

New Rule of Thumb: 6 Months' Pay Per Year Of Service?



So much for the rule of thumb that an employee should receive one month of notice for every year of service. The Toronto Star has reported on a recent wrongful dismissal decision that Ontario employers should consider, especially when hiring senior managers or executives. Except for the 12 month notice period that was awarded, the facts of the case seem unremarkable. The company terminated, without cause, the employment of a 52 year old executive, who had 19 months of service.

The interesting part of the decision is that the executive, who had still not found work after 14 months, was then awarded a 12 month notice period. This is probably much higher than the company expected when it was considering the termination. If it had obtained a legal opinion prior to the firing, the advice was probably that the executive would be awarded a notice period somewhere around 6 months.

This decision underscores the sometimes painful reality that there really is no rule of thumb when estimating a lawful notice period. It also reinforces the fact that properly drafted employment agreements can be a valuable tool to provide organizations with certainty around employee terminations.

For example, it is perfectly lawful to have a severance clause in an employment agreement that provides only the statutory minimum entitlements to an employee on termination. This type of clause may be appropriate for a lower level employee, but probably not for an executive. For an executive, a common approach is to have a severance clause which provides guaranteed entitlements that are above the statutory minimums (but probably much lower than 6 months per year of service), and in exchange requires the executive to sign a release.

Had this type of clause been used in this case, it would have avoided the need for litigation, which was probably costly to both sides, and could have saved the company a significant amount of the ultimate severance costs.

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