THE LAWRENCES® LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

SPRING 2009

In this issue:

Implementing Change in the Workplace

How Do You Cut Costs to Stay in Business?

Roslyn Baichoo

The current economic climate is affecting workplaces both large and small. Many employers need to cut costs to stay afloat, but they want to retain good performers to help the business survive as the economy recovers. Here are five ways to lower costs while keeping the company going in anticipation of better times.

Communicate with Employees

The economic crisis is an opportunity to communicate the company's goals, plans, and even failures. Be upfront about the company's plan to survive the recession. Communicate regularly throughout the process: tell employees that cost-cutting procedures will be undertaken and that they may include terminations. If employees buy in to the company's mission and feel part of the recovery process, they are less likely to object to changes that must be made for the company's survival.

Put Employment Agreements in Writing

Some employers oppose written employment agreements, fearing that a written contract reduces the employer's right to make changes. These concerns can be addressed in the agreement itself. In fact, in most circumstances, a written agreement can give the employer greater flexibility in difficult times. For unionized employers, it may be possible to negotiate concessions from unions in the application and interpretation of collective agreements.

Implement a Work-sharing Program

When business is reduced by circumstances beyond the employer's control, it is worth discussing work-sharing. Qualified employers can initiate work-sharing as a means of avoiding a temporary layoff among staff who are entitled to receive Employment Insurance (EI) benefits. Employers can retain staff and employees can keep their jobs while receiving EI benefits for the days when they are not working-with no waiting period for EI benefits. Work-sharing agreements can range from six to 26 weeks, with an extension up to a maximum of 38 weeks. See details of this plan at: http://www1.servicecanada.gc.ca/eng/epb/sid/cia/grants/ws/desc_ws.shtml.

Trim the Fat

Consider cutting bonuses, reducing perquisites and freezing salaries. Do this from the top down: impressions matter when you're looking for buy-in.

Discretionary bonuses are easy to deal with: the employer simply exercises its discretion not to pay. Where bonuses are guaranteed, employers fear that cutting these bonuses will lead to constructive dismissal claims. This fear is groundless if employers provide adequate notice that guaranteed bonuses will be removed at some point in the future.

Some employees have also begun to rely on salary increases as a right. In fact, that might be the case if a historical pattern demonstrates an entitlement to a salary increase. Again, this problem can be addressed with advance notice to employees of a salary freeze.

Be Selective in Termination

If reducing the size of your workforce is inevitable, do *not* offer buyout packages to anyone willing to take them! That could lead to irreplaceable talent walking out the door. Instead, thin the ranks of poor performers whose presence is tolerated when the workplace is busy, but who are an unaffordable luxury today. If it is impossible to terminate for just cause, or to pay a severance package up front, non-producers can be put on working notice.

Proper implementation of any of the above measures requires advice from an employment lawyer. Lawrences' Employment and Labour Group is experienced in advising both unionized and non-unionized employers in prudent ways to implement change in the workplace.

Roslyn Baichoo is an associate in Lawrences' Employment and Labour Group. She represents employers before various provincial and federal labour and arbitration boards, the Human Rights Tribunal of Ontario and all levels of the Ontario courts. Roslyn also provides corporate human resources training to employers on proactive approaches to workplace concerns. She can be reached at (905) 452-6878 or rbaichoo@lawrences.com.