

Preparing For Tariffs: Workforce Planning During Economic Slowdown



Canada has spent the past two years recovering from high interest rates and elevated inflation which produced down years in terms of economic output. Going forward, the Canadian economy faces uncertainty in the face of a potential federal election, a new US presidential administration, and international trade disputes.

On February 1st 2025, the U.S. Trump administration announced it would be putting 25% tariffs into place on Canadian goods (10% on energy exports), effective February 4, 2025. In response, the Canadian government announced it would be putting countermeasures into place, beginning with 25% tariffs on \$30 billion in U.S. goods, also effective February 4, 2025. Both governments have stated that these changes to the tariff amounts and further measures are possible.

Update (February 3, 2025): Following publication of this article and discussions between the two nations on February 3, 2025, Canada and the U.S. agreed to pause any tariff or retaliatory measures for “at least” 30 days.

It is not yet clear what the economic impact of these tariffs on the Canadian economic landscape will be, or how long they will be in place, but businesses in Canada should be prepared to address potential changes to their workforce as a result.”

This bulletin discusses some options available to employers to manage unexpected downturns and, if necessary, to reduce their labour force. All of these options are subject to restrictions in any collective agreement in unionized workplaces, and in any employment agreement in non-unionized workplaces. All options should be considered carefully in light of potential risks discussed below.

Voluntary and Involuntary Temporary Layoffs

Provincial employment standards legislation has provisions dealing with situations of temporary lay-offs. Some have specific requirements. Others are more permissive. Ontario, for example, has provisions dealing with temporary layoffs up to 35 weeks in a 52 week period (with a number of conditions) and up to 13 weeks in a 20 week period (with significantly fewer conditions). British Columbia, meanwhile, only has provisions dealing with temporary layoffs up to 13 weeks in a 20 week period. Québec has provisions allowing an employer to lay off an employee temporarily for less than 6 months, without having to give notice of termination or pay in lieu thereof.

Temporary layoffs which adhere to the statutory provisions will not violate employment standards legislation. Generally, if a layoff lasts longer than permitted under employment standards legislation, termination of employment will be deemed to have occurred. However, for non-unionized employees, in common law provinces, temporary layoffs of any length may be considered to be a constructive dismissal at common law, unless the employer has a contractual right to layoff or that right is implied by past practice. By contrast, in Québec, such a contractual right or past practice is not required.

Collective agreements typically contain layoff provisions. These provisions will generally apply for temporary layoffs and recalls of unionized employees.

Other Voluntary Measures for Employees

Employers may be assisted by voluntary measures accepted by employees. These can include:

1. A voluntary agreement to reduce compensation;
2. A voluntary agreement to reduce weekly hours, or implementation of rotating shifts (e.g., one week on, one week off, etc.);
3. A voluntary agreement to take an unpaid leave of absence (furlough);
4. A voluntary work sharing agreement (see below for more information); or
5. A voluntary separation agreement.

All of these voluntary measures should be reduced into written agreements. Employers should also consider what, if anything, they may be able to provide employees in exchange for these agreements (e.g. compensation, etc.).

Other Involuntary Measures for Employees (Short of Termination or Layoff)

In addition to a temporary layoff, employers may have the following measures at their disposal, without employee consent, if the change is not substantial:

1. A reduction in pay; and
2. A reduction in hours.

Employers should seek specific legal advice before making any unilateral changes of this nature.

Work Sharing

The federal government has a work sharing program available for certain qualifying employers and employees. Under the program, if employers and a specific unit of employees agree, those employees may “share” the work being performed by reducing each employee’s work week by as much as 60% in order to avoid layoffs.

Under the program, if an agreement is in place between these employers and employees and accepted by Service Canada, Service Canada will provide employment insurance benefits to employees to make up some or all of their lost income.

Work sharing arrangements are subject to an employer application, agreement from employees, acceptance by Service Canada and other qualifying criteria. There are also reporting requirements.

Termination of Employment (Non-Unionized Employees)

Employers continue to have the right to terminate employees' employment as a result of economic circumstances where appropriate notice of termination is provided. Contractual, civil law or common law rights, equal to or in excess of employment standards rights, will apply.

For employees who are entitled to common law notice and Québec employees, who are entitled to reasonable notice of termination under the *Civil Code of Québec*, the economic environment may impact such notice period. If there is a scarcity of work, this may, in particular, have the impact of lengthening the applicable notice period – the premise being that it will take longer for the employee to find alternate work in a downturn.

If the number of employees being terminated is significant, this may also require consideration of the “mass”, “collective” or “group” termination provisions found in provincial employment standards legislation. British Columbia and Ontario, for example, require notice of group termination where 50 or more employees at a single location or establishment will be terminated within a prescribed period. Québec requires notice of collective dismissal where 10 or more employees at the same establishment, over the course of 2 months, will be terminated or laid off for 6 months or more.

Employers should seek specific legal advice if there is a risk of triggering a mass termination as there are specific requirements that must be met in such circumstances.

Employment Insurance Benefits, ROEs and Top-Ups

If an employee is put on a temporary layoff, is starting an approved work sharing agreement, or has their employment terminated, a Record of Employment (“ROE”) from Service Canada is required. In many cases, employees may qualify for employment insurance benefits.

Employers may wish to provide employees top-up payments while on layoff or during any period they are receiving employment insurance payments. To ensure these top-ups are not subject to employment insurance claw backs or other deductions, it is recommended that the employer review requirements for supplemental unemployment benefits (“SUB”) registration with Service Canada and apply to register their SUB [here](#).

Takeaways

Employers have many options available to manage their workforce and plan for temporary or sustained economic downturns. The options set out above may create circumstances where an employee can, and may, allege constructive dismissal and claim termination entitlements, among other risks.

It is highly advisable for employers to obtain legal advice on their options, and an assessment of related risks before taking any steps. In all cases, it is advisable for employers to develop clear communications to employees, and to update those communications as situations change.

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.

Authors: [Andrew Gould](#), [Clayton Jones](#), [Florence Gauthier](#), [Rachel Younan](#)

