



e2r Alert

COVID-19 and the Common Law Reasonable Notice Period

Is COVID-19 and its impact on the economy a factor our courts will consider when assessing common law reasonable notice? The answer: It depends.

The recent decision of *Yee v. Hudson's Bay Company*, an Ontario case, appears to suggest that the negative economic circumstances brought about due to the pandemic may increase an employee's entitlement to reasonable notice.

Mr. Yee was terminated from Hudson's Bay Company on August 28, 2019 – prior to the start of the pandemic. At the time of his termination, Mr. Yee was the Director of Product Design and Development, 62 years old, had about 11 years of service and earned approximately \$162,000 (plus benefits, bonus and pension plan). Mr. Yee argued that due to the pandemic, his ability to secure alternate employment in the retail sector was diminished and therefore should be taken into account in the determination of the reasonable notice period.

In determining the common law reasonable notice period, the Court assessed the typical factors – his age, length of service, his income and character of employment – but because Mr. Yee's termination occurred prior to the start of the pandemic, the Court held that the impact of COVID-19 on the economic conditions that arose after his termination should not be taken into consideration because reasonable notice is assessed based on the circumstances as they existed at the time of termination.

Takeaway

It's clear from this case that if the termination occurred prior to the start of the pandemic, the effects should not be taken into consideration when assessing reasonable notice.

However, the case also suggests that where an employee has been terminated during the pandemic, courts may give consideration to COVID-19's impact on the job market and on the employee's ability to secure similar employment, a factor which may increase an employee's notice period.

This area of law will most certainly continue to evolve as more decisions are released. If you have any questions regarding the applicability of this decision, please contact e2r® to speak with an Advisor.