

**Trump's Tariffs Have Landed  
How Can Canadian Employers Pivot?  
~ Layoffs, Terminations, Work Share and Other Options ~**

March 7, 2025

On March 4<sup>th</sup>, 2025, the United States launched a trade war with Canada, implementing stiff tariffs on all Canadian imports. In response, the Government of Canada is moving forward with 25% tariffs on \$155 billion worth of imported goods, beginning immediately with a list of goods worth \$30 billion. While the implementation of some U.S. tariffs has been delayed, the impact of the trade war will still be extraordinary for many Canadian industries.

Caught in the middle of this unprovoked and unprecedented American attack, Canadian employers must pivot quickly. If right- or downsizing becomes necessary, strategic advice from experienced employment counsel is critical to help achieve operational objectives and minimize risk and cost.

**In this briefing note we provide an overview of four key options and associated risk:**

- 1. Layoff, Constructive Dismissal and Grievances**
- 2. Service Canada's Work-Sharing program**
- 3. Individual Termination**
- 4. Group Termination**

**To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer or [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com).**

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**1. Layoff, Constructive Dismissal and Grievances**

An employer may be surprised to learn it may not have an inherent right to temporarily "lay off" an employee without triggering termination entitlements under common law or employment standards. For example, in Ontario, an employment agreement must include an express or implied right to temporarily lay off an employee, failing which an employer has no automatic right to do so. Without this right, a layoff may amount to a without cause termination, entitling the employee to notice or pay in lieu of notice, and possibly severance pay.<sup>1</sup>

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<sup>1</sup> An implied right to lay off may exist in some industries in certain provinces, but this is not guaranteed, and the cost to fight that battle (should you need to) could be high.

Even when an employer is permitted to temporarily lay off an employee, that layoff is deemed to be a termination once a certain period passes. The period varies from province to province, and even within some provinces is based on certain factors (*e.g.*, whether the employer continues benefit coverage during the layoff). In Ontario and British Columbia, the period can be as short as 13 weeks in any period of 20 consecutive weeks; and in Saskatchewan, the period can be as short as 7 days.

A layoff or a reduction in working hours or pay can trigger a “constructive dismissal,” which may in turn cause a laid off employee to commence a claim for common law or employment standards termination entitlements. When determining whether a constructive dismissal has occurred, an adjudicator will assess whether there has been a fundamental, unilateral change to a key term (or terms) of an employment agreement. **This is not always obvious or clear, so we recommend you discuss anticipated changes with your Sherrard Kuzz LLP lawyer before taking steps, particularly if the change(s) impacts a group of employees when potential liability can be considerable.**

In a unionized context, an employer’s right to lay off employees is governed by the collective agreement which may set out rules regarding when a layoff can occur, the process the employer must follow, the duration of a layoff, and/or seniority and recall rights. If a layoff breaches a collective agreement the employer may face a grievance, either for an individual employee or a group of impacted employees, including claims for damages or back wages.

## **2. Service Canada’s Work-Sharing Program**

Service Canada offers a Work-Sharing Program designed to help an employer avoid layoffs. Through the program, an employer and its employees agree the employees will work a temporarily reduced work week (*e.g.*, a 3, instead of 5, day work week). The program then provides Employment Insurance benefits to eligible employees whose income is reduced (*e.g.*, 55% pay for the two unworked days).

During the COVID-19 pandemic, Service Canada offered “special measures” for the Work-Sharing Program, making it easier for an employer to qualify. We will keep readers apprised in the event the government again offers special measures to assist employers.

## **3. Individual Termination**

An employer may address tough economic times through the dismissal of individual employees. When evaluating the potential cost of an individual termination it is important to remember that employment standards minimums are a floor, not a ceiling. For a non-unionized employer, an employee will be held to employment standards minimums (and not common law) only if that restriction on the employee’s termination entitlements is set out in an enforceable employment agreement. This is a high bar to meet, as courts increasingly find reasons to side with employees and strike down contractual termination provisions. For a unionized employer, any termination must also comply with the collective agreement.

If an employee does not have an employment agreement, or if the agreement is unenforceable, an employee will be entitled to common law reasonable notice. The amount of common law reasonable

notice will depend on a variety of factors<sup>2</sup> but can be as much as 24 months of compensation, or more in “exceptional circumstances.” In economic downturns, the availability of similar employment may be depressed, making it more difficult for a dismissed employee to find new employment and mitigate their losses, increasing common law notice entitlements.

An employer may also need to consider unique risks related to employees in specific scenarios:

- **Fixed-term agreement:** Unless there is a binding early termination provision, a dismissed employee working under a fixed-term employment agreement may be entitled to compensation for the remainder of the contract. This liability may be considerable.
- **Temporary foreign worker:** If a temporary foreign worker is under a “closed” temporary work permit, they are only allowed to work for a specific employer. In that case, a court may award greater notice to the employee to compensate for the enhanced difficulty of finding new employment.
- **Independent contractor:** An “independent contractor” may be among the first to be let go. However, if that independent contractor is deemed to be an employee by a court or the Canada Revenue Agency (for example), increased termination liability may very likely ensue.

#### 4. Group Termination

Most employment standards legislation across Canada has group termination provisions, which provide increased statutory notice entitlements when a set number of employees are dismissed over a specific period of time. These statutory notice entitlements do not replace common law notice or statutory severance pay, if applicable.

Example: In Ontario, the group termination provisions are triggered if an employer terminates the employment of 50 or more employees at the employer’s establishment in a rolling, four-week period. Note that a constructive dismissal “counts” as a termination, and an “establishment” can include multiple facilities in the same municipality as well as employees who work exclusively from home. **Therefore, an employer may reach the threshold of mass termination without being aware.** Minimum notice must be provided based on the number of employees affected:

- **50-199** employees: **8** weeks of notice
- **200-499** employees: **12** weeks of notice
- **500+** employees: **16** weeks of notice

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<sup>2</sup>Factors include length of service, type of work, degree of expertise or training, age, remuneration, availability of alternative employment and custom in the trade or business.

We have set out below the group termination threshold in each Canadian province. Entitlement in some jurisdictions increases as the number of terminated employees increases. These thresholds serve as general guidance, and exceptions do exist.

**We strongly recommend you discuss any potential group termination with experienced employment counsel, as liability for a group termination is significant and there are various technical requirements an employer must follow.**

### ***Group Termination Thresholds for Canadian Jurisdictions***

| <b>Jurisdiction</b>       | <b>Group Termination Threshold</b>   |
|---------------------------|--|
| Federal jurisdiction      | <b><u>50</u></b> or more employees in an industrial establishment in a 4-week period |
| British Columbia          | <b><u>50</u></b> or more employees at a single location in a 2-month period          |
| Alberta                   | <b><u>50</u></b> or more employees at a single location in a 4-week period           |
| Saskatchewan              | <b><u>10</u></b> or more employees in a workplace in a 4-week period                 |
| Manitoba                  | <b><u>50</u></b> or more employees in a 4-week period                                |
| Ontario                   | <b><u>50</u></b> or more employees at an establishment in a 4-week period            |
| Québec                    | <b><u>10</u></b> or more employees at the same establishment in a 2-month period     |
| New Brunswick             | <b><u>10</u></b> or more employees in a 4-week period                                |
| Nova Scotia               | <b><u>10</u></b> or more employees within in a 4-week period                         |
| Prince Edward Island      | N/A  |
| Newfoundland and Labrador | <b><u>50</u></b> or more employees in a 4-week period                                |

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