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# Hiring: Getting it Right Before it Goes Wrong

Severance/Notice Clauses

The Alberta Municipalities  
2025 Public Risk Conference



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# **The Basics of Severance Liability on Termination of Employment**



# The Basics

- Non-union employees can be terminated without cause by providing advance notice or severance pay in lieu of notice
- An Employer can make an express condition at the time of the offer of employment agreement to a specified amount of notice or payment in lieu of notice
- In the absence of an express written employment agreement at the time employment is offered and accepted addressing how much this notice or severance will be, the Courts imply their own view on reasonable notice or payment in lieu (common law liability)



## Options for Severance Clauses

- The minimum statutory requirements of the *Alberta Employment Standards Code*
- Any lump sum or formula can be applied, so long as it complies with the minimums of the *Employment Standards Code*
- For example, expressly adopting and referring to the minimums in the *Employment Standards Code* (Sections 56 and 57) to a formula such as 2 weeks per year of service pro rata to a maximum of 6 months
- Ensure wording is clear in terms of whether severance is base wages/salary or inclusive of benefits, and if there is a benefits component, how this is calculated



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# **Classic Ways Employers Invalidate Their Severance Limitation Clauses**



## Classic Errors to Avoid

- Employee offered and accepted employment prior to being given their contract with the severance clause
- A general reference to the Employment Standards without referring expressly to the minimum standards and ideally sections 56 and 57 of the *Employment Standards Code*
- Letting the employee start work prior to signing the letter of hire or contract with the severance clause
- Failing to advise the employee to seek legal advice prior to signing the offer with the severance clause or not providing fair time for the employee to do so





## New or Complex Invalidation Risks for Severance Clauses

- Employee changes position without express prior agreement to apply prior severance clause to a new role
- Attempting to expand the definition of “just cause termination”
- Any wording that could be argued in any potential circumstance to violate any statutory legal requirement (*Dufault v Ignace (Township)*, 2024 ONCA 915)
- Repudiation of the employment contract (including the termination provisions) through an employer’s conduct, both pre and/or post-termination





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# Take Away Tips



## Take Away Tips

- This is a very important tool in every employer's toolbox and when used correctly can save any employer hundreds of thousands of dollars in severance over the coming years
- If you aren't using a clear notice/severance clause for your non-union hires, we strongly recommend you seek legal advice to do so with your hires moving forward
- Even if you have been using terms of hire which have such a clause, if you have not received specific advice or review of that clause within the last year, we recommend you do so to potentially update the wording due to quickly evolving caselaw
- Setting this up properly means you will have more time and money to spend on your good employees rather than spending too much money on walking poor employees out the door



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# QUESTIONS?

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