

You Raise the Issue

CHEREDA BODNER

Severance Packages for Terminated Employees

Question: When an employer is calculating the severance package for an employee terminated without just cause, are there factors other than base salary that need to be taken into consideration?

Answer: An employee dismissed without just cause is entitled to reasonable notice or salary and benefits in lieu thereof. Aside from determining the salary that would have been paid over the notice period, an employer may also be required to include:

1. The benefits that the employee would have been entitled to had he remained employed during the notice period. This typically includes employer paid premiums for pension plans, health and dental plans.
2. The amount of overtime the employee would have likely worked over the notice period.
3. Bonuses and commissions that the employee would have made over the period of reasonable notice. Bonuses need only be paid if they had been paid previously in predictable amounts and were not purely discretionary.
4. The lost value of any pension that would have accrued to the employee's pension entitlement during the notice period. This amount must be actuarially calculated based on the provisions of the pension plan and includes a determination of whether the pension is vested or would have become vested during the notice period.

Wrongful Dismissal After a Demoted Employee Quits?

Question: Some time ago, our company demoted an employee to a position with less pay and fewer benefits. He accepted the position but resigned after three months and is now suing us for wrongful dismissal? Does he have a case?

Answer: When an employee is dismissed from employment, he has an obligation to mitigate his damages by seeking alternate employment. Recent cases have suggested that where an employee is constructively dismissed by a demotion to a fundamentally lesser position, unless the working conditions are substantially different, the personal relationships involved are acrimonious, or working in the new position would be objectively humiliating, the employee has a duty to accept the position in mitigation of his damages during the reasonable notice period or until he finds acceptable employment elsewhere. Accordingly, where there is an inability to find similar employment, in appropriate circumstances an employee may continue to work for the employer through the notice period and later sue for wrongful dismissal. However, the employee may be deemed to have unconditionally accepted the demotion if he or she does not dispute it within a reasonable time.

2000, 10235 - 101 STREET
EDMONTON, AB T5J 3G1
PH: 780.423.3003

400 THE LOUGHEED BUILDING
604 1 STREET SW
CALGARY, AB T2P 1M7
PH: 403.260.8500

201, 5120 - 49TH STREET
YELLOWKNIFE, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

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The Labour and Employment Group
Edmonton 780-423-3003
Calgary 403-260-8500

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