

Changes to Termination Notice Period for Interprovincial and Cross-Border Trucking Companies as of February 1, 2024

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Federally regulated trucking companies should be aware of changes to the termination provisions under Part III of the *Canada Labour Code* ("**Code**") that are coming into effect as of 1 February 2024.

The Code applies to all road transportation services, including trucks and buses, that cross provincial or international borders. In other words, if you operate, or are employed by, a trucking company that performs services interprovincially and/or to the United States of America, that company would be subject to the Code.

Previously, employees with three consecutive months or more of continuous employment were entitled to two weeks' notice or pay in lieu of notice upon being terminated without cause. Once the new provisions come into effect on 1 February 2024, such notice period increases to three weeks. The notice period continues to increase by one week for each additional year of service completed thereafter, up to a maximum of eight weeks. Employers who provide notice before 1 February 2024 will not be required to follow the new provisions.

The new provisions also require federally regulated trucking companies to provide a written statement of benefits to employees who are terminated. The statement must set out the employee's vacation benefits, wages, severance pay and any other benefits and pay arising from their employment with the employer as of the date of the statement. The statement must be given to the employee as follows:

1. If the employee is given advance working notice of termination, no later than two weeks before the date of the termination; or
2. If the employee is given pay in lieu of notice, no later than the date of the termination.

General Considerations for Federally Regulated Trucking Companies

In order for a person to gain the protection afforded to employees under Part III of the Code, a worker must have status as an employee. It is therefore important that federally regulated trucking companies that engage both employee drivers and owner-operators (i.e., independent contractors) ensure that they have in place well-drafted owner-operator and/or employment agreements. In addition to written agreements, trucking companies (especially those that engage owner-operators) must ensure that they examine the totality of their relationships with their own owner-operators to determine if a person is truly an owner-operator or if they may inadvertently be classified as an employee.

Considerations for Federally Regulated Trucking Companies that Hire Employees

Federally regulated trucking companies should consider auditing their employment agreements to ensure that the agreements provide at least the minimum notice of termination provided under the Code. This is especially important in light of recent case law (*Waksdale v. Swegon North America Inc.*, 2020 ONCA 391) which effectively heightens the risk that contracting out of the minimum standards required by the Code may render the termination clauses in an offending employment contract unenforceable. If a termination clause in an employment agreement is rendered unenforceable, this could increase the amount of pay in lieu of notice payable to an employee upon termination without cause.

Considerations for Federally Regulated Trucking Companies that Engage Owner-Operators

Federally regulated trucking companies that engage owner-operators should have in place a carefully drafted owner-operator agreement that clearly identifies the owner-operator as being an independent contractor. Apart from having a written contract, federally regulated trucking companies should ensure that their interactions with an intended owner-operator is not at risk of being characterized as an employer-employee relationship. If an owner-operator is classified as an employee, that owner-operator would then be entitled to notice or pay in lieu of notice under the Code. Trucking companies should therefore ensure that owner-operators own their own trucks, have the ability to control when they work, are responsible for their own fuel and insurance expenses, and pay for their own truck maintenance, among other things. A PDF version is available to download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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