

Do Employees Who Receive CERB Get Less Termination Notice? – Ask The Expert



CERB may reduce damages for wrongful dismissal during the pandemic.

QUESTION

Do CERB benefits that a wrongfully dismissed employee receives get subtracted from his/her termination notice?

ANSWER

We don't know yet but probably not.

EXPLANATION

In addition to employment standards notice, employees who get terminated without cause may be entitled to what's called common law or reasonable notice to make up for the employment income they would have earned during the notice period. In determining reasonable notice, courts subtract the amounts employees received to "mitigate" their losses. That includes Employment Insurance (EI) unemployment benefits. So, the case could also be made that Canada Emergency Relief Benefit (CERB) monies that employees who got terminated without cause during the pandemic received should also be subtracted from their termination notice.

While it sounds like a sound argument, the COVID situation is totally different. Unlike EI, the CERB was created on the fly in response to an emergency that nobody saw coming. Employers and employees also don't pay into the system the way they do with EI. These were among the reasons the first court to address the question ruled that CERB doesn't come out of reasonable notice.

The case, which came from Ontario and is called *Iriotakis v. Peninsula Employment Services Limited*, 2021 ONSC 998 (CanLII), is by no means the final word on this subject. There's no assurance that courts in Ontario or anywhere else will follow *Iriotakis* in the many cases likely to arise on how CERB impacts termination notice. So, we'll just have to track the cases and keep you in the loop.

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