

Member's Quarterly

Winter 2021 Edition

Feature

Reducing Wage Rate: Don't Recycle the Notice

Always provide notice in writing

One of the more unique statutory requirements under Alberta's *Employment Standards Code* (the "Code") as compared to other provinces is section 13 of the Code, which requires that employers must give each employee notice of a reduction of the employee's wage rate, overtime rate, vacation pay, general holiday pay or termination pay before the start of the employee's pay period in which the reduction is to take effect. Otherwise, the employee is entitled to the difference between the employee's wage rate, overtime rate, vacation pay, general holiday pay or termination pay before the reduction and those rates and pay after the reduction from the time in the pay period in which the reduction was first applied to the end of that pay period.

The Alberta Labour Relations Board (the "Board") recently explored this provision in *I.T. Partners Inc. and Moore, Re*, [2020] A.W.L.D. 1064. In this decision, the Employment Standards officer found that proper notice was not provided, so the employee was owed the difference between the employee's wage rate until the end of the pay period.

The employee in this decision was hired on July 17, 2017 with an hourly rate of \$40.87. However, the employer found that the employee did not demonstrate the appropriate skill set for his position of Systems Analyst Tier III. The employer advised him in a letter dated December 15, 2017 that his service as a Systems Analyst Tier III was terminated, but the employee would be offered immediate employment as a Systems Analyst Tier II, and the employer would be committed to providing him training to develop him to perform at a Tier III level. The employee was required to sign a new employment agreement if he accepts. In early January 2018, the employee signed a new employment agreement with an hourly rate of \$31.25.

This employer's pay period was a monthly pay period from the 26th of one month to the 25th of the next, and the specific period in question was from December 26, 2017 to January 25, 2018. The pay stub during this period showed that 111.5 hours worked were paid at a reduced wage rate of \$31.25.

The employer gave evidence that at the December 15, 2017 termination meeting, notice of the wage reduction was given verbally that the compensation of the new role would be \$65,000 per year (which equates to \$31.25 per hour assuming 40 hour work weeks), that the employee accepted the offer, and that it maintained the non-reduced wage rate for 30 days after December 15 by showing that 64 hours in the December 26, 2017 to January 25, 2018 pay period were paid at the non-reduced wage rate. However, the employee stated that he did not learn of his new wage rate until the receipt of his new employment agreement on January 8.

The Board found that although the Employer may have told the employee something about an impending change to his role and wages and that the paystub showed that the wage rate did not change for 30 days, this did not matter unless notice of the *specific new wage rate* was given at the meeting. In reviewing the December 15, 2017 letter, the Board questioned whether the employer provided notice of the specific new wage rate to the employee verbally, based on the fact that the letter states: "You will be required to execute a new employment agreement that will outline your corresponding remuneration for the position". Although the employer argued that the "corresponding remuneration" referred to in the letter was the \$65,000 per year remuneration that was discussed verbally, the Board found that the suggestion



Duncan Marsden, LL.B.
Partner/
Regional Leader,
Borden Ladner
Gervais LLP



Tommy Leung
J.D.
Associate,
Borden Ladner
Gervais LLP

Member's Quarterly

Winter 2021 Edition

Feature continued

that the “corresponding remuneration” language refers to a rate which has already been provided verbally was “not an easy fit”. Ultimately, because it was not clear that the employer provided notice of the specific wage rate reduction prior to the pay period where the wage rate was reduced, the Employment Standards officer’s order was upheld.

Key Takeaways

Aside from the statutory requirement that employers must provide notice of the wage rate reduction (and overtime rate, vacation pay, general holiday pay or termination pay reductions) prior to the pay period when the reduction will take place, there are other key takeaways for employers. First, employers can decide on the length of each pay period. Under section 7 of the *Code*, every employer must establish one or more pay periods for the calculation of wages and overtime pay due to an employee, but a pay period must not be longer than one work month. As a result, employers should consider the length of pay period it uses for the employment relationship and the effect it may have in terms of notice if entitlements may be reduced. Second, employers should consider providing written notice of reductions. Although the Board confirmed that notices of reduction do not have to be in writing, the Board also warned that employers rely upon verbal notice at its potential peril, as it makes proof that notice was given more difficult, as evidenced in the above decision. As a result, although not required, notice of wage reduction should be provided in writing and retained in accordance with the *Code*’s record retention requirements.

Duncan Marsden is Partner/Regional Leader with Borden Ladner Gervais LLP and can be reached via email at dmarsden@blg.com.

Tommy Leung is an Associate with Borden Ladner Gervais LLP and can be reached at toleung@blg.com.