

No Employment Agreement? No Termination Provision? Pay the Price!

A recent case from the British Columbia Court of Appeal is yet another reminder to employers of the importance of enforceable employment agreements and termination provisions. The case in particular emphasizes this point given the short service of the employee upon termination and the sizeable reasonable notice award.

In January 2014, Mr. Pakozdi joined B & B Heavy Civil Construction Ltd. as a Bid Estimator. In January 2015, after only one year of employment, the Company terminated Mr. Pakozdi's employment on a without cause basis and provided him with about two weeks' notice. At the time of his dismissal, Mr. Pakozdi was earning \$130,000 annually and was 55 years old. He had also suffered some health setbacks arising from old injuries in the latter part of 2014.

Mr. Pakozdi sued for wrongful dismissal. When determining the proper length of notice for termination, the trial judge concluded that in light of his experience, age and length of employment, the applicable notice period was five months. But it doesn't end there! Mr. Pakozdi believed that his vulnerability at the time of his firing (i.e. his health setbacks) should be taken into account to lengthen the reasonable notice period - and the trial judge agreed! The period of notice was increased by an additional three months to eight months in total on the basis that Mr. Pakozdi's physical and medical condition would make it more difficult for him to obtain new employment.

On appeal, it was confirmed that the applicable notice period of five months was considered reasonable. However, the additional three months awarded due to Mr. Pakozdi's health was not. The judge on appeal stated that Mr. Pakozdi's worsening health condition did not provide a basis for increasing the notice period.

With all that being said, the key takeaway is ultimately that an employee with one year of service was awarded five months' notice! We are seeing more and more short service employees awarded a disproportionate amount of reasonable notice. The justification being that someone who was only employed for a short period will suffer a disadvantage in the marketplace due to negative inferences that might be drawn.

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This once again highlights the value of enforceable employment agreements with a well drafted termination provision. If you have any questions regarding employment agreements or if you would like to have your employment agreements reviewed, please contact e2r® to speak with an Advisor.

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