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Hiring: Getting it Right Before it Goes Wrong

Severance/Notice Clauses



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The Basics of Severance Liability on Termination of Employment

The Basics

- Non-union employees can be terminated without cause by providing advance notice or severance pay in lieu of notice
- In the absence of an express employment agreement at the time employment is offered and accepted on how much this notice or severance will be, the Courts imply their own view of reasonable notice or payment in lieu (common law liability)
- An Employer can make it an express condition at the time of the employment offer that the employee agree to a specified amount of termination notice or payment in lieu of notice

Options for Severance Clauses

- The minimum statutory requirements of the Alberta *Employment Standards Code*
- As long as it complies with the minimums of the *Employment Standards Code*, any amount of lump sum or formula can be applied
- Ensure wording is clear in terms whether it is base wages/salary or there is a component for benefits, and if there is a benefits component, how such is calculated



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Classic Ways Employers Invalidate Their Severance Limitation Clauses

Classic Errors to Avoid

- Employee offered and accepted employment prior to being given their Letter of Hire or Contract with the severance clause
- A general reference to the Employment Standards without referring expressly to the minimum standards, and ideally express reference to sections 56 and 57 of the *Employment Standards Code*
- Letting the employee start work prior to signing the Letter of Hire or Contract with the severance clause
- Lack of independent legal advice warning in the Letter of Hire or Contract

New or Complex Invalidation Risks for Severance Clauses

- An employee changes positions without an express prior agreement applying the previous severance clause to the new role
- Attempting to expand the definition of “just cause” termination in your hiring terms
- Any wording that could be argued, in any potential circumstance, to violate any statutory legal requirement (*Dufault Ontario Case*)



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Take Away Tips

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- If you aren't using a clear notice/severance clause for your non-union hires, we strongly recommend you seek legal advice to do so moving forward
- Even if your hiring terms include such a clause, we recommend reviewing it annually with legal counsel to ensure it remains up to date with evolving case law
- This is a very important tool in every employer's toolbox and when used correctly can save any employer hundreds of thousands of dollars in severance over the coming years
- Setting this up properly means you will have more time and money to spend on your good employees rather than spending too much money on walking poor employees out the door

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QUESTIONS?

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