

Managing Your Workforce In Times Of Economic Uncertainty



President Trump's announcement that the US will apply a 10% tariff on Canadian energy products and 25% tariffs on all other imports from Canada has sent shockwaves across the Canadian economy. In a report issued in January, the [Bank of Canada](#) speculated that a trade war between Canada and the US would lead to a decline in Canada's GDP during the first year by about 2.5%. The fact that this economic shock comes so closely after a significant rise in interest rates due to high inflation means that Canadian employers are in a precarious position.

This insight is intended to help guide employers in Canada with the employment law issues they may face due to the uncertainties arising from threatened or actual tariffs, the removal of US funding sources and other current events matters. This is not intended as a substitute for legal advice, but a supplement to it. Each employer will need to make its own decisions, having regard to such things as: (i) the constantly **changing** current events; (ii) the nature of the employer's business; and (iii) the employer's financial health. If you have any questions, please contact any member of Dentons' Canadian [Employment and Labour](#) group.

Workplace restructuring:

To address economic headwinds, employers may consider undertaking temporary layoffs, work-sharing, pay cuts, reduced working hours and/or staggered work hours.

While each of these options may allow employers to immediately trim their labour costs, they also come with the increase risk of a successful constructive dismissal claim. In considering whether such a change constitutes a constructive dismissal, a judge will consider a number of factors including, (i) whether the change is truly fundamental when viewed in relation to all of the employee's employment terms; and (ii) whether the employee has a provision in their employment agreement which permits such changes. In these circumstances, employers will need to consider whether it's better to risk constructive dismissal in an effort to save jobs, or to simply implement widespread employee dismissals if finances do not permit continued employment of all employees (while keeping in mind that termination payments to employees will also have a financial cost).

Pay cuts, reduced working hours and/or staggered work hours represent other cost-cutting options for employers that favour the retention of employees over dismissals with no legal repercussions other than the possibility of constructive dismissal

claims. Temporary layoffs and work-sharing need to be undertaken properly, if at all, and are addressed in more detail below.

Employers with large workplaces should also be aware that if a significant number of employees claim constructive dismissal within a given time period, group or mass termination obligations may arise. In the event of group terminations, additional termination payments will be owed to impacted employees. For more information on group terminations, please see our [Dentons Canada Group Terminations Toolkit](#).

Employment insurance top-ups by employers (SUB plans):

Employers that have registered a [Supplemental Unemployment Benefit \(SUB\) plan](#) with Service Canada may top up employment insurance (EI) coverage for their employees during a temporary stoppage of work, so long as there is not a termination of employment due to re-organization or a shutdown of operations. If a SUB plan has not been registered with Service Canada however, EI top-ups are currently only permitted for employees on statutory leaves of absence such as Pregnancy Leave and Parental Leave. SUB plan benefits must be financed by the employer. The benefit of SUB plans is that they allow employers to put a reduced amount of income into the pockets of employees during difficult financial times, with the federal government also paying EI to employees and without the standard EI claw-backs in relation to the employer payments. The use of SUB plans can result in employees receiving as much as 95% of their normal weekly earnings.

Note that SUB plans must be registered with Service Canada before their effective date. For employers that may want to take advantage of the SUB plan option, the time to submit one's application is now, as the application process is complicated and processing by Service Canada can take some time.

Work-sharing:

The federal government's [work-sharing \(WS\) program](#) helps employers and employees avoid layoffs when there is a temporary decrease in the normal level of business activity, and the decrease is beyond the control of the employer. As stated the ESDC website, "[t]he agreement provides income support to employees eligible for EI benefits who work a temporarily reduced work week while their employer recovers. All employees participating in the agreement must experience a minimum 10% reduction to their normal weekly earnings to comply with the terms of the agreement. A [WS] agreement is a three-party agreement involving employers, employees and Service Canada."

WS arrangements currently have a minimum of 6 weeks and a maximum of 26 weeks, although a 12-week extension may be sought in order to bring the total period up to 38 weeks. During the COVID-19 pandemic, the federal government extended the maximum WS period to 76 weeks. We will be monitoring this program as the federal government might look to further extend the WS program in the event that the US government proceeds to levy tariffs broadly across all Canadian imports.

For companies that do not have an approved WS agreement in place, applications must be submitted to Service Canada a minimum of 10 days business days prior to the proposed start date. Note that WS arrangements may only begin on Sundays, to align with the EI payment cycle. Application information can be found [here](#).

Working While on Claim:

Service Canada has an EI Working While on Claim program, provided the person receiving EI benefits does not work a full week. Working While on Claim requires the

employee to declare their earnings online; however it permits the employee to keep 50 cents of every dollar earned, up to 90% of their usual weekly pay. If the employee goes over 90%, then EI benefits are deducted dollar for dollar.

The following is a Working While on Claim calculation example from the federal government:

John was laid off when the grocery store where he worked shut down. His weekly earnings were \$500, so his weekly EI benefit rate is \$275 (55 percent of \$500). He has found a part-time job at a restaurant, where he works three days a week and earns \$300 per week. As a result, his \$275 in EI benefits are reduced by \$150 or 50 cents for every dollar he earns at the restaurant ($\$300 \div 2 = \150). This brings his total EI benefit to \$125 ($\$275 - \$150 = \125). In the end, John takes home \$125 per week in EI benefits plus his part-time wages of \$300, for a total of \$425.

Termination of employment:

Where the negative economic impact is too great, it may be that the only option for employers will be to engage in a permanent reduction in force. While that will presumably be a last option for employers, the benefit is that eligible employees will be entitled to apply for EI coverage. Employees can receive EI for up to a maximum of 45 weeks, depending on the unemployment rate in their region at the time of filing the claim, and the amount of insurable hours that the employee has accumulated in the last 52 weeks or since their last claim, whichever is shorter. The basic rate for calculating EI benefits is 55 percent of average insurable weekly earnings, up to a maximum amount of CA\$695 per week.

Employers considering termination of employment for their employees should try to keep in mind, to the extent possible, whether employees have worked sufficient insurable hours prior to the termination so as to be able to qualify for EI coverage. In the event of terminations of employment for economic reasons, the employer should indicate Code A (Shortage of Work) on the Record of Employment, which will simplify the EI application process for impacted employees.

It goes without saying that terminations of employment can be a complex area to navigate. Oftentimes employees have significant common law notice entitlements in excess of their statutory minimum entitlements under employment standards legislation. Recent case law in this area has created greater risk for employers. It may not make sense to undertake a large corporate downsizing in priority to some of the other options in this insight, if the net result will be a significant and immediate termination pay liability for the employer. Companies are urged to reach out to a member of the Dentons Canada national Employment and Labour Law group before undertaking terminations.

Conclusion

The cloud of uncertainty that hangs over the Canadian economy will continue to be a drag on Canadian employers as they ready themselves for the impact of what could be a lengthy trade war. That said, by knowing the options that are available to them, employers can exercise some degree of flexibility as they work to ready themselves for this next period of economic turmoil.

About Dentons

Dentons is the world's first polycentric global law firm. A top 20 firm on the

Acritas 2015 Global Elite Brand Index, the Firm is committed to challenging the status quo in delivering consistent and uncompromising quality and value in new and inventive ways. Driven to provide clients a competitive edge, and connected to the communities where its clients want to do business, Dentons knows that understanding local cultures is crucial to successfully completing a deal, resolving a dispute or solving a business challenge. Now the world's largest law firm, Dentons' global team builds agile, tailored solutions to meet the local, national and global needs of private and public clients of any size in more than 125 locations serving 50-plus countries. www.dentons.com

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. Specific Questions relating to this article should be addressed directly to the author.

Authors: [Catherine P. Coulter](#), [Andy Pushalik](#)

Dentons