

Mass Terminations—What Ontario Employers Need to Think About When Restructuring or Reducing Their Workforces

June 30, 2016

By [Michael Comartin](#)

When discharging employees, it pays to be prepared. This is especially so when an employer is considering a large-scale restructuring.

When discharging employees, it pays to be prepared. This is especially so when an employer is considering a large-scale restructuring.

What Is a “Mass Termination”?

Under the Ontario Employment Standards Act, 2000 (ESA) a provincially-regulated Ontario employer owes additional obligations to its employees in a “mass termination” situation.

A “mass termination” occurs when an employer discharges 50 or more “employees” in any rolling four-week period at the employer’s establishment (which generally refers to all of an employer’s locations within the same municipality). If a mass termination occurs, the employer has the following special obligations:

The employer must provide notice to employees (or pay in lieu of notice). The amount of that notice that is required depends on the number of employees discharged within the four-week period:

If 50 to 199 employees are discharged, employers are required to provide employees at least 8 weeks’ notice.

If 200 to 499 employees are discharged, employers are required to provide employees at least 12 weeks’ notice.

If 500 or more employees are discharged, employers are required to provide employees at least 16 weeks’ notice.

The employer must give notice to the Minister of Labour (through the Director of Employment Standards) by filing a Form 1. The notice given to employees is not effective until the employer submits

its Form 1. This means that an employer that fails to file a proper Form 1 may end up having to pay notice/termination pay twice.

Restructuring unionized employees may lead to additional issues, such as an obligation to provide additional notice to the relevant unions, further layoff rules, and bumping rules.

These mass termination obligations do not replace any obligation to provide statutory severance pay that would be owed if the employees whose employment was being terminated had at least five years of service. Those employees would also be entitled to a cash payment of one week of statutory severance pay for each year of service, up to a maximum of 26 weeks of pay in any addition to the aforementioned notice requirements.

There are exceptions to the mass termination rules, and special rules apply where an employee resigns after being given notice of his or her discharge.

An employer also needs to consider its common law and/or contractual obligations to provide reasonable notice (or pay in lieu thereof), which could add another layer of expense to the restructuring.

Employers should consider these issues *before* undertaking a large-scale restructuring, in order to take advantage of any exceptions under the ESA and to prepare comprehensive plans for the restructuring, including proper termination letters.

AUTHOR



Michael Comartin

Partner, Toronto

TOPICS

Cross-Border, Reductions In Force