

# Group Termination: Are There Any Changes In Store For Employers Under Federal Jurisdiction?



The current economic climate is forcing many employers to reassess their workforce requirements, which may result in layoffs or redundancies.

## **The Current Legal Framework**

For employers under federal jurisdiction, Part III of the *Canada Labour Code* (the “CLC”) sets out the applicable rules for individual and group terminations.

The layoff or dismissal of 50 or more employees within the same establishment within a four-week period may result in the application of the provisions of Division IX of the CLC specific to mass layoffs.

In the event of a mass layoff, section 212 of the CLC requires the employer to notify the Head of Compliance and Enforcement of the Labour Program in writing at least 16 weeks prior to the date of the first scheduled layoff, and to send a copy of the notice to the Minister of Employment and Social Development, the Canada Employment Insurance Commission and the unions representing the affected employees. When the employees concerned are not unionized, the employer must give a copy of the notice to the employees concerned or post a copy in a conspicuous place in their workplace.

When the employer fails to give such notice, or gives insufficient notice, employees may not claim compensation from the employer. This is an important distinction from the situation that prevails for Québec employers under provincial jurisdiction, who are required to pay such compensation to employees affected by collective dismissal under section 84.0.13 of the *Act respecting Labour Standards*.

## **The Debate on Compensation in Lieu of Notice for Group Termination**

The interpretation of section 212 of the CLC was recently the subject of [a decision](#) by the Alberta Court of King’s Bench in proceedings taken under the *Companies’ Creditors Arrangement Act* following the cessation of Lynx Air’s operations. In this case, a union was asking the Court to issue an order declaring that the employees were entitled to include in their claim, under the *Wage Earner*

Protection Program (WEPP), an indemnity in lieu of the 16 weeks' notice of group termination that Lynx Air had failed to give.

The Court rejected this request on four grounds:

(1) Notice of group termination must be given to the Chief Compliance Officer, not to the employees directly.

(2) The purpose of Division IX is not to provide financial support to the affected employees, but rather to eliminate the need for redundancies or minimize their consequences (Art. 221 of the CLC).

(3) The Minister of Labour may exempt an employer from the requirement to give notice, which is inconsistent with the idea that an employee has an indisputable right to receive compensation in lieu of notice upon group termination.

(4) The employer's obligations to pay compensation in lieu of notice under Division X and severance pay under Division XI are explicit. If it had been Parliament's intention to create such an obligation under Division IX, it could have provided for it, but it did not. In fact, the obligation to pay compensation in lieu of group termination notice is explicitly provided for in the labour standards legislation of several provinces, including British Columbia, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

## A Fate That Could Soon Be Different

This result is not surprising, since it applies the same interpretation of section 212 of the CLC as that adopted by the Nova Scotia Court of Appeal in *Conrad v. Imperial Oil*, to the effect that the notice of group termination to be given to the minister does not equate to pay in lieu of group termination notice owed to the affected employees.

It may, however, be disappointing for the plaintiff union and the affected employees, since the CLC provisions obliging an employer to pay compensatory indemnity in the event of failure to give notice of group termination already exist.

Indeed, Parliament passed the *Budget Implementation Act, 2018, No. 2* on December 13, 2018, to amend Division IX of the CLC. When these amendments come into force, section 212.1 will be added to the CLC to provide for an obligation on the part of the employer to give at least eight (8) weeks' written notice to each employee affected by the group termination or to pay compensation in lieu thereof of at least the greater of eight (8) weeks or the number of weeks between the date of the layoff and the end of the mass layoff notice period.

## Conclusion

Unlike employees of provincially-regulated undertakings in Québec, employees of federally-regulated undertakings are not entitled to receive a notice of group termination or compensation in lieu thereof. This situation may soon change, however, as Parliament has already passed the necessary legislation to amend Division IX of the CLC. The effective date of these changes is unknown at the time of publication.

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