



Workplace Watch

Monitoring Developments in Labour, Employment and Human Rights Law

Update on Just Cause Termination

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A recent case at the Ontario Labour Relations Board (OLRB), *Giggly Panda Baby Spa Inc. v. Breanne Norris (Giggly)*, has again highlighted the difference between the Ontario *Employment Standards Act, 2000 (ESA)* standard for termination without notice and the common law “just cause” standard.

In *Giggly*, the employee was asked to work July 1st, a statutory holiday. She only agreed to work if she received “double time”. Further communications took place, and the employer eventually terminated the employee. The employer claimed that the employee blackmailed and extorted it by asking for more pay and terminated her for just cause.

The OLRB confirmed that the correct analysis for determining whether the conduct amounts to “*wilful misconduct, disobedience or wilful neglect of duty*” (which is the language used in the *ESA*) is whether the employee “*consciously and deliberately engaged in some positive act of misconduct or deliberately refrained from performing duties or responsibilities that he or she was required to perform.*” As the employee was not obliged at law to work on the statutory holiday, the requests for “double time” were not wilful misconduct, disobedience or neglect of duty. The requests for more compensation were simple negotiations, as opposed to extortion or blackmail.

The *Giggly* case follows the 2022 Ontario Court of Appeal decision in *Render v. Thyssenkrupp Elevator (Canada) Ltd.*, in which the Court found the employer liable for notice pay under the *ESA* even though it agreed there was just cause for dismissal at common law. Because the *ESA* test is more stringent than the common law test, an employee fired for just cause may still be entitled to notice and severance pay under the *ESA*.

Takeaway: Employers should be mindful of the difference between the wilful misconduct standard under the *ESA* and the common law just cause standard when considering terminating an employee without notice or pay in lieu. An employee may be entitled to *ESA* notice/severance pay even if the employee’s conduct amounts to just cause at common law.



Upcoming Changes to the Canada Labour Code

As of **December 15, 2023**, the *Canada Labour Code* (which applies only to federally-regulated employers) will require employers to provide free menstrual products (including tampons and menstrual pads) in all washrooms in the workplace, regardless of whether the washroom is assigned to one particular gender. Covered disposal containers for the products will also be required at every toilet in the workplace.

As of **February 1, 2024**, the minimum notice requirement under the *Canada Labour Code* will increase for individuals who are terminated without just cause and who have at least three years of continuous service. To satisfy the requirement, the employer can choose to provide notice, pay in lieu of notice, or a combination of the two. The new notice periods are set to increase as follows:

| Continuous Service Period | Minimum Notice |
|----------------------------------|-----------------------|
| 3 months | 2 weeks |
| 3 years | 3 weeks |
| 4 years | 4 weeks |
| 5 years | 5 weeks |
| 6 years | 6 weeks |
| 7 years | 7 weeks |
| 8 + years | 8 weeks |

In addition, as of **February 1, 2024**, upon the termination of an employee, employers will have to provide the employee with a written statement of benefits that includes the employee's vacation benefits, wages, severance pay and any other benefits and pay arising from their employment. This statement must be provided no later than on the effective date of termination when an employee is terminated with pay in lieu of notice. If an employee is provided with working notice, the statement must be provided no later than two weeks prior to the effective date of termination.

2023 AODA Compliance Report Deadline

Under the *Accessibility for Ontarians with Disabilities Act* ("AODA"), businesses and not-for-profit organizations with 20 or more employees in Ontario, as well as designated public sector organizations, have until **December 31, 2023**, to file their latest Accessibility Compliance Report. The form is a self-reporting tool to advise the Ministry for Seniors and Accessibility whether an organization is compliant with the AODA and the Integrated Accessibility Standards Regulation ("IASR"). The form for the Report is available online. Monetary fines may be imposed under the IASR if an organization fails to meet its reporting obligations.