees at a single location within a four week period, before the date on which the first termination is to take effect. The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
8 weeks	50 or more but fewer than 100
12 weeks	100 or more but fewer than 300
16 weeks	300 or more ²⁸

The notice of termination must include the following information:

- Number of employees whose employment will be terminated,
- Effective dates of the terminations, and
- Any other information required by the regulations.²⁹

An employer that gives notice to the Minister must then give a copy of the notice

- to the bargaining agent for the affected employees, and
- if any of the affected employees do not have a bargaining agent, to the affected employees in accordance with the regulations.³⁰

A copy of the notice may be given to an affected employee personally or by mail, fax or email to an address provided by the employee for the purposes of communication with that employee.³¹

A copy of the notice given by the employer to the bargaining agent or, in the absence of a bargaining agent, to the affected employees will constitute notice of termination only if it is given to the employee and the employee is identified as an affected employee.³²

Variance or exemptions from mass termination requirements

A group termination notice is not required if the employees are employed on a seasonal basis or for a definite term or task.³³

The statute permits an employer to apply to the Director to vary or exempt the application of one or more provisions of the statute or the regulations (a) that employer and the employees referred to in the application; or (b) with respect to a type of employment carried on by that employer,³⁴ provided:

- The provision to be varied or exempted and the extent to which it may be varied or exempted is authorized by the regulations to be varied or exempted, and
- The Director is satisfied that issuing the variance or exemption meets the criteria established by the regulations.³⁵

However, the relevant regulation under the statute does not authorize the provisions relating to mass terminations to be varied or exempted.³⁶

Saskatchewan

Legislative requirements for mass terminations

If the employment of 10 or more employees at a single location is to be terminated within any four-week period, an employer must give written notice of group termination to the Minister of Labour Relations and Workplace Safety, the affected employees, and any union representing the employees. The notice must include the number of employees being terminated, the effective date of the termination, and the reasons for the termination.³⁷

The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
At least 4 weeks	10 to 49
At least 8 weeks	50 to 99
At least 12 weeks	100 or more ³⁸

Employees affected by a group termination must also receive an individual termination notice.³⁹ The employer can give the individual and group termination

in the same document and at the same time if the notice meets the time required for both individual and group termination.⁴⁰

Where the length of notice of a termination required by a collective agreement exceeds the length of notice required by the statute, the employer must give to the Minister of Labour Relations and Workplace Safety, the affected employees, and the employees' union, the notice required by the collective agreement.

Variance and exemptions from mass termination requirements

In March 2020, in response to the COVID-19 crisis, Saskatchewan approved and ordered Regulation 28/2020, *The Employment Standards (Public Emergencies) Amendment Regulations* (Public Emergency Regulation No. 1), which, among other things, defined a "public emergency" as a period in which an order of the chief medical officer is in force, or a public emergency declaration ordered under *The Emergency Planning Act*, is in force.

On May 13, 2020, Saskatchewan approved and ordered Regulation 62/2020, *The Employment Standards (Public Emergencies) Amendment Regulations, 2020, (No. 2)* (Public Emergency Regulation No. 2), which replaces Public Emergency Regulation No. 1, but preserves its definition of "public emergency." Among other things, Public Emergency Regulation No. 2 provides that during a public emergency period, in the circumstances of a group termination, employers are exempt from the requirement to provide notice to the employees whose employment will be terminated and to the union; however, employers must provide the required notice to the Minister of Labour Relations and Workplace Safety as soon as reasonably possible after the termination.

Additional exemptions in Saskatchewan to the requirement to provide written notice of mass termination to the Minister, union and employees exist. One such exemption is when the employees are employed pursuant to a contract of employment that is impossible to perform due to an unforeseeable event or circumstance.⁴¹ Had Regulation 62/2020 not been filed (making it unnecessary for employers to rely on this exemption), provided the COVID-19 pandemic was interpreted as "an unforeseeable event or circumstance" that makes an employee's employment contracts "impossible to perform," this exception to the requirement to provide notice of mass termination may have been available to employers during the pandemic.

Furthermore, had Regulation 62/2020 not been filed (again making it unnecessary for employers to rely on this exception), another exception to the requirement to provide written notice of mass termination may have been available to employers during the COVID-19 pandemic in Saskatchewan if:

- The employer applied in writing to the director of employment standards; and
- The Director of Employment Standards was satisfied that giving written notice would be prejudicial to the employer and the employees.⁴²

Other exemptions in Saskatchewan to the requirement to provide written notice of mass termination to the Minister, union and employees exist when the employees are:

- Employed pursuant to an arrangement by which:

- The employer may request the employee to come to work at any time for a temporary period; and
- The employee has the option to accept or reject one or more of the requests.⁴³
- Employed for a definite term;⁴⁴
- Employed for a specific project with a completion date that is reasonably foreseeable in any industry, other than the construction industry, or occupation;⁴⁵
- Employed in the construction industry for a specific project with a completion date that is reasonably foreseeable;⁴⁶
- Offered and have refused reasonable alternative work or employment by the employer;⁴⁷
- Terminated because of a seasonal reduction of the employer's operations, suspension of those operations or closure of those operations if that reduction, suspension or closure is normal for that employer;⁴⁸
- Laid off for a period not exceeding 26 weeks;⁴⁹
- At the age of retirement that is the established age of retirement for that employer and their employment has been terminated for that reason;⁵⁰
- In an undertaking in which only members of the employer's immediate family are employed;⁵¹
- Sitters;⁵²
- Athletes while engaged in activities related to their athletic endeavour;⁵³
- Engaged in farming, ranching or market gardening activities, except those employed in egg hatcheries, greenhouses, nurseries, bush clearing and commercial hog operations;⁵⁴ or
- Commercial fishers or commercial trappers as defined in the *Fuel Tax Regulations*, 2000.⁵⁵

And finally, the Government of Saskatchewan is exempted from giving any written notice of mass termination with respect to employees who are not within the scope of a collective bargaining agreement and whose employment is terminated within 30 days after polling day for a general election within the meaning of *The Election Act*, 1996.⁵⁶

Manitoba

Legislative requirements for mass terminations

In addition to the notice of termination or a wage in lieu of notice that an individual employee may be entitled to upon termination of their employment, upon the termination of 50 or more employees within any four-week period, an employer must give the Minister of Labour and Immigration written notice of group termination to all affected employees. In addition, the employer must immediately give a copy of the notice to the union for affected employees. If the affected employees do not have a union, the employer must give a copy of the notice to each affected employee, or post the notice in conspicuous places at the workplace. The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
At least 10 weeks	50 to 100
At least 14 weeks	101 to 299
At least 18 weeks	300 or more ⁵⁷

Variance and exemptions from mass termination requirements

Upon an application being made to the Minister, the Minister may waive the notice requirement for a group termination, where the Minister is satisfied that the notice requirement is:

- Unduly prejudicial to the interests of the employees or a class of employees;
- Unduly prejudicial to the interests of the employer; or
- Seriously detrimental to the operation of the business of the employer.⁵⁸

Newfoundland and Labrador

Legislative requirements for mass terminations

Without limiting the notice of termination provisions relating to the notice of termination required to be given by an employer to each employee, where an employer intends to terminate the contracts of service of 50 or more employees within a four-week period, the employer must give to each employee written notice of intention to terminate the contract of service.⁵⁹ The notice required depends on the number of employees affected:

Notice Required	Number of Employees Affected
8 weeks	50 or more but fewer than 200
12 weeks	200 or more employees but fewer than 500
16 weeks	500 or more ⁶⁰

The employer must, immediately after the notices are given:

- Notify the Minister in writing of the number of persons to whom the notice was given and the period of notice, and
- Provide the Minister with the reasons for giving the notices.⁶¹

For the duration of the notice periods listed above, the employer must:

- Continue to employ the employees who were served with the notice of intention to terminate; or
- Pay them wages equal to the normal wages covering the period of notice that the employer would otherwise be required to give.⁶²

Variances and exemptions from mass termination requirements

The requirements outlined above do not apply to employees whose contracts of service have existed for less than one month.⁶³

The notice requirements outlined above also do not apply to a contract of service that is or has become impossible to perform or frustrated by a fortuitous or unforeseeable event or circumstance.⁶⁴ Provided the COVID-19 pandemic is interpreted as a "fortuitous or unforeseeable event or circumstance" that made the employees' contracts of service "impossible to perform or frustrated," the notice requirements for a mass termination in Newfoundland and Labrador may not apply to a mass termination during the COVID-19 pandemic.

In addition, the notice requirements outlined above do not apply to a contract of service of a person who:

- Is laid off after refusing an offer by their employer of reasonable alternative work;⁶⁵
- Is laid off after refusing alternative work made available to them through a seniority system;⁶⁶
- Is on layoff and does not return to work within a reasonable time after being requested to do so by their employer;⁶⁷
- Is laid off or terminated during or as a result of a strike or lock-out at their place of employment;⁶⁸
- Is employed in the construction industry;⁶⁹
- Is employed in logging or fishing;⁷⁰
- Is employed for seasonal production work in a fish plant to supplement the regular work force in peak production periods;⁷¹
- Is employed under an arrangement whereby they may elect to work or not for a temporary period when requested to do so;⁷²
- Having reached the age of retirement according to the established practice of the employer, has their employment terminated;⁷³
- Is employed on an offshore oil well drilling rig;⁷⁴ or
- Where there is continued or uninterrupted employment of an employee by a person or firm to which an employer transfers, assigns or conveys their undertaking as referred to in section 6 of the statute.⁷⁵

New Brunswick

Legislative requirements for mass terminations

Upon the termination or layoff of more than 10 employees representing at least 25% of the total employees of the employer within a four-week period, the employer must provide six weeks' notice, or the notice required under a collective agreement, whichever is greater. The notice must be given to the Minister of Post-Secondary Education, Training and Labour, the affected employees and, where the employees are covered by a collective agreement, to the employees' union. A copy of the notice must be posted for the information of all employees.⁷⁶

Variance or exemptions from mass termination requirements

Notwithstanding these notice requirements, an employer may terminate an employee without notice:

- Where there is a lack of work for any reason unforeseen by the employer at the time the notice would otherwise have been given, for such period as the lack of work continues due to that reason; or
- For any reason, for a period of up to six days.⁷⁷

Furthermore, an employer may terminate an employee's employment without notice upon making a payment in lieu of notice to the employee. The amount of such payment in lieu must be equal to the pay the employee would have earned under an individual termination⁷⁸ as though the employee was entitled to such notice. Notice of an individual termination is:

- Two weeks' notice, where the employee has been employed by the employer for a continuous period of employment of six months or more but less than five years; and
- Four weeks' notice, where the employee has been employed by the employer

for a continuous period of employment of five years or more.⁷⁹

Finally, an employer may apply to the Director at any time to be exempted from any provision of the statute. The Director may grant an exemption if the employer can show to the Director's satisfaction that, in addition to any other requirement that may be established in the legislation:

- The employer suffers a special hardship in complying with the provision that is not suffered by other employers; and
- The employee receives other benefits or advantages that can be viewed as reasonable compensation for the sacrifice of the benefit, advantage, privilege or protection offered by the provision in respect of which the exemption is sought.

Rather than deciding such an application, the Director may refer the matter to the Board. Furthermore, if the Director makes a decision with respect to the exemption application, any person affected by the decision may request the Director in writing, within 14 days after notice of the decision, to refer the matter to the Board.⁸⁰

Nova Scotia

Legislative requirements for mass terminations

Notwithstanding the requirement for individual notice upon an employee's termination, if 10 or more employees in an establishment are terminated or laid off within any four-week period, an employer must give written notice of group termination to all affected employees and to the Director of Labour Standards. An "establishment" is defined as "a place or places at which any part of a business undertaking of an employer is or has been carried on."⁸¹ The notice required depends on the number of affected employees:

Notice Required	Number of Employees Affected
At least 8 weeks	10 to 99
Not less than 12 weeks	100 to 299
Not less than 16 weeks	300 or more ⁸²

Variance or exemptions from mass termination requirements

Group termination notice provisions do not apply to a person:

- Whose period of employment is less than three months;⁸³
- Employed for a definite term or task for a period not exceeding 12 months;⁸⁴
- Laid off or suspended for a period not exceeding six days;⁸⁵
- Offered reasonable other employment by their employer;⁸⁶
- Who having reached the age of retirement established by the employer on the basis of a *bona fide* occupational requirement for the position in which the person is employed, has their employment terminated;⁸⁷
- Who is laid off in circumstances established by regulation as an exception to subsection s. 72(1) (individual termination notice requirements) or s. 72(2) (mass termination notice requirements);⁸⁸
- Employed in the construction industry;⁸⁹
- Employed in an activity, business, work, trade, occupational profession, or any part thereof that is exempted by regulation.⁹⁰

In addition, group termination notice provisions do not apply where a person is discharged for any reason beyond the control of the employer, including the actions of governmental authority, if the employer has exercised due diligence to foresee and avoid the cause of discharge.⁹¹ Provided the COVID-19 pandemic is interpreted as "a reason beyond the control of the employer," employers may be relieved from the requirement to provide notice of group termination.

Furthermore, a person may be terminated "forthwith" if the employer gives them notice in writing to that effect and pays them an amount equal to all pay they would have been entitled to for work they would have performed at the regular rate in a normal, non-overtime work week for the period of notice in a group termination.⁹²

Finally, persons engaged in work in the following are exempted from the application of the group termination notice requirements of the statute:

- As real estate salespersons;
- As automobile salespersons;
- As salespersons, other than route salespersons, who are entitled to receive all or any part of their remuneration as commissions in respect of offers to purchase or sales of goods, wares, merchandise or services in which offers or sales are normally made other than at or in their employer's establishment; or
- On fishing vessels of all types or in the operation of fishing vessels on water, and
- Athletes while engaged in activities related to their athletic endeavour.

Prince Edward Island

No legislative requirements for mass terminations

There are no mass termination provisions in the employment standards legislation or regulations. Except where there is just cause to terminate an employee, employees who have been employed by an employer for a continuous period of six months or more in Prince Edward Island are entitled to individual notice of termination in writing. The individual notice of termination to which an employee is entitled depends on the duration of the employee's employment by the employer:

Notice Required	Employee Employed for Continuous Period of:
Two weeks in writing	Six months or more but less than five years
Four weeks in writing	Five years or more but less than ten years
Six weeks in writing	10 years or more but less than 15 years
Eight weeks in writing	15 years or more ⁹³

Variance or exemptions for individual termination requirements

The individual notice requirement does not apply to a person who is laid off or terminated for any reason beyond the control of the employer, including:

- The complete or partial destruction of the plant;
- The destruction or breakdown of machinery or equipment;
- The inability to obtain supplies and materials; or
- The cancellation or suspension of, or inability to obtain, orders for the products of the employer, if the employer has exercised due diligence to

foresee and avoid the cause of termination or layoff.⁹⁴

In addition, the individual notice requirement does not apply to a person who is laid off or terminated because of actions of any governmental authority that affect directly the operations of the employer.⁹⁵

Provided the COVID-19 pandemic is interpreted as "a reason beyond the control of the employer," or actions of the provincial or federal government in response to COVID-19 directly affected the operations of an employer, employers in Prince Edward Island may not be required to provide individual notice upon the termination of an employee, or a group of employees.

Others for whom the individual notice requirement does not apply include those who:

- Are employed to perform a definite task for a period not exceeding 12 months;
- Are laid off for a period not exceeding six consecutive days;
- Have been offered reasonable other employment by their employer;
- Are terminated or laid off because of labour disputes or weather conditions.⁹⁶

Federally regulated employers subject to the Canada Labour Code (CLC)

Legislative requirements for mass terminations

For employers regulated by the CLC, a group termination of employment is the termination of employment of 50 or more employees working at a single industrial establishment either on the same date or within any four-week period.⁹⁷ In addition to any individual notice required to be given under the CLC, employers terminating such a group must notify the Minister of Labour in writing of their planned group termination of employment at least 16 weeks before the employment terminations begin. They must also immediately give a copy of the notice to the Minister of Employment and Social Development, the Canada Employment Insurance Commission, and to any union representing the "redundant" employees. Where the redundant employees are not represented by a union, a copy of the notice must be given to the redundant employees or the employer must immediately post the notice in a conspicuous place within the industrial establishment.⁹⁸

The notice must set out:

- The dates on which the employer intends to terminate the employment of employees;
- The estimated number of employees in each occupational classification whose employment will be terminated; and
- Any other information prescribed by the regulations.⁹⁹

Variance and exemptions from mass termination requirements

Employers subject to the CLC are exempt from the group termination notice requirements in respect of employees employed on:

- A seasonal basis; or
- An irregular basis under an arrangement whereby the employee can elect to

work or not to work when requested to do so.¹⁰⁰

After satisfying its notice obligations, the employer must then immediately establish a joint planning committee together with employee representatives.¹⁰¹ The purpose of this committee is to:

- Eliminate the necessity for the termination; or
- Minimize the impact of the termination on the employees and assist them in obtaining other employment.¹⁰²

An employer may request that the Minister of Labour waive an employer's requirement to give notice and/or establish a joint planning committee when it can be shown to the Minister's satisfaction that it would be:

- Unduly prejudicial to the interests of employees in the industrial establishment or of the employer,
- Seriously detrimental to the operation of the industrial establishment, or
- Unnecessary because the same or substantially similar measures, or measures to the same effect, for the assistance of the employees at the industrial establishment have been established by collective agreement or otherwise.¹⁰³

Finally, the requirement to establish a joint planning committee does not apply in respect of redundant employees represented by a union if the union and the employer are bound by a collective agreement that contains provisions:

- That specify how termination procedures may be negotiated and settled, or provisions intended to minimize the impact of termination of employment on the employees and assist them in obtaining other employment; or
- That the provisions requiring the establishment of a joint planning committee do not apply in respect of the employees represented by the union.¹⁰⁴

According to media reports, a Canadian airline sent a letter dated April 27, 2020 to the federal Labour Minister requesting an exemption from the CLC requirement for 16 weeks' notice of a group termination. The company indicated in its letter that due to "unprecedented circumstances" as a result of COVID-19, it expects to permanently reduce its workforce by 50 people or more. The letter characterized the group termination provisions as "unduly prejudicial to the interests of the company's employees and to the company," and "seriously detrimental to the operations of the company's industrial establishments." An exemption from these provisions would entitle the airline to effect a group termination without delay, and immediately remove all terminated employees from its payroll. In doing so, the airline would put itself in a better position to potentially survive the pandemic. It remains to be seen how the federal Labour Minister will respond to this exemption request.

This is not the only Canadian airline carrier to announce major terminations or layoffs. Undoubtedly, other airlines would welcome a positive response from the federal government to the exemption request described above, as would other federally regulated employers contemplating mass terminations; such news may encourage them to request a similar exemption, if they have not already done so. In addition, in provinces where relief to mass termination requirements is available, news of a positive response to the airline's exemption application may encourage employers to seek such relief.

Bottom Line for Employers

It remains to be seen whether, in response to the COVID-19 pandemic, more Canadian provinces will follow the lead of Saskatchewan and alleviate the pressures on employers during the pandemic by affording them explicit relief from mass/group termination requirements without the necessity for an application for a variance or exemption, and approval of same. Any government in Canada that might contemplate doing so will surely conduct a cost/benefit analysis and ask itself these questions: Is it reasonable to eliminate the protection afforded to employees by lengthy mass termination notice requirements to better position businesses to survive an unprecedented pandemic? Is what is in the best interests of Canadian employers ultimately also what is in the best interests of the Canadian economy?

Footnotes

1. *Employment Standards Act, 2000*, SO 2000, c 41 (Ontario ESA), s. 58(1).
2. Ontario ESA, s. 1(1).
3. Termination and Severance of Employment, O Reg 288/01 (Regulation 288/01), s. 3(1).
4. Regulation 288/01, s. 3(2).
5. Ontario ESA, s. 58(3).
6. Ontario ESA, ss. 58(2)(a), 58(4), Regulation 288/01, s. 3(2).
7. Ontario ESA, ss. 58(2)(b), 58(5).
8. Regulation 288/01, s. 4(1).
9. Ontario ESA, ss. 60(1), 60(2).
10. Ontario ESA, s. 64(1).
11. Regulation 288/01 (Regulation), s. 3 (4).
12. Ontario ESA, s. 61(1).
13. *Employment Standards Act*, RSBC 1996, c 113 (BC ESA BC), s. 64(5).
14. BC ESA, s. 64.
15. BC ESA, s. 72(i).
16. *Employment Standards Regulation*, BC Reg 396/95 (Regulation 396/95), s.30.
17. BC ESA, s. 73.
18. BC ESA, s. 65 (1)(d).
19. BC ESA, s. 65(1)(a).
20. BC ESA, s. 65(1)(b).

21. BC ESA, s. 65(1)(c).
22. BC ESA, s. 65(1)(e).
23. BC ESA, s. 65(1)(f).
24. BC ESA, s. 65(2).
25. BC ESA, s. 65(4)(a).
26. BC ESA, s. 65(4)(b).
27. BC ESA, s. 65(4)(c).
28. Employment Standards Code, RSA 2000, c E-9 (AEC), s. 137(1).
29. AEC, s. 137(2).
30. AEC, s. 137(3).
31. Employment Standards Regulation, Alberta Regulation 14/1997, with amendment to and including Alberta Regulation 182/2019 (Regulation 14/1997), s. 63.5(2).
32. s. 137(4), AEC.
33. Regulation 14/1997, with amendment to and including Alberta , s. 63.5(1).
34. AEC, s. 74(1).
35. AEC, s. 74(3).
36. Regulation 14/1997, s. 43.86(1).
37. *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (Sask. SEA), s. 2-62.
38. The Employment Standards Regulations, RRS c S-15.1 Reg 5 (Saskatchewan Regulation), s. 31(1).
39. Sask. SEA, s.2-62(1).
40. Sask. SEA, s.2-62(3).
41. Saskatchewan Regulation, s. 31(2)(i).
42. Saskatchewan Regulation, s. 31(3)(a) and (b).
43. Saskatchewan Regulation, s. 31(2)(a).
44. Saskatchewan Regulation, s. 31(2)(b).
45. Saskatchewan Regulation, s. 31(2)(c).
46. Saskatchewan Regulation, s. 31(2)(d).
47. Saskatchewan Regulation, s. 31(2)(e).
48. Saskatchewan Regulation, s. 31(2)(f).

49. Saskatchewan Regulation, s. 31(2)(g).
50. Saskatchewan Regulation, s. 31(2)(h).
51. Saskatchewan Regulation, s. 3(1)(a).
52. Saskatchewan Regulation, s. 3(1)(b).
53. Saskatchewan Regulation, s. 3(1)(c).
54. Sask. SEA, ss. 2-3(1)(a), 2-3(2)(a)(b)(c).
55. Sask. SEA, s. 3(3), Fuel Tax Regulations, 2000, RRS c F-2321 Reg 1, ss. 2(1)(d) and (f).
56. Saskatchewan Regulation, s. 31(4).
57. *The Employment Standards Code*, CCSM c E110 (Manitoba ESC), s. 67(1).
58. Manitoba ESC, s. 69.
59. Labour Standards Act, RSNL 1990, c L-2 (Newfoundland and Labrador LSA), s. 57(1).
60. Newfoundland and Labrador LSA, s. 57(3).
61. Newfoundland and Labrador LSA, s. 57(4).
62. Newfoundland and Labrador LSA, s. . 57(2).
63. Newfoundland and Labrador LSA, s. 57(7).
64. Labour Standards Regulations, CNLR 781/96 (Newfoundland and Labrador Regulation), s. 13(a).
65. Newfoundland and Labrador Regulation, s. 13(b).
66. Newfoundland and Labrador Regulation, s. 13(c).
67. Newfoundland and Labrador Regulation, s. 13(d).
68. Newfoundland and Labrador Regulation, s. 13(e).
69. Newfoundland and Labrador Regulation, s. 13(f).
70. Newfoundland and Labrador Regulation, s. 13(g).
71. Newfoundland and Labrador Regulation, s. 13(h).
72. Newfoundland and Labrador Regulation, s. 13(i).
73. Newfoundland and Labrador Regulation, s. 13(j).
74. Newfoundland and Labrador Regulation, s. 13(k).
75. Newfoundland and Labrador Regulation, s. 13(l).
76. *Employment Standards Act*, SNB 1982, c E-7.2 (New Brunswick ESA), ss.

- 32(1),32(2).
77. New Brunswick ESA, s. 33.
78. New Brunswick ESA, s. 30.
79. New Brunswick ESA, ss. 34 and 30.
80. New Brunswick ESA, ss. 8(1),8(2).
81. *Labour Standards Code*, RSNS 1989, c 246, (Nova Scotia LSC), s. 2(f).
82. Nova Scotia LSC, s. 72(2).
83. Nova Scotia LSC, s. 72(3)(a).
84. Nova Scotia LSC, s. 72(3)(b).
85. Nova Scotia LSC, s. 72(3)(c).
86. Nova Scotia LSC, s. 72(3)(e).
87. Nova Scotia LSC, s. 72(3)(f).
88. Nova Scotia LSC, s. 72(3)(g).
89. Nova Scotia LSC, s. 72(3)(h).
90. Nova Scotia LSC, s. 72(3)(i).
91. Nova Scotia LSC, s. 72(3)(d).
92. Nova Scotia LSC, s. 72(4).
93. Employment Standards Act, RSPEI 1988, c E-6.2 (PEI ESA), s. 29 (1).
94. PEI ESA, s. 29(2)(d).
95. PEI ESA, s. 29(2)(e).
96. PEI ESA, s. 29(2), (a), (b), (c), and (e).
97. *Canada Labour Code*, RSC 1985, c L-2 (CLC), s. 212(1).
98. CLC, s. 212(2).
99. CLC, s. 212(3).
100. Canada Labour Standards Regulations, CRC, c 986, s. 28.
101. CLC, s. 214(1).
102. CLC, s. 221(1).
103. CLC, s. 228.
104. CLC, s. 229(1).

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.

by Rhonda B. Levy and George J.A. Vassos, Littler Mendelson