

## ***Good News! Severance Pay Based on Ontario Payroll Only!***

As most employers who operate in Ontario are aware, in accordance with the Ontario *Employment Standards Act, 2000*, as amended (the “ESA”), an employer who terminates an employee without cause must provide an employee with statutory severance pay if:

1. The employee has five years of service or more; and
2. The employer has a payroll of \$2.5 million or more.

The question then becomes whether the payroll is calculated based on the employer’s Ontario payroll or national/global payroll, and a recent decision from the Ontario Labour Relations Board (the “Board”) confirms that the payroll should be calculated solely on the employer’s Ontario payroll, not global payroll.

In *Hawkes v. Max Aicher (North America) Limited*, the employee was terminated after five years of service. The employer was a wholly owned subsidiary of a European company that had no operations elsewhere in Canada but operated internationally. Only when the payroll was calculated based on the global payroll of the parent company did the employer’s payroll exceed \$2.5 million. The employee made a claim to the Ministry of Labour for severance pay. The Employment Standards Officer concluded that since the employer did not have a payroll of \$2.5 million or more in Ontario, the employee was not entitled to statutory severance pay. The employee appealed the decision to the Board.

The Board affirmed the decision of the Employment Standards Officer. In particular, the Board found that in accordance with section 3(1) of the ESA, the ESA only applies to an employee and his/her employer if (i) the work is performed in Ontario; or (ii) if the work performed outside Ontario is a continuation of work performed in Ontario. The inclusion of this provision is an explicit exclusion of the extra-provincial application of the ESA. Therefore, the payroll must be calculated based on the Ontario payroll only.

This decision is good news and in line with previous advice given by e2r® as we have always maintained the employer’s payroll should be calculated based on the employer’s Ontario payroll only, despite a previous Ontario court decision questioning the long standing and accepted approach.

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