U.S. Tariffs: New Work-Share “Special Measures” And Employment Law Considerations

Current and future U.S. tariffs on Canadian exports are causing employers to consider strategies for dealing with the potential negative effect of tariffs on the Canadian economy. This brief article outlines some of the options available to employers whose business is negatively impacted, together with their associated legal implications.

Work-Sharing: New U.S. Tariff “Special Measures”

Canadian employers experiencing decreased levels of business may qualify for “work-sharing” under the Work-Sharing Program established by *Employment and Social Development Canada* (“*ESDC*“). Many Canadian employers will already be familiar with this program, which gained prominence during the COVID pandemic.

The ESDC has recently introduced new Work-Sharing “special measures” to expand the scope of the program in response to U.S. tariffs. These special measures are currently in effect from March 7, 2025 to March 6, 2026.

Employers experiencing a decline in business activity attributable to the threat or potential realization of U.S. tariffs may be eligible for Work-Sharing special measures if they are operating in Canada for a minimum of 1 year and have a minimum of 2 EI-eligible employees who agree to a reduction in hours and to share any available work.

Work-Sharing agreements approved under U.S. tariffs special measures must have a minimum duration of 6 weeks and may be extended to a maximum total of 76 weeks, if required.

These special measures further expand employer eligibility for work-sharing to businesses that have been in operation in Canada for 1 year (otherwise 2 years), to include non-profit and charitable organizations experiencing a reduction in revenue levels as a direct or indirect result of the tariff, and to include employers experiencing a decrease in work activity over the past six months of *less than 10*% and allowing utilization of Work-Sharing to exceed 60%.

The measures also expand employee eligibility to employees who are not year-round, permanent, full-time or part-time employees, and specifically seasonal or cyclical

employees.

Employers wishing to learn more about the Work-Sharing U.S. tariffs special measures can do so by contacting the *ESDC*'s Work-Sharing Employer Inquiry Unit at edsc.dgop.tp.rep-res.ws.pob.esdc@servicecanada.gc.ca

Temporary Layoffs

Employers experiencing the negative impact of tariffs might consider temporary layoffs as a practical interim measure. In Ontario, the *Employment Standards Act* ("*ESA*") permits temporary layoffs of up to as long as 35 weeks in duration, without triggering a termination of employment under the *ESA*. Employers considering this option must, however, be aware of several important limitations on their ability to lawfully impose temporary layoffs.

First, layoffs which extend beyond the permitted period under the *ESA* are deemed to be terminations of employment, resulting in termination pay obligations. Second, an employer's ability to impose such layoffs is not unlimited. Unless the employee has signed a written employment agreement which expressly (and validly) permits such layoffs, a temporary layoff may be considered to be a constructive dismissal, again, resulting in termination pay obligations.

In the union setting, the employer's right to impose layoffs may be further qualified by such considerations as required consultation with the union, and the effect of seniority, bumping and recall rights under the terms of their collective agreement.

Individual Terminations of Employment

In some cases, terminations of employment may be unavoidable, in which case employers will have to assess the required notice or termination payments associated with each individual termination. These considerations include not only the minimum statutory requirements under the *ESA*, but also any existing express contractual termination rights and obligations, and possibly the obligation under the common law to provide reasonable notice of termination or payments instead of such notice.

In the union setting, the applicable collective agreement may also provide for severance or other entitlements above employment standards minimums.

"Mass" Termination of Employment

Larger employers experiencing severe negative tariff impact may have to consider larger scale terminations. Where an Ontario employer (whether unionized or non-union) terminates the employment of 50 or more employees at an establishment in the same 4-week period, the *ESA*'s "mass" termination rules require that notice be given to the Ministry of Labour, and that all affected employees receive a minimum fixed amount of notice (between 8 and 16 weeks under the *ESA*, depending on the circumstances).

As with individual terminations of employment, employers implementing a mass termination must also further address any additional contractual, common law or collective agreement termination obligations that may apply to each affected employee.

Changing Terms of Employment

Employers who consider the reduction of hours or wages (or any other changes to employment terms) as a response to the negative impact of tariffs must be very careful. If such changes are imposed unilaterally (without the agreement of the employee), they may very well constitute a constructive dismissal, involving the same

considerations as with individual terminations of employment.

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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