

Employment And Labour Law Considerations For Looming Tariffs



The Canadian government managed to secure a 30 day reprieve from the extreme tariffs threatened by the peacocking leader to the south. But as of today, who can really say what is going to happen when March rolls around? One thing is clear, if America tariffs are imposed on Canada, there will be a swift economic impact in our country. Some businesses will suffer and need to reduce workforce. Others might find an opportunity for growth. In this week's blog, we'll look at some issues and concepts that you hopefully won't need to know in the next month, but are a good reminder at any time.

1. Are lay-offs really a thing?

Collective agreements typically contain language establishing what kind of a work reduction constitutes a layoff, the order in which employees will be laid off, what notice or compensation will be owed to a laid off worker, and recall rights. If your business operates under a collective agreement, you should be familiar with the layoff provisions already or as soon as possible. Decide whether it makes sense to give layoff notice in anticipation of a business downturn, and whether you can rescind layoff notices if tariffs are avoided again or even altogether.

For non-union workplaces, layoffs are more perilous. While the employment standards legislation in your jurisdiction may stipulate what is a layoff and your employees' entitlements when laid off, employers do not have an automatic right to layoff employees. In fact, unless your individual employees are bound to written employment contracts that allow for temporary layoffs, the laid-off employee has a common law right to consider their employment terminated, and to seek wrongful dismissal compensation.

And as for what actually constitutes a layoff, remember that an employee whose employment ends (permanently) due to lack of work has been terminated, and not laid off.

2. What if my company's contracts don't contemplate layoffs?

Better get on that. Hopefully you'll never need it, but if the alternative is a straight up termination, you (and hopefully your employee) will be glad it's in there.

For any new employees your company hires, make sure you include language that allows for a temporary layoff compliant with the employment standards legislation in your jurisdiction.

The case of existing employees raises a different issue, because they already have employment contracts. Even if those contracts are not written down, the terms and conditions are largely implied by common law. It is a fundamental rule of contract law, that you can't make a new contract unless both sides agree and both sides get some fresh benefit from the contract. If you want to be able to enforce a new contract for an existing employee, the employee should receive something in return, such as a reasonably valuable signing bonus, or a raise in their wage or salary.

And if your collective agreement does not include provisions for layoffs and recalls, you may want to meet with your union representatives right away to organize a means to fairly reduce the workforce in a manageable way that respects seniority and legitimate business needs.

3. Are there alternatives to layoffs?

Certain eligible employers may be able to take advantage of [Canada's Work-Sharing Program](#). In a nutshell, the Work-Sharing Program helps employers and employees avoid layoffs when there is a temporary decrease in the normal level of business activity (minimum 10% reduction in earnings), and the decrease is beyond the control of the employer. This became a popular topic at the outset of the COVID-19 pandemic.

A Work-Sharing agreement exists between the employer, employee, and Service Canada, in essentially says that the employee will work reduced hours, equally share available work over the term of the agreement, and receive some wage subsidy from the government. The arrangement must last a minimum of six weeks, and can last up to twenty-six weeks

4. What if my business can benefit from tariffs?

Certain businesses might be in a position to increase their work in the event of tariffs. Businesses who acquire other businesses should be familiar with how their acquisition will create new legal liabilities from absorbing a new workforce, particularly in the collective agreement environment.

Different considerations may apply depending on whether business is transferred through a share sale or an asset sale, so careful consideration should be paid to the appropriate clauses in a purchase and sale agreement.

Overall Considerations

Some economists warn that the imposition of tariffs could cost Canada a million jobs. Don't wait to prepare for this potential outcome. Review your existing contractual, common law, or collective agreement obligations, and where possible, prepare your business to absorb job losses with help from experience legal counsel.

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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