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A STRATEGIC TEAM



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« THE PRICE OF RESTRUCTURING »

Even though some experts believe that Québec will avoid a recession, there still seems to be a consensus that the Canadian economy – including Québec's – is currently experiencing a slight decline. In order to remain viable, some companies will be forced, unfortunately, to lay off a number of their employees. When company restructuring involves terminating more than ten employees, which can also happen in the event of a business closure or downsizing, it is crucial for an employer to know the rules governing collective dismissal so as to be able to plan the financial impact of the potential compensation payments.

The rules governing collective dismissal vary according to whether the business is under provincial or federal jurisdiction. The vast majority of companies are under provincial jurisdiction. Sectors that fall under federal jurisdiction include those involved in rail transport, radio and television broadcasting, inter-provincial or international transportation by land or by sea, airports, airlines and banks.

Insofar as provincial legislation applies, a notice of collective dismissal must be submitted as soon as at least ten employees are terminated at the same establishment within a consecutive two-month period. Both unionized and non-unionized employees are affected by this rule. Some individuals, however, are exempt, such as those not

having completed three months of continuous service, as well as those in senior management positions. As for the term "establishment", it means a physical area – a factory, a workshop or a boutique – in which the employer carries on business.

The amount of notice employees must receive in a collective dismissal is based on the number of employees who have been terminated: 8 weeks' notice for 10 to 99 employees, 12 weeks for 100 to 299 employees, and 16 weeks for 300 or more employees. If no notice is given or the notice is of insufficient length in relation to the time period required, the employer must pay the employee a compensatory indemnity consisting of his or her regular wage, for a period equal to that of the stipulated time period of the notice, or for the time that remains so that the time period is respected. In some cases, then, failing to give the notice within the stipulated time periods obligates the employer to pay out a sum equivalent to sixteen weeks of an employee's regular wage for each and every employee concerned!

From a strategic viewpoint, the employer

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can choose whether to serve a notice while still requiring the employee to work or to pay out an equivalent amount as compensation. In certain circumstances, paying a compensatory indemnity might be appropriate so as to prevent, for instance, undermining the morale and work quality of the non-terminated employees working side by side with their soon-to-be terminated colleagues. It could be equally fitting, in such a context, to offer psychological assistance to all the employees. In any event, only a "force majeure" or unforeseen event preventing the issuance of such notice can exempt the employer from paying compensation.

Lastly, it is important to note that while the termination pay to which every employee being terminated is legally entitled to cannot be combined with a collective dismissal compensation, the employee has the right to receive the greater of the two.

To what extent, then, do the rules governing mass termination apply for business under federal jurisdiction? Under federal law, the employer must advise the Ministry of Labour at least sixteen weeks prior to proceeding with

the immediate or phased termination of fifty or more employees within a period of four weeks. It should be noted that providing this notice does not exempt the employer from the obligation of serving an individual notice to the employee or, in lieu of notice, paying the employee a compensatory indemnity. Contrary to provincial legislation, an employee does not have the right to a compensation equivalent to sixteen weeks' notice if the employer fails to respect the stipulated time periods.

On the whole, there is no question that an intuitive awareness of the company's future situation combined with suitable knowledge of the rules applying to notice requirements will help a conscientious employer minimize the financial costs arising from a collective dismissal. The best approach under the circumstances is to sign a compliance agreement and a claim release. After all, if respecting the provisions of a collective dismissal has its price, then best to prevent any future dispute and buy industrial peace at the same time.

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