

You Raise the Issue

KEVIN FETH



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Question: How much of my severance package can I roll over into an RRSP?

Answer: You can roll into an RRSP up to \$2,000.00 for each year or portion thereof that you worked for your employer before 1996. You can roll in another \$1,500.00 per year or portion thereof for each year of service, prior to 1989, that you were not vested in an employer-sponsored pension plan. No rollover is available for years after 1995.

Question: John was an employee of Company A for 20 years. Company A then sold all of its assets to Company B and he started to work for Company B. John has now worked for Company B for eight months. At the time of the asset sale, he was told that his job would continue under the new corporate administration. If John is now dismissed without cause by Company B, will his severance package be based on eight months' service or 20 years and eight months' service?

Answer: The law had historically provided that an employee's entire period of service was to be taken into account when calculating an appropriate severance period. This position has been codified by the Employment Standards Code which deems service to be continuous where a transfer of assets takes place.

There is, however, some law which suggests that a purchaser of assets may avoid inheriting long term employees. Specifically, if a purchaser expressly advises employees that their seniority will not be recognized, or takes steps to suggest a new employment relationship is being entered into (eg: having employees interview for their own jobs), then it is arguable that the employee has started a new job and would only be entitled to notice based on the length of employment with the new owners.

Question: Can I dismiss an employee for misconduct outside of the workplace or outside of normal working hours?

Answer: Yes. One court has provided the following list of criteria for blameworthy conduct outside of the work environment which can result in just cause for termination:

1. The conduct of the employee harms the company's reputation or product.
2. The employee's behaviour makes him unable to perform his duties satisfactorily.
3. The employee's behaviour leads to refusal, reluctance or inability to work with his colleagues.
4. The employee has been guilty of a serious breach of the Criminal Code, thus rendering his conduct injurious to the general reputation of the company and its employees.
5. The employee's behaviour creates difficulty for the company to properly carry out its functions, manage its work, or efficiently direct its workforce.

Some recent examples of misconduct outside of the workplace which have resulted in termination are: conviction for fraud unrelated to the workplace, sexual harassment

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of a subordinate employee outside of working hours, use of illegal narcotics, an assault on a fellow employee outside of the workplace, and engaging in an outside business activity which directly or indirectly competes with the employer's business.

The employer must clearly demonstrate that there is real prejudice, actual or potential, that has resulted or will be reasonably likely to result from the employee's misconduct. The question of "prejudice" is obviously subjective and will vary from circumstance to circumstance. It would be wise to obtain legal advice before making a decision in a specific case.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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