

Trade Wars And The Workplace: An Employer's Guide To Temporary Layoffs



On February 1, President Trump issued an executive order directing the U.S. to impose new 25% tariffs on imports from Canada. Later that day, Canada announced retaliatory 25% tariffs on \$155-billion in U.S. goods. Both measures were supposed to take effect on February 4, but two chaotic days (and at least one “good talk” later),¹ both countries took a step back from the ledge – agreeing to pause their respective tariffs for a period of “at least 30 days”.

Understandably, Canadian businesses are still very concerned about the impact that a potential trade war could have on their employees, operations, partners, customers, and suppliers. Amid this uncertainty, employers are well-advised to carefully consider all available options to protect their employees and operations should political tensions rise again. For many, this includes a refresher on the rules and legal consequences of temporary layoffs.

Layoffs Permitted by Legislation, Not Necessarily by Common Law

As many employers discovered during the COVID-19 pandemic, there is no automatic right to lay off employees, even if employment standards legislation allows it. Rather, there is a presumption under Canadian law that a temporary layoff constitutes a constructive dismissal, allowing the employee to treat their employment as having been terminated (allowing them to seek damages). This presumption of constructive dismissal can be rebutted in three ways:

1. Express Term in the Employee's Agreement

The easiest way to rebut a claim of constructive dismissal is to obtain the employee's prior consent to a temporary layoff. If an employee signed a written offer letter or employment agreement with a temporary layoff clause, this should avoid the risk of a constructive dismissal claim.

The layoff can then proceed without the employee's further consent, provided the layoff complies with employment standards legislation. In the table below, we set out the provincial and federal rules and maximum durations of temporary layoffs.

2. Implied Term Allowing for a Temporary Layoff

Ontario and other provincial courts have also recognized a so-called “implied term” allowing an employer to place an employee on a temporary layoff. Such an implied term is typically established through the employer’s past practices of laying off employees, general practices regarding layoffs within their industry, or other reasonable expectations of the employer and employee regarding layoffs.

However, [as we wrote about previously](#), Ontario courts have imposed a high bar for employers to prove such an “implied term”. Therefore, we recommend that employers proceed with great caution if relying upon an implied term to allow for a temporary layoff, as doing so may risk inviting constructive dismissal claims.

In other provinces, such as British Columbia, employers may be permitted to temporarily lay off employees where it is normal and expected in the industry. However, such layoffs are not expected to apply in the context of the current economic uncertainty.

3. Condonation or Consent to the Layoff

A layoff will not trigger a constructive dismissal where it is consented to or condoned by the employee. Consent is typically provided in an express form such as a layoff notice signed back by the employee. Condonation arises where the employer can establish through the employee’s actions and communications that, viewed objectively, the employee freely consented to the layoff.

Similar to implied terms permitting layoffs, establishing condonation (as opposed to outright consent), will be challenging for employers. Ontario courts have held that a written acknowledgement of a layoff is not consent or condonation of a layoff, nor is an employee’s failure to clearly object to a layoff. Employers therefore must be cautious when relying upon employee condonation and should take the time to ensure that layoff letters and notices asking employees for their consent to the layoff are properly drafted.

How to Proceed with Layoffs without an Express Term

Employers with clear and enforceable layoff terms in their employment agreements will be able to proceed with temporary layoffs, as long as the employer acts honestly and in good faith. However, most employers will likely find they don’t have such express terms, requiring them to explore other courses of action to reduce their exposure to constructive dismissal claims. Some strategies that employers may consider include financially incentivizing employees to consent to layoffs, regularly updating employees about layoffs, and re-offering comparable employment where available to mitigate potential claims.

Takeaways

Employers across Canada should assess whether their offer letters and employment agreements contain layoff clauses, as well as up-to-date termination clauses. Employers should also consider their options and risks before proceeding with temporary layoffs. In addition, employers should consider whether their plans could trigger group termination obligations, such as notice to the applicable provincial employment standards branch. With advance planning and strategies, risks can be mitigated.

Additional Resources

McMillan has prepared the following table summarizing the basic framework of temporary layoffs under provincial and federal employment standards legislation. The table serves as a general reference guide for employer obligations when implementing temporary layoffs.

Depending on the circumstances, employers may be exempt from the below obligations. For instance, some jurisdictions exempt employers from providing layoff notice in cases of a sudden and unforeseen lack of work beyond the employer's control.

Additionally, employers should be aware that employees may have entitlements beyond those listed below, arising from collective agreements, individual employment agreements, or mass termination provisions.

For legal advice on your business' obligations with respect to temporary layoffs, please contact a member of McMillan's Employment and Labour Relations Group.

Province Temporary Layoff Basics

Temporary layoff can last up to 13 weeks in any period of 20 consecutive weeks.

Written notice (or pay in lieu of notice) must be provided to the employee for layoffs of longer than a week. The amount of notice that an employer must provide will depend on the employee's length of service:

- Newfoundland & Labrador**
- a) one week, where the employee has been continuously employed by the employer for a period of 3 months or more but fewer than 2 years;
 - b) 2 weeks, where the employee has been continuously employed by the employer for a period of 2 years or more but fewer than 5 years;
 - c) 3 weeks, where the employee has been continuously employed by the employer for a period of 5 years or more but fewer than 10 years;
 - d) 4 weeks, where the employee has been continuously employed by the employer for a period of 10 years or more but fewer than 15 years; or
 - e) 6 weeks, where the employee has been continuously employed by the employer for a period of 15 years or more.

No notice is required when an employee has fewer than 3 months of service.

Employees may be temporarily laid off without written notice for a period of no more than 6 days.

For longer layoffs, the amount of notice (or pay in lieu of notice) that an employer must provide will depend on the employee's length of service:

- Nova Scotia**
- a) 1 week for employees with 3 months but fewer than 2 years of service;
 - b) 2 weeks for employees with 2 years or more but fewer than 5 years;
 - c) 4 weeks for employees with 5 years or more but fewer than 10 years; or
 - d) 8 weeks for employees with 10 years or more.

No notice is required when an employee has fewer than 3 months of service.

Province

Temporary Layoff Basics

An employer may not layoff an employee without giving at least the following notice in writing:

- a) 2 weeks, for employees with between 6 months and 5 years of continuous service; or
 - b) 4 weeks, for employees with 5 or more years of continuous service.
- No notice is required when an employee has fewer than 6 months of service.

New Brunswick

No employer may lay off more than 10 employees within a 4-week period if they represent at least 25% of the employees of the employer without first giving 6 weeks' notice of layoff to:

- a) The Minister of Post-Secondary Education, Training and Labour; and
- b) The employees affected by the layoff (and any bargaining agent). A copy of this notice must be posted and available for the information of all employees.

Pay in lieu of notice in an amount equal to the pay the employee would have earned during the notice period may be provided.

An employer may not layoff an employee without giving at least the following notice in writing:

- a) 2 weeks, for employees with between 6 months and fewer than 5 years of continuous service;
- b) 4 weeks, for employees with 5 or more years but fewer than 10 years of continuous service;
- c) 6 weeks, for employees with 10 or more years but fewer than 15 years of continuous service; or
- d) 8 weeks, for employees with 15 or more years of continuous service.

PEI

No notice is required when an employee has fewer than 6 months of service.

Pay in lieu of notice in an amount equal to the normal wages the employee would have earned during the notice period (exclusive of overtime) may be provided.

In Québec, a layoff temporarily suspends the contract of employment between the employer and the employee. The employee retains their employment relationship for the duration of their layoff and the contractual relationship is maintained.

The maximum temporary layoff period in Québec is 6 months, and no advance notice is required.

However,

Québec

- Where the temporary layoff lasts more than 6 months, specific notices and/or payment in lieu of notice will generally be required.
- Where the temporary layoff lasts more than 6 months and involves 10+ employees in the same establishment in the course of 2 consecutive months could instead constitute a collective dismissal. Specific notices and/or payment in lieu of notice will generally be required and may vary depending on the number of employees being laid off.

Province

Temporary Layoff Basics

Employers are not required to provide notice of temporary layoff or reason for layoff.

A temporary layoff can last:

1. Not more than 13 weeks of layoff in any period of 20 consecutive weeks; or
2. More than 13 weeks in any period of 20 consecutive weeks, but fewer than 35 weeks of layoff in any period of 52 consecutive weeks, where:
 - a) The employee continues to receive substantial payments from the employer;
 - b) The employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan;
 - c) The employee receives supplementary unemployment benefits;
 - d) The employee would be entitled to receive supplementary unemployment benefits but isn't receiving them because they are employed elsewhere;
 - e) The employer recalls the employee within the time approved by the Director; or
 - f) The employer recalls the employee within the time frame set out in an agreement with an employee who is not represented by a trade union.
3. A layoff longer than a layoff described in "2" where the employer recalls an employee who is represented by a trade union within the time set out in an agreement between the union and the employer. If an employee is laid off for a period longer than a temporary layoff as set out above, the employer is considered to have terminated the employee's employment and must pay termination pay and severance pay where applicable.

Ontario

Employers do not need to provide notice to employees where employees are likely to return to work if the layoff is fewer than 8 weeks. If the layoff is longer than 8 weeks in a 16-week period, the layoff becomes a termination and notice is required. The amount of notice depends on how long the employee has been employed by the employer:

- 1 week for employees with at least 30 days to less than 1 year;
- 2 weeks for employees with at least 1 year to fewer than 3 years;
- 4 weeks for employees with at least 3 years to fewer than 5 years;
- 6 weeks for employees with at least 5 years to fewer than 10 years;

Manitoba

or

- 8 weeks for employees with at least 10 years.

In the following circumstances, lay-offs do not become terminations even if they are longer than 8 weeks in a 16-week period:

- When employers continue to pay wages or payments instead of wages to employees; or
- When employers continue to make payments to both pension and group insurance plans on behalf of employees.

Employers can also apply to the Director of Employment Standards to implement a greater temporary layoff period (any that the Director considers appropriate).

Saskatchewan

Layoffs are considered a temporary interruption of service for up to 6 consecutive workdays. If the layoff exceeds 6 workdays, termination notice or payment is required for employees who have worked more than 13 consecutive weeks for the employer prior to a layoff. Since layoffs and terminations are treated the same, the effective termination date would be at the start of the layoff.

Province

Temporary Layoff Basics

Under Alberta law, the general rule is that an employer does not have to provide termination pay where an employee is "temporarily" laid off.

Alberta

If an employee is laid off for a period of time that is longer than a temporary layoff of 90 days, the employer is considered to have terminated the employee's employment. Generally, the employee will then be entitled to termination pay.

The period of temporary layoff can be extended beyond 90 days if the employer makes regular payments to or on behalf of the employee (e.g., continuing to pay wages, pensions, or benefits) and the employee agrees to these payments in lieu of a limit on the length of the layoff. Termination pay is payable when such payments in lieu cease.

An employee is considered laid off as soon as they earn less than 50% of their weekly wages at the regular rate (averaged over the previous eight weeks).

Temporary layoffs are prohibited unless the employee agrees in advance, either by:

- A term of the employment agreement,
- By a well-known industry-wide practice, or
- With the consent of the employee

BC

In the absence of the above, a layoff constitutes termination of employment, and notice is required.

If permitted, the maximum duration of a temporary lay-off is 13 weeks in a consecutive 20-week period.

On the first day of the 14th week (unless a variance is granted), the lay-off is deemed to be a termination of employment. The 20-week period begins on the first day of the layoff.

Employers may seek a variance from the Employment Standards Branch to extend a temporary layoff beyond 13 weeks. Variances will be considered on a case-by-case basis, and only offered in rare and exceptional circumstances.

Province

Temporary Layoff Basics

Generally, employers may temporarily lay-off employees for 3 months or less. However, the layoff may exceed 3 months if:

1. The layoff is 12 months or less and mandatory under a minimum work guarantee in a collective agreement;
2. The employer gives the employee notice of layoff and a fixed period of layoff or a fixed date of recall within 6 months of the start of the layoff, and the employer in fact recalls the employee within that period.
3. The term of the layoff is more than 3 months and:
 - a) the employee continues to receive payments in an amount mutually agreed upon;
 - b) the employer continues to make payments to a pension plan or under a group or employee insurance plan;
 - c) the employee receives supplementary unemployment benefits; or
 - d) the employee would be entitled to supplementary unemployment benefits, but is disqualified from receiving them under the Employment Insurance Act.

Federal

Notice to an employee of a temporary layoff under 3 months is not generally required. However, notice is required for temporary layoffs exceeding 3 months, if the employer recalls the employee within 6 months from the first day of the layoff. In that case, the recall date must be included in the notice sent to employees.

Outside of these parameters, and barring any employer exemptions, the employee's employment is terminated and the employer must pay termination pay and severance pay where applicable.

Footnotes

1 [Trudeau, Trump finish another phone meeting on eve trade war](#)" CBC News (February 3, 2025).

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2025

Authors: [Ioana Pantis](#), [David Fanjoy](#), [Saadia Naim](#), [Kristen Shaw](#)

McMillan