



---

# e2r Alert!

---

## Employer Pays Over 1 Million in LTD Benefits

Under the common law, employers are generally required to maintain employee benefits over a common law reasonable notice period after being dismissed. This can include long-term disability (“LTD”) benefits, subject to the terms of the insurer’s policy. When employers fail to maintain these types of benefits post-termination, the consequence can be severe.

In *Pasap v Saskatchewan Indian Gaming Authority and Bear Claw Casino*, in a wrongful dismissal action, the Court ordered the employer to pay their former employee \$1,216,764.00 in damages on account of the employee’s loss of LTD benefits post termination.

In this case, the employer had issues with the employee’s performance. The employee’s performance was discussed during a meeting with management. This culminated in the end of the employee’s employment. Whether employment ended via resignation or termination was up for debate before the Court. The employee’s and employer’s version of events were quite different.

Employer: told the employee had to improve his performance. Employee responded that he was not interested in the criticism and resigned from his employment.

Employee: employer told him they had issues with his performance. He was given a choice to either resign or be fired. Employee refused to resign.

Ultimately, the Court sided with the employee’s version of events because of certain emails that corroborated his version of the story.

For good measure, and by way of reminder, resignations generally ought to be “clear and unequivocal” and should be confirmed in writing. We see from this case what can go wrong when resignations are not documented properly.

After the meeting, the employer took the position the employee resigned. They did not provide him any pay in lieu of notice of termination, nor did they continue his benefits,

including LTD benefits. Four (4) months after the employee's last day of work he became totally disabled for the rest of his working life (until age 65).

Finding that the employer terminated the employee, the Court determined he was entitled to eight (8) months of common law reasonable notice. After a lengthy assessment of medical evidence, the Court determined the employee had in fact become totally disabled four (4) months after his dismissal.

If the employer properly maintained benefits during the notice period, the employee could have applied to and obtained LTD benefits. Since the employer breached the employment agreement by wrongfully dismissing the employee, it was liable for all associated losses during the notice period, including loss of wages and loss of LTD benefits. The employer had to pay for the full length of the benefits the employee would have received from the LTD insurer (26 years' worth), which amounted to over a million dollars. Ouch.

This case demonstrates the importance of 1) ending an employment relationship properly, including documentation, and 2) the risk of prematurely cutting off benefits (including LTD and life).

As always, we recommend speaking to an e2r™ Advisor when dealing with performance management, resignations, and ending employment relationships, or if you would like to discuss this topic in further detail.