

The Rights of a Displaced Worker

It appears that there is a global trend where private sector employers and governments are engaging in the practice of downsizing business operations. This is being done under the guise that there is a growing necessity to promote efficiencies in doing business, for the purpose of maintaining business viability, productivity and reducing expenditures.

The practice of laying off, retrenching or making workers redundant, has been successfully employed. Workers who are thrown on the breadline are the victims of these legitimate forms of action. The employee can however protest on grounds of unfair dismissal, where there is reason to believe that the employer has not followed the established fair procedures before moving to lay off, retrenched or become engaged in the process of redundancy. Best practice dictates that the employee has the right to have a fair process, proper notice and severance pay, if he/she qualifies. An employee reserves the right to pursue a case in a common law court against the employer for wrongful dismissal, on the grounds of breach of contract, where proper notice was not given.

Employers must be made aware that in the absence of giving notice, the employee is to be paid in lieu of notice. Pay in lieu of notice refers to wages the employee would have earned during the notice period. There is protection under the law for an employee who is terminated without notice, as the law treats it as a breach of contract. It is advised that pay in lieu of notice is the remedy for such a breach. The employee who is terminated for cause, such as gross misconduct, or who resigns without notice may not be entitled to lieu of notice. This entitlement may also be subject to the provisions of the contract of employment.

It is to be stressed that an employer is not required to pay in lieu of notice, where upon an employee is dismissed for gross misconduct. This includes theft, violence or some other serious violation. It is to be emphasized that the employer's decision to immediately terminate is deemed to be lawful. However, it is imperative that the employer pays in lieu of notice, based on the understanding that the law demands that the employee is entitled to advance

warning before the termination is effective. Looking at contract law, the employer must be aware that the employment contract is binding, and therefore, the notice clause is part of the agreement.

On the flip side, where an employee ends a contract without giving notice, such action constitutes a breaking of the contract of employment. This means that the employee surrenders the right to pay in lieu of notice. For a worker on probation, the clause of pay in lieu of notice, does not form part of the understanding.

Employees who are laid off or made redundant may be eligible for severance pay or unemployment benefits, based on the requirements of the labour in their jurisdiction. Where there are arrangements for planned layoffs or redundancies, employers have a responsibility to provide some form of retraining for their employees. It is a plus for those employees who benefit for an extended payment by the employer of premium of the health insurance plan.

Displaced employees are reminded to ensure that the employer settles all outstanding payment of wages or salary, accrued and unused vacation pay, and any other monetary benefits that came with the job.