

Mass Terminations In The Post-Merger Context



A number of different parties and interests are at play in any merger. Although it may not be at the forefront during merger negotiations and considerations, the acquiring company should turn its mind to the possibility of mass terminations, and the consequences flowing from them. Comparatively speaking, the Canadian employment framework is quite generous, and there is no employment at will.

Commonly, an acquiring company will identify and seek to reduce redundancies and inefficiencies in the post-merger entity. Prior to instituting mass terminations, companies must consider their legal obligations to the terminated employees.

If the employees of a target company are unionized, section 69 of Ontario's *Labour Relations Act, 1995* deems the acquiring company to be a successor employer. As such, if all or a part of a business or undertaking is sold, leased, transferred, or otherwise disposed of, the purchasing business, as successor, becomes bound by the collective agreement, as if it were a party to the collective agreement. As such, any termination of unionized employees of the target company must be done in compliance with the governing collective agreement. Generally, typical asset purchase agreements require the purchaser to continue employment of all unionized workers on identical employment terms and conditions.

If an employee is not offered employment post-merger, the employee's statutory, contractual and common law entitlements must be considered. Similar to Ontario's *Labour Relations Act, 1995*, section 9 of Ontario's *Employment Standards Act, 2000* ("ESA") deems the purchaser of a business to be the successor employer. Additionally, the length of employment, used for the purposes of calculating termination and severance pay, is based upon the combined employment at the predecessor and successor employer.

The *ESA* has particular provisions which apply in the context of mass terminations, and which supplant the normal notice, or pay in lieu of notice requirements. Section 58 of the *ESA* sets out that the mass termination requirements apply when 50 or more employees are terminated at the employer's establishment within the same four-week period. If such a mass termination occurs, subsection 3(1) of Ontario Regulation 288/01 entitles all employees with more than three months of continuous employment to eight weeks' notice where 50-200 employees are terminated, 12 weeks' notice where

200-500 employees are terminated and 16 weeks' notice where more than 500 employees are terminated. However, the mass termination provisions do not apply if either the terminations represent fewer than 10% of the employees who have been employed for at least three months, or if the terminations are not caused by the permanent discontinuance of part of the employer's business at the establishment. Additionally, subsections 2(1) and 9(1) of Ontario Regulation 288/01 provides that if an employee refuses an offer of reasonable alternative employment, the employee will be disentitled to termination and severance pay.

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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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