

Severance Pay in Ontario - Employers Open Your Wallets!

A recent and startling Ontario Superior Court decision may have just significantly increased your costs upon termination of your employees in Ontario.

When terminating an employee in Ontario, employers are required to provide notice of termination in accordance with the *Employment Standards Act, 2000* (“ESA”). In addition to notice of termination, employers are required to pay certain employees severance pay if particular criteria are met. The severance pay requirement is 1 weeks’ pay per year of service up to a maximum of 26 weeks’ pay.

Specifically, employees are entitled to severance pay if they have acquired five (5) years of service and the employer has a payroll of \$2.5 million or more.

The ESA states that an employer shall be considered to have a payroll of \$2.5 million or more if:

- a) The total wages earned by all of the employer’s employees in the four weeks that ended with the last day of the last pay period completed prior to the severance of an employee’s employment, when multiplied by 13, was \$2.5 million or more; or
- b) The total wages earned by all of the employer’s employees in the last or second-last fiscal year of the employer prior to the severance of an employee’s employment was \$2.5 million or more.

As you will note, the ESA does not specify that the payroll is exclusive to the province of Ontario. That being said, the widespread interpretation of this particular provision by the courts as well as the Ontario Ministry of Labour is that only the wages earned by employees in Ontario are included in the calculation of the employer’s payroll.

That long held assumption was recently overturned by Judge Kane’s Ontario Superior Court decision in *Paquette v. Quadraspec Inc.*

In this particular case, the employee was not provided with severance pay as Quadraspec Inc.’s annual payroll in Ontario was less than \$1.5 million dollars. However, Quadraspec Inc. had a payroll of more than \$3 million dollars in Quebec. Judge Kane held that an employer’s **total payroll** should be considered when determining severance pay obligations. As such, Quadraspec

Inc. was required to pay Mr. Paquette severance pay because their national payroll exceeded \$2.5 million dollars.

Implications for Employers Doing Business in Ontario

Unless overturned, this decision is important for any employer doing business in multiple jurisdictions inclusive of Ontario. This could mean that if you have only one employee in Ontario but a large workforce outside the province (or possibly outside the country!!!), that one employee in Ontario may be entitled to severance pay.

Please contact e2r Solutions® to discuss any questions that you have regarding severance pay in Ontario, or about terminations generally.

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