

MORE CLARITY ABOUT THE IMPACT OF COVID-19 ON REASONABLE NOTICE PERIODS

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Iriotakis v. Peninsula Employment Services Limited,^[1] a recent decision issued by Ontario's Superior Court of Justice, is the latest case to consider the impact of the COVID-19 pandemic on reasonable notice periods. The decision also sheds some light on the effect that the Canada Emergency Response Benefit ("**CERB**") may have on a damage awards.

COVID-19 and Reasonable Notice

The employee in this case was dismissed on March 25, 2020, just one week after the Government of Ontario declared a state of emergency as a result of the COVID-19 pandemic. The 56-year old employee had worked as a "Business Development Manager" for just over two years at the time of his dismissal.

The central issue before the Court was the appropriate amount of reasonable notice owed to the employee. In this regard, the Court was asked to make findings about the job market and the impact of the COVID-19 pandemic. While the Court opined that uncertainties in the job market did tilt the reasonable notice period away from the short-end, it ultimately refused to put significant weight on the pandemic given that its impact was "highly speculative and uncertain" at the time of termination:

I have little doubt that the pandemic has had some influence upon Mr. Iriotakis' job search and would have been reasonably expected to do so at the time his employment was terminated in late March 2020. However, it must also be borne in mind that the impact of the pandemic on the economy in general and on the job market, in particular, was highly speculative and uncertain both as to degree and to duration at the time Mr. Iriotakis' employment was terminated [...] I must be alert to the dangers of applying hindsight to the measuring of reasonable notice at the time when the decision was made to part ways with the plaintiff. [Emphasis added.]

In the result, the Court found that a three-month reasonable notice period was appropriate in the circumstances

CERB Payments and Damages

The Court also considered the impact that CERB payments received by the employee should have on the damage award. The Court began its analysis by distinguishing CERB payments from Employment Insurance (“EI”) benefits on the basis that – unlike the CERB – the EI program is an “earned” entitlement that employees are required to pay into. Nevertheless, the Court found that it would not be equitable to reduce the employee’s damages in this case because the level of CERB received (approximately \$2,000 per month) was considerably less than the base salary previously earned by the employee. The Court also noted the employee’s limited entitlements from the employer post-termination relative to his actual pre-termination earnings.

Takeaways for Employers

This decision is good news for many employers who have had to make difficult workforce-related decisions during the past year. It suggests that, in the absence of actual evidence about the impact of the COVID-19 pandemic on the economy and job market at the time of termination, lengthier notice periods may not be warranted. The Court’s “balanced approach” in this case also indicates that the pandemic will be just one of many factors used to determine reasonable notice periods, and that the pandemic should not dominate the reasonable notice analysis.

[1] 2021 ONSC 998.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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