Pivoting After Quarantine: Recalling, Restructuring & Rebuilding

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Presentation Roadmap

1) Legal rights for layoffs
2) Recalls and terminations
3) Update on government income relief options
4) Best practices and strategies to pivot your workforce post COVID-19
1) The Right to Lay-Off:

- The Employment Standards Act and the right to layoff
- The Employment Contract
- The Collective Agreement
- “Illegal Layoffs”
- Communicating with Employees While on Layoff
- Constructive Dismissal Claims
- Frustration of Contract
Provincial Government Requirements around Layoffs (Ontario)

- 13-wks in a 20-wk period, or less than 35wks in a 52-wk period
- Longer than this = Termination
- How to get to the 35 weeks in a 52-week period?
  - Substantial Payments
  - Payments to retirement or pension plan or group or employee insurance plan
  - Supplementary unemployment benefits (SUBP) (except if on CERB)
  - Employee is employed elsewhere and would otherwise be entitled to supplementary unemployment benefits
  - Recalled within time approved by Director of Employment Standards
  - Recalled within time agreed upon in agreement
2) Recalls and Terminations

- **When a Layoff Becomes a Termination**
  - Notice entitlements

- **Termination while on Layoff**
  - Notice entitlements

- **Recalling Employees**
  - Who to Recall First
  - When to Recall
  - Multiple Recalls
3) Update on Government Relief Options

Support for Employers

- Work Share Program
- Canada Emergency Wage Subsidy (CEWS)
- Workers Compensation (WSIB)
- Canada Emergency Business Account (CEBA)
- Deferred Tax Payments
- Canada Emergency Rental Assistance (CECRA)
What is it?

A. Program to help avoid temporary layoffs and reduction in workforce
B. Available to both provincially and federally-regulated employers
C. Work sharing unit must reduce its hours of work by at least 10% (one half day) to 60% (3 days)
D. Reduction of work can vary from week to week, as long as average reduction over course of agreement is from 10%-60%
E. Sharing of available work
F. Both employer and employee must agree

Min. 6 weeks to 76 weeks (normally up to 38 weeks)
Canada Emergency Wage Subsidy (CEWS)

- 75% wage subsidy to eligible employers for up to 12 weeks
- Retroactive to March 15, 2020

- Eligible employers include:
  - Individuals
  - Taxable Corporations
  - Partnerships consisting of eligible employers, non-profit organizations and registered charities
  - Those that see a drop of at least 15% of their revenue in March 2020 and 30% for the following months

- Employers are expected to make their best effort to top-up employees’ salaries to bring them to pre-crisis levels
- Extended to August 29
Canada Emergency Wage Subsidy (CEWS)

- **Eligibility Periods:**
  - March 15 - April 11
  - April 12 - May 9
  - May 10 - June 6

- **Penalties**
Canada Emergency Business Account (CEBA)

- $40,000 in interest-free government-guaranteed loans
- For businesses that had payrolls last year between $20,000 and $1.5 million
- If the loan is repaid by December 31, 2022, 25% (up to $10,000) will be forgiven
Deferred Tax Payments

- Payment of income tax deferred until after August 31, 2020 for business

- For payment of income tax amounts owing on or after March 18 and before September 2020

- No interest or penalties will accumulate on these amounts during this period
Canada Emergency Commercial Rental Assistance (CECRA)

- Loans to commercial property owners
- To lower or forgo rent of small businesses from April to June 2020
- Qualification requirements
- Application to open end of May
Government Relief Options

Support for Employees

- Infectious Disease Emergency Leave
- Canada Emergency Response Benefit
Infectious Disease Emergency Leave

- Unpaid leave for employees
- Protected from termination and layoff
- Eligibility: employees can’t come to work because:
  - they are sick
  - they are in quarantine (including self-quarantine)
  - schools are closed and they have to take care of their kids
  - they are stuck in another country due to travel restrictions
  - they need to care for someone who is sick
- No requirement to provide doctor’s note
The Canada Emergency Response Benefit (CERB)

Benefit of $500/week for 16 weeks is available to workers:

- Residing in Canada, who are at least 15 years old;
- Who have stopped working because of reasons related to COVID-19 or are eligible for Employment insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020;
- Who had employment and/or self-employment income of at least $5,000 in 2019 or in the 12 months prior to the date of their application; and,
- Who have not quit their job voluntarily;
- No more than $1,000 in employment and/or self-employment income for 14 or more consecutive days within the four-week benefit period of your claim.
CERB

- The $1,000 monthly limit
- Topping up the CERB
- No SUB Plan
4) Pivoting Your Workforce

- Reduction Options
  - Reducing Hours
  - Reducing Pay
  - Benefits
  - Some layoffs/terminations
  - Independent contractor roles?

- Reopening
  - Health and Safety Concerns
  - The Right to Refuse Work - “danger” and not “risk”
  - Risks of Liability
  - Workers Compensation
Reopening for Business

• Failure to comply with a closure order - penalty

• Making a plan
  ■ Who will design and implement the plan
  ■ Assessing the workplace
  ■ Return to work plan
  ■ Plan implementation (review government and public health guidance)
  ■ Monitoring compliance
  ■ Responding to issues as they arise/adapting the plan as necessary

• Sector-specific safety guide
  https://www.ontario.ca/page/resources-prevent-covid-19-workplace
Questions?

To learn more about our team: https://springlaw.ca/team/

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Thank you!