The Trade War and Employment Law

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The Trump administration has escalated trade tensions with Canada by imposing sweeping tariffs on key exports. Initially targeting steel and aluminum with a 25% tariff, the U.S. has expanded its approach to include Canadian lumber, dairy and other industries. In response, Canada has announced retaliatory tariffs while unveiling a $6-billion aid program to support businesses affected by the trade dispute.

These measures introduce considerable uncertainty for Canadian businesses, particularly those dependent on U.S. trade. Employers across manufacturing, steel and other export-reliant sectors are now facing rising costs, supply chain disruptions and financial strain. As a result, workforce adjustments—including layoffs, contract renegotiations and restructuring—are becoming an unavoidable reality.

To that end, for Ontario employers, gracefully navigating employment standards, collective agreements and termination obligations is more critical now than ever. Employers must carefully evaluate their rights and responsibilities to ensure compliance with labour laws and avoid costly legal missteps which could compound existing economic struggles.

With that in mind, this article provides key employment law considerations for Ontario businesses as they respond to the evolving trade war. From temporary layoffs to workforce management strategies, understanding these legal principles and corresponding best practices will be crucial to managing workforce challenges effectively while avoiding pitfalls and staying within the bounds of employment law.

Employer Rights and Considerations

Canadian case law has consistently upheld that economic challenges, including those recently triggered by the COVID-19 pandemic, do not absolve employers of their obligations under employment standards legislation. Employers must continue to provide termination notice, severance pay or indemnity in lieu of notice. This principle extends to the current trade environment: employers cannot use economic uncertainty as a justification for disregarding minimum employment standards.

Therefore, businesses should conduct thorough risk assessments before making workforce adjustments. Short-term cost-saving measures that fail to comply with employment laws could lead to costly legal disputes and long-term financial consequences. For example, temporary layoffs, if not properly handled, could evolve into permanent reductions, necessitating compliance with termination and severance obligations.

Modifying Employment Terms

Employment contracts govern the employer-employee relationship, and neither party has the unilateral right to alter key terms without consent and contractual consideration. While some non-unionized employers may have contractual provisions allowing for adjustments to compensation, work hours or temporary layoffs, many do not. Without explicit contractual authority, such changes to the terms of an employment agreement could lead to claims of constructive dismissal, entitling employees to seek damages for wrongful termination.

Even uniform reductions in pay or hours across the workforce can constitute constructive dismissal, as courts will only consider whether the change significantly alters fundamental employment terms.

The onus thus falls to employers to carefully evaluate whether planned adjustments risk breaching employment agreements and explore ways to mitigate potential claims, such as obtaining employee consent, providing economic or benefit-based consideration for changes and providing reasonable notice of changes.

Avoiding Constructive Dismissal Claims

To the above point, if a business needs to modify the terms of their team's employment, including but not limited to compensation, job responsibilities, hours of work or workplace locations, they must proceed cautiously to avoid triggering constructive dismissal claims.

Under Ontario law, constructive dismissal occurs when an employer unilaterally makes significant and adverse changes to an employee's fundamental terms and conditions of employment without their consent. In such cases, the employee may treat the change as a termination, resign and seek compensation as if they were wrongfully dismissed.

To minimize legal risks, employers should secure written employee consent, provide sufficient notice and ensure changes do not collectively alter the employment relationship's core terms. Common triggers for constructive dismissal include significant pay cuts (typically 10% or more), reassignments that strip key responsibilities, forced schedule or location changes, demotions and toxic workplace conditions. As will be expanded upon below, temporary layoffs, unless explicitly permitted by contract or industry norms, may also qualify as constructive dismissal.

Employers can mitigate risks by incorporating flexibility clauses in contracts, offering consideration (e.g., bonuses or benefits) for major changes, and engaging in open dialogue with employees. Businesses are encouraged to proactively seek legal guidance before implementing substantial modifications to ensure the balance of operational needs with compliance, reducing exposure to costly litigation and wrongful dismissal claims.

If adjusting the terms of employment is not a sufficient measure to combat economic downturn, some corporations may need to lay off their staff. Temporary layoffs are often used by employers to manage work slowdowns while maintaining employment relationships. Work and pay are suspended for a defined period with the expectation that employees will return once business conditions improve. While common in unionized settings, temporary layoffs are less frequent among non-unionized employees not subject to a collective agreement.

Under Ontario's *Employment Standards Act*, a temporary layoff is limited to 13 weeks in a 20-week period or 35 weeks in a 52-week period if specific conditions are met. However, employers do not have an automatic right to lay off non-unionized employees unless their employment contracts explicitly allow it. As outlined above, without such a provision, a layoff may be deemed a constructive dismissal, entitling employees to severance and wrongful dismissal claims. Employers considering layoffs should consult legal counsel to ensure proper documentation, transparency and legal compliance to minimize risk.

Other Considerations

Mass Terminations

Mass terminations, where 50 or more employees are dismissed at a single establishment within four weeks, additional ESA obligations are triggered, including extended notice periods and mandatory government notifications. Employers should exercise caution and seek counsel in such a scenario.

Voluntary Leaves of Absence or Resignation Bonuses

Offering employees voluntary unpaid leaves of absence or sabbaticals to reduce payroll costs temporarily can be an effective measure without significant risk. Offering employees the option to voluntarily resign in exchange for a financial payment can also provide a low risk solution if any employees are already contemplating retirement or resignation.

Temporary Foreign Workers

Employers terminating the employment of employees on temporary work permits may face greater liability. A permit is often linked directly to the employer, which restricts employment to that employer, limiting an employee's reemployment options. Terminating such employees should be approached with caution, as a court may award greater notice.

Independent Contractors

Similarly, independent contractors are often the first workers to be affected by a reduction in force or downsizing. Many businesses believe that these workers are not entitled to common law notice of termination or pay in lieu of notice, or they seek to rely on termination provisions which are unenforceable. To be clear, an agreement between the worker and the employer that the worker is an independent contractor is not determinative of their status. A court or tribunal will instead examine the substance of the relationship. Terminating someone who an employer believes to be an independent contractor without pay in lieu of notice could have considerable consequences if they sue and are thereafter deemed to have been an employee.

Job Sharing

Introducing job-sharing arrangements to spread work among employees and avoid layoffs can alleviate some economic stress. While this may pose similar risks to a reduction of work hours, an employer may be able to participate in an Employment Insurance, Work-Sharing Program. To be eligible, employees must suffer at least a 10% reduction in normal weekly wages deemed beyond their control. Participants can work reduced hours for regular wages and receive EI benefits for the balance of the week, for a maximum of 26 weeks. An extension for an additional 12 weeks is also possible.

Government Relief

To help Canadian businesses weather a prolonged trade war with the U.S., the federal government recently unveiled a $6-billion aid program. For employers directly impacted by the trade war, they may be able to receive “favourably priced loans” from a $500 million grant made available through the Business Development Bank of Canada.

Conclusion

Navigating economic uncertainty requires employers to be proactive and strategic. Workforce reductions, whether individual or mass terminations, come with significant legal considerations under employment standards legislation and the common law. Employers should assess all available options—including alternate measures like reduced work hours, job-sharing or voluntary separation—to minimize legal risks while maintaining operational stability.

Clear communication with employees and trade unions, a thorough review of employment agreements and staying informed on government relief programs are key to mitigating risks. In all cases, legal compliance and careful planning are essential. Seeking legal counsel before implementing workforce changes can help avoid unintended liabilities and ensure a balanced approach that protects both the business and its employees.

Please contact our workplace law team for further information, we would be happy to assist you with navigating any of the above.

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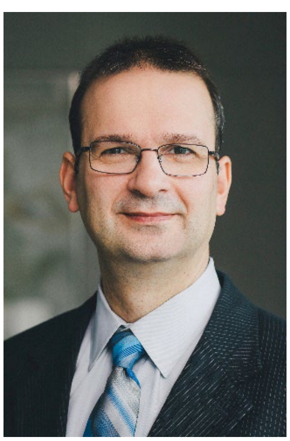
Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada, The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including this video and this one-page guide, all of which can be found on the Market Expansion Resources Dashboard.



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Michael is a member of the firm's Workplace Law Group. His practice focuses on all aspects of labour and employment law in both the federal and provincial jurisdictions. He advises employers in a number of industries, including manufacturing, transportation, retail, electrical distribution, construction and financial services, on various matters, including employment standards, human rights, discipline, discharge, union certification, grievances, wrongful dismissal, executive employment matters and transactions, as well as general labour and employment law issues.

Michael represents employers before the courts and administrative tribunals, such as the Ontario Labour Relations Board, the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Grievance Settlement Board and in grievance arbitration and mediation.

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Quinn summered at the firm in 2023. He recently graduated from the University of Toronto Faculty of Law. He also holds a Bachelor of Arts degree from McGill University, where he majored in sociology, minored in communication studies and graduated with distinction.

During law school, Quinn served as a mentor to first-year students and led the In Vino Veritas wine club. In this role, he hosted fun and informative wine tastings for groups of 25 law students. After first year, Quinn worked as a research assistant in the field of copyright law. In this role, he prepared a report (based on Canadian precedent) designed to protect religious organizations from copyright infringement claims when using music during public events.