



## Lancaster, Brooks & Welch LLP

BARRISTERS AND SOLICITORS

### Cost Controls in Tough Times By Robert B. Reid April 2009

It is tempting to cut wages as an easy first step to controlling expenses when revenues decline. Leaving aside for the moment the effect on morale that may follow, and whether your business can prosper with fewer staff, there are some legal issues to assess before making a final decision.

A termination may not create short-term savings if substantial severance payments are required. The Employment Standards Act minimum requirements are just that – minimums -- and the common law entitlements for employees may be much greater, especially for long-service, senior employees. If you have an employment agreement that pre-sets the termination provisions, you will know in advance what the termination will cost.

Temporary layoffs save the employer money immediately, and the ESA termination provisions do not apply until the layoff exceeds 13 weeks or 35 weeks if some benefits, for example, health care coverage are continued. However, there is a risk that the non-unionized employee can immediately claim dismissal upon layoff, since courts have made it clear that unless a contract clearly provides for the possibility of temporary layoff, sending someone home to await recall is legally the same as a termination. In a unionized workplace, the layoff concept will normally be enshrined in the Collective Agreement where layoff in reverse order of seniority is the normal rule. A temporary layoff can be either for a defined period or of indefinite duration.

Changing the employment terms for existing (non-unionized) employees can save the employer money, but there is a risk that, if the change or changes are significant, the employee can leave and sue for “constructive dismissal” just as if the employer terminated the person outright. A reduction in wages, hours, benefits or other changes affecting compensation or working conditions may or may not be acceptable to the employee, and the employer’s risk is that in imposing some cost-cutting changes, it will end up with fewer employees and more claims than it bargained for! However, if changes can be discussed and agreed in advance, the legal issues evaporate. For example, employees may be willing to work a shorter week or fewer hours per day for a limited time, especially if doing so coincides with children’s summer vacation, spouses’ holiday times, etc. “Work Sharing Agreements” arranged through Service Canada may provide EI payments during the non-working days of the reduced work week, thus minimizing the impact on the employee. Details of that programme and eligibility can be found at [http://www.servicecanada.gc.ca/eng/work\\_sharing/index.shtml](http://www.servicecanada.gc.ca/eng/work_sharing/index.shtml).

It may be that changes to health care benefits, pension contributions, bonuses or deferred profit sharing programmes can save money for the employer, without creating a major impact on the employees’ normal take-home pay, thus making the adjustments more palatable.

Maybe most important of all, for once it appears that there is widespread recognition that the economic times are affecting everyone, so a golden opportunity exists to discuss plans with employees to garner input and support for necessary adjustments. The silver lining to the financial cloud may be that employees become empowered to help their employers find workable solutions to the tough problems that everyone has to face.

**The foregoing information is provided to you for information purposes only.  
We caution you to obtain legal advice specific to your situation in all circumstances**

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