



e2r Alert!

BEWARE: Improper Termination Practices Ahead

At e2r™, the one topic we talk to our clients about daily are terminations. It is definitely one of the trickiest parts of the employment life cycle, which is further underscored by the sheer number of court cases that come from terminations – and the below case is a prime example.

The recent Ontario Superior Court's decision, *Pohl v Hudson's Bay Company*, is a harsh reminder to employers about the potential (and costly!) consequences of failing to treat employees fairly at the time of termination.

Facts

Mr. Pohl was terminated without cause after 28 years of service as part of nation-wide restructuring. The employee was immediately exited after receiving his termination letter, which offered a separation package of 40 weeks, inclusive of his entitlements under the Employment Standards Act, 2000 ("ESA").

When Mr. Pohl declined this offer, he was provided only with his statutory minimums as well as an offer of "continuing employment", in which he could return to work in a lower position.

Issues

(i) How could the Company be so insensitive?

The Court found the Company's decision to walk Mr. Pohl out upon termination was "unduly insensitive" particularly given the employee's tenure and that he had committed no wrongdoing.

(ii) Failing to comply with the ESA and the Employment Insurance Act is a definite No-No!

The Company failed to pay out the employee's wages, termination pay, and severance pay as a lump sum within the time period prescribed by the ESA or when instructed to do so by the employee's counsel. In addition, the Company failed to issue a Record of Employment within five days of the termination and instead issued two ROEs three months after the termination, both with errors.

(ii) Being cute is not a good litigation strategy!

The Court found the Company's offer of alternative employment was designed to avoid Mr. Pohl's significant common law termination entitlements and to allow the Company to revise his employment agreement.

Takeaway

Overall, the Court found the Company repeatedly placed its interests over the employee's, attempted to trick Mr. Pohl into "giving up [his] rights", and contributed to his mental distress as well as feelings of humiliation, diminished self-worth, and anxiety.

In addition to a 24-month reasonable notice period, the Company was also ordered to pay \$55,000 in moral and punitive damages on account of its conduct in terminating the employee, as well as its post-termination conduct.

The damages awarded by the Court highlight the need for employers to both comply with the ESA at all times, and to treat all employees fairly post-termination – particularly long-standing employees with no allegation of misconduct.

In light of the larger recent trend of courts scrutinizing employers for missteps in the course of terminations, employers should seek legal guidance with respect to their termination practices to ensure they follow their statutory obligations both during and post-termination. Please do not hesitate to reach out to speak with an e2r™ Advisor with any questions.