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Employee Terminations: Statutory Deadlines
by Leanne Standryk

We advise our Management side clients to seek our advice well in advance of conducting employee terminations. Once we discuss the legal issues relevant to employee terminations including the manner of conducting the meeting itself, the focus of our discussion moves to practical issues post-termination.

A common trend is for employers to present severance packages as a starting point for negotiation. During the course of the negotiation it is easy for the employer to lose sight of obligations under the applicable employment standards legislation. For example, employers may neglect to issue an ROE under the Employment Insurance Act within the required time or fail to make the minimum required payments under the Employment Standards Act pending conclusion of the discussions. These oversights have been used by employees in wrongful dismissal actions to allege that the employer has acted in bad faith. If a Court agrees, there can be substantially increased damage awards. Compliance with the established statutory obligations post-termination is important business. I would suggest that you keep in mind the following:

Statutory Payments

Once you have determined the employee's statutory minimum entitlements, in Ontario under the Employment Standards Act 2000, S.O. 2000 c.14, you must consider when those payments are to be made. In Ontario, termination and severance pay must normally be paid within seven (7) days of termination or on the employer's next regularly scheduled payday, whichever is the later, unless the employee waives this right during the course of negotiations.

Record of Employment

On what date must the Record of Employment ("ROE") be issued for the employee? The Employment Insurance Act provides that an ROE must be issued no later than five (5) days after "an interruption of earnings". Even if the employer is still negotiating with the employee, the employer should issue the ROE within the statutory deadline. If the parties reach a settlement later, the employer must file a new, corrected ROE.

When contemplating employee terminations it is good practice to diarize the dates by which statutory payments must be made and documents issued. Such planning should help make the termination process less stressful and can help to avoid allegations of bad faith conduct.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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