

e2r Alert!

THE EVOLUTION OF COMMON LAW REASONABLE NOTICE

A recent decision issued by the Ontario Court of Appeal appears to have raised the cost of terminating employees.

In *Di Tomaso v. Crown Metal Packaging Canada LP*, Mr. Di Tomaso was employed for 33 years as a mechanic and press maintainer for Crown Metal Packaging. His responsibilities included setting up the metal manufacturing line, minor repair work and assisting the millwright with mechanical work on machines. Upon closing the facility where Mr. Di Tomaso worked, Crown Metal terminated his employment at age 64.

As a result of his dissatisfaction with the notice of termination provided by Crown Metal, Mr. Di Tomaso sued his employer for 24 months' pay in lieu of notice. Crown Metal defended the claim by relying on the long established principle that non-managerial employees (and certainly unskilled employees) are not entitled to the same level of compensation in lieu of notice as managerial employees. Crown Metal further argued that typically, non-managerial employee entitlement in this regard is subject to a 12 month cap.

The Court of Appeal made two particularly noteworthy findings. First, it concluded that the cap of 12 months' notice for unskilled workers is no longer good law. Second, the Court of Appeal also rejected the principle of law that higher paid, more skilled employees are entitled to a longer notice period than lower paid, low-skilled employees.

What can Canadian employers learn from this decision? First, when terminating "unskilled" workers on a without cause basis, employers may no longer be able to rely on the principle that a unskilled workers are to be treated differently than managerial employees and are subject to a cap of 12 months.

Second, it is critical that employers ensure a properly drafted employment agreement incorporating a termination provision is given to all newly hired employees.

By issuing employment agreements that incorporate termination provisions, the issue of employee entitlement to compensation in lieu of reasonable notice is no longer relevant. In other words, they create certainty. If Mr. Di Tomaso had been subject to such an employment agreement, there would have been no issue for resolution before the courts.

If you require assistance with terminating an employee or drafting an employment agreement, we encourage you to contact an e2r Solutions® Service Provider.

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