



Research Advisory

Hewitt

Canadian Research Group

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Highlights

Wronko v. Western Inventory Ltd., restricts the ability of employers to fundamentally alter employment contracts including pension, benefit and compensation arrangements.

The Hewitt Research Advisory is a regular Hewitt newsletter designed to provide a detailed overview of specific legislative and regulatory developments in Canada relating to human resources.

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Court of Appeal Casts Doubt on Employers' Ability to Alter Pension, Benefit and Compensation Arrangements

Background

A recent Ontario Court of Appeal decision may restrict the right of employers to fundamentally alter employment contracts, including pension, benefit and compensation arrangements - even with adequate notice.

Facts

In 2000, the parties signed a written employment contract entitling the employee to payment of two years' salary plus bonus on termination. Two years later, the employee was provided a Memorandum in which he was asked to sign a new contract reducing his entitlement upon termination to 30 weeks notice. He refused, and the employer purported to give him 104 weeks (two years) notice that the termination provision in his employment contract would be changed to reduce his entitlement as outlined in the original Memorandum. At various times throughout the following two year period, the employee reiterated his opposition to any alteration of the original termination provision contained in his employment contract. Two years and four days after receipt of the Memorandum, the employee was told to sign the amended contract or leave his position. When denied notice pursuant to the original contract, he sued for damages for constructive dismissal.

Trial Level Decision

At trial it was held that the employer had the right to impose a fundamental change to the parties' contract of employment, so long as it provided reasonable notice. And, two years was held to constitute reasonable notice. The trial judge held that the employee had ended the employment relationship and dismissed his claim for damages for constructive dismissal. The employee was, however, awarded damages for unpaid vacation pay and \$10,000 in costs. He appealed this result, and won.

Court of Appeal Decision

The Ontario Court of Appeal reversed this ruling and held that, by making its final ultimatum, the employer repudiated the parties' employment relationship. Because the employer failed, immediately after the employee's initial refusal to accept the change, to terminate and make an offer of new employment pursuant to the purported amendment, the employer "must be taken to have acquiesced ... and to have accepted that the terms of the existing contract remained in effect". As such, the employer's ultimate termination was wrongful and entitled the employee to payment of two years' salary in lieu notice. On October 9, 2008, the Supreme Court of Canada dismissed the employer's application for leave to appeal. As a result, the Court of Appeal's decision in *Wronko* is final.

Hewitt Comment:

Despite the fact that Wronko deals with an individual, the case has potential implications in a group setting. Prior to the Wronko decision, employers often made substantial changes to pension and benefits programs with little fear of triggering a constructive dismissal, as long as they provided adequate notice. That safeguard is now in question. Going forward, employers will need to assess whether the contemplated change constitutes a fundamental alteration to the employment contract, a task that is complicated in the group setting by the fact that what may be considered a fundamental change for one employee may not be for another. If the change could be considered substantial, legal advice should be sought. In the new negative economic environment where plan sponsors may need to make changes to employee benefits, the courts have added another layer of complexity.

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