Why C-Suite Employees Get Sweet Payouts When Terminated



A decade ago, when GE parted ways with Jack Welch a public clamour broke out over his $417-million golden handshake. How could a publicly traded company justify such high severance? Notwithstanding that disapproval, the trend hasn't changed; most chief executives can expect to receive huge payouts at termination.

For example, if the current CEO of CBS, Les Moonves, were to be terminated today, he would be due more than $251-million in severance pay. And it is no different in Canada. When roughly $50,000 is the Canadian employee's severance norm, how can senior executives continue to negotiate such disproportionate payouts?

Employees tend to accept many unfavourable terms in their employment agreements when taking a new job because they fear losing the offer if they attempt to negotiate a better agreement. Many worry they will be perceived as "difficult" going into a new relationship. In any event, most employees have little leverage to improve the terms of their employment as they are considered more or less replaceable.

Courts recognize this significant imbalance of power. Employers dictate the rules of the game. But this idea is turned on its head at the executive level. The chief executives, chief financial officers and the rest of the C-suite occupants, have the power in contract negotiations.

Employment law favours the rich. The more senior the role, the more money one makes, the longer the courts believe it will take an executive to become re-employed and, as a matter of law, the more months of severance they receive, let alone their total remuneration per month.

In a recent case, Paul Love, an employee for barely more than two years at Acuity Investment Management, was awarded more than three months severance for each year of service. The 50-year-old who was making in excess of $600,000 a year, was awarded nine months severance. In making its decision, the court considered the likelihood of Love finding comparable employment and the time it would take for him to do so.

Quite apart from what courts will award if there is no contract, my experience acting for senior executives is that large organizations often agree to virtually anything to procur the talent they want. Accordingly, executive compensation packages include large base salaries, high annual bonuses in both cash and stock options and much more. Increasingly, shareholders or, at least directors of the board, want CEOs to be

paid in stock to align their motivations with the success of the company. But the other side of this is that terminated CEOs are being paid vastly more than what they would be otherwise entitled to in court.

And if a CEO's reputation is tarnished in the course of being terminated, additional damages may be sought. Joel Matlin, former president and CEO of AlarmForce Industries Inc., recently said he is suing his former company for $11-million in damages for wrongful dismissal, punitive damages and loss of reputation. Matlin was allegedly "shocked" when the board of directors fired him without warning or severance — despite not being terminated for cause.

His damages may even be substantially increased if his claims for loss of reputation are supported. Matlin was client facing and, given his extremely public and negative departure from AlarmForce, he is arguably now "tainted" and rendered less employable. His personal branding has been associated with one company for so long that he has become a household name. It will undoubtedly be difficult for him to find a similar position offering a similar level of pay — that being the test the court applies in determining how much Matlin is owed.

Because an organization's direction is largely dependent on the strength of its senior executive team and payouts on termination of senior executives affect companies' investment value, it is time to take a closer look at the financial motivations provided by compensation and termination incentives.

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