



**EMOND
HARNDEN**
LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI

LYNN HARNDEN

✉ lharnden@ehlaw.ca ☎ 613 940-2731

April 14, 2020

BY ELECTRONIC MAIL (Filomena.Tassi@parl.gc.ca)

The Honourable Filomena Tassi
Minister of Labour
Room 682, Confederation Building
Ottawa, ON K1A 0A6

Dear Minister Tassi:

Re: Government Should Suspend Temporary Layoff to Prevent Deemed Terminations

We are one of Canada's largest boutique-style labour and employment law firms, exclusively representing the interests of employers in federally and provincially regulated industries in both official languages.

Recent events have impacted businesses of all sizes operating in federally-regulated sectors. In particular, employers in the aviation and transportation industries are seeing dramatic decreases in revenues as a result of unprecedented decreases in traffic. Many of these operations are small and medium sized business, without the means to continue operations while not earning revenue. As a result of these disruptions, thousands of employees in these sectors have been temporarily laid off since early March 2020, and this number is likely to increase over the coming months.

Pursuant to the *Canada Labour Code* ("**CLC**") and the *Canada Labour Standard Regulations* ("**CLSR**"), a temporary layoff cannot last more than three months. If a temporary layoff exceeds this three-month limit, the employer is deemed to have terminated the employment relationship on a without cause basis, which is, with limited exceptions, not permitted by operation of s. 240 of the *CLC*. As the end of this three-month window rapidly approaches, we are concerned about the significant impact that such "deemed terminations" will have on the continued viability of these operations.

In many cases, it is not possible for employers to provide a recall date, or even a period of time, that would allow them to extend the period of temporary layoff for up to six months. The current situation is unpredictable and it is impossible to say for certain when an employee will be recalled to work. Employers cannot be expected to rely upon this provision of the *CLSR* in a situation where no one is able to accurately predict the point at which physical-distancing measures will be lifted, businesses will be able to resume their normal operations, and employees will be able to safely return to work.

Likewise, many employers are unable to continue to make payments to employees, to continue to make payments for the benefit of employees (e.g., an employee insurance plan), or to provide supplementary unemployment benefits, which would allow the temporary layoff to extend past three months.

707 rue Bank St
Ottawa, ON K1S 3V1
☎ 613 563-7660

439 av. University Ave
Toronto, ON M5G 2N8
☎ 416 922-3773

☎ 1 888 563-7660
☎ 613 563-8001
EHLAW.CA |  | 



Further, the discrepancy between the duration of numerous federal economic measures (e.g., the Canada Emergency Response Benefit, Employment Insurance, and the Canada Emergency Wage Subsidy) and the prescribed length of temporary layoffs in the *CLSR* has led to confusion. Ideally, the *CLSR* layoff provisions should align as much as possible with these economic measures to avoid unnecessary conflict and unintended consequences.

In our view, and given the unprecedented crisis facing the country's workplaces and economy, the Federal Government ought to act to temporarily lengthen or suspend the three-month layoff window and the requirements to qualify for a temporary layoff of a longer period. Such a measure would allow small and medium-sized employers much needed relief while they earn little to no revenue and would provide workers with better hope that their employer will be able to recall them when the economy rebounds.

Moreover, in our view, the Government should use this opportunity to provide legislative clarity to employers, namely by protecting their management rights to place employees on a temporary layoff without facing the risk of complaints and lawsuits alleging constructive or unjust dismissal.

Such measures would prevent the unintended consequences of thousands of deemed terminations in Canada's workplaces, including the very real possibility that such terminations would debilitate many small and medium-sized businesses and force many of them to permanently close their doors. Likewise, these measures would prevent the unintended consequences of thousands of employees who would otherwise have jobs to which to return having been deemed terminated, and therefore remaining out of work and reliant upon government support measures for longer than would otherwise be the case. Not only do the deemed terminations trigger statutory obligations to provide sizeable payments, these unwanted terminations and the potential torrent of lawsuits will jeopardize the quick start-up of the economy that will be critical once emergency measures are lifted.

What we are asking of you is not unprecedented: both the Manitoba and Alberta provincial governments have taken these steps already with respect to their provincially-regulated workplaces, and we expect the other provinces will follow suit. We have similarly written to the Ontario government to request that such measures be considered in that province. We are asking the Federal Government to take further action toward its goals of protecting both business and employees, and in doing so, set the stage for those provinces who may not have taken these necessary steps yet.

We implore you to take immediate action to enable employers and their employees to survive the COVID-19 pandemic.



**EMOND
HARDEN**
LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI

We remain, as ever, at your disposal.

Yours Truly,

EMOND HARDEN LLP

Lynn Harnden

c.c.: The Right Honourable Justin Trudeau, Prime Minister of Canada
The Honourable Marc Garneau, Minister of Transport
Canadian Chamber of Commerce