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Public Sector Employers Act

The Employment Termination Standards established by the Public Sector Employers Council are adopted as employment termination standards for the purposes of section 14.4 of the *Public Sector Employers Act*.

EMPLOYMENT TERMINATION STANDARDS

[includes amendments up to those made by 2002-64-Sch.]

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Definitions

1 In these standards:

"**Act**" means the *Public Sector Employers Act*;

"**employee**" has the same meaning as in section 14.1 of the Act;

"**notice of termination**" means notification by a public sector employer to an employee that his or her contract of employment will be terminated;

"notice period" means the length of time from the date on which notice of termination is given to an employee until the date on which employment will terminate;

"retiring allowance" means a payment that, by a contract of employment, an employee may receive on or after retirement of the employee from his or her employment in recognition of the employee's service, but does not include the following:

- (a) superannuation or a pension benefit;
- (b) an amount received as a consequence of the death of the employee;
- (c) a benefit designated by the minister;

"severance" means the severance payment made in lieu of the notice period;

"successor employer" means a purchaser, lessee or transferee referred to in section 35 of the *Labour Relations Code*.

[am. 2002-64-Sch, s. 1.]

Limitation on notice period and severance

2 (1) An employee must not be given a notice period or severance in the case of

- (a) termination for cause,
- (b) expiry of a contract of employment with a definite term, or
- (c) voluntary resignation or retirement.

(2) Subsection (1) does not prevent an employer from providing severance under a labour adjustment policy or program approved by the minister.

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

[am. 2002-64-Sch, s. 2.]

Limitation on retiring allowance

2.1 (1) An employee who receives a notice period or severance must not be given a retiring allowance.

(2) Subsection (1) does not prevent an employer from providing a retiring allowance under a labour adjustment policy or program approved by the minister.

(3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

[en. 2002-64-Sch, s. 3.]

Duties of employee during notice period

3 (1) During the notice period, a public sector employer, in its sole discretion, may

(a) require the employee to continue with his or her duties, assignment, tasks or projects,

(b) assign the employee to other duties, assignments, tasks or projects with the same or a successor employer, notwithstanding that the assignment may amount to a constructive dismissal, if

(i) the assignment is reasonably consistent with the employee's ability and responsibility at the time of the assignment, and

(ii) the employee is not required to relocate unreasonably,

(c) assign the employee to a non-successor employer with the agreement of the employee, or

(d) excuse the employee from performing his or her duties.

(2) If an employee refuses to perform duties assigned by the employer in accordance with this section, the employee is deemed to have voluntarily resigned and is not entitled to a continuation of the notice period or any payment in lieu of the notice period.

Severance payment instead of notice

4 (1) If an employer terminates employment without cause and excuses the employee from performing his or her duties under section 3 (1) (d), the employer, in its sole discretion, may provide the employee with severance.

(2) Severance must be in the form of periodic payments unless the employer, in its sole discretion, considers a lump sum payment to be more appropriate.

Amount of notice and severance

5 (1) A notice period or severance must not exceed the following:

(a) an amount calculated according to an employment termination plan for the employee that has been approved by the minister;

(b) if no employment termination plan has been approved by the council, the lesser of

(i) an amount equal to the remaining term of the contract, or

(ii) an amount provided under common law calculated as though the employee were subject to an indefinite term agreement with no provision regarding severance.

(1.1) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the minister for the purposes of subsection (1).

(2) Despite subsection (1), the maximum notice period that an employee may be given is 18 months.

(3) Despite subsection (1), the maximum severance that an employee may be given is the value of salary and benefits the employee would otherwise be entitled to for the notice period.

[am. 2002-64-Sch, s. 4.]

Executive notice and severance

5.1 (1) In addition to the limits imposed under section 5, this section applies in relation to employees of a public sector employer, other than an employer referred to in paragraph (g) of the definition of "public sector employer" in section 1 of the Act, who are appointed to or employed in the following positions:

(a) deputy minister;

(b) chief executive officer or president of a public sector employer;

(c) superintendent of a school.

(2) The notice period or severance that may be given to an employee in a position referred to in subsection (1) must not exceed

(a) an amount calculated according to an employment termination plan for the employee that has been approved by the Treasury Board, or

(b) if no employment termination plan has been approved by the Treasury Board, the following limits:

(i) up to a 6 month notice period or severance, if the employee has served or been employed in that position for fewer than 12 months;

(ii) up to a 9 month notice period or severance, if the employee has served or been employed in that position for 12 to 17 months;

(iii) up to a 12 month notice period or severance, if the employee has served or been employed in that position for 18 to 35 months;

(iv) up to a 14 month notice period or severance, if the employee has served or been employed in that position for 36 to 47 months;

(v) up to a 16 month notice period or severance, if the employee has served or been employed in that position for 48 to 59 months;

(vi) up to an 18 month notice period or severance, if the employee has served or been employed in that position for 60 or more months.

(3) Treasury Board may not approve an employment termination plan under subsection (2) (a) that would provide an employee more than a 12 month notice period or severance for fewer than 18 months of service or employment.

(4) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the Treasury Board for the purposes of subsection (2).

[en. 2002-64-Sch, s. 5.]

Re-employment in the public sector

6 (1) In this section, "**re-employment**" includes entering into a contract for services with a public sector employer either individually or through a sole proprietorship, partnership or corporation.

(2) An employee must notify the employer of any re-employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided.

(3) If an employee commences employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided,

(a) no severance covering this period of re-employment is payable, and

(b) the employee must pay the government any amount that is attributable to the period during which the employee is re-employed.

(4) During the notice period or period in lieu of which severance is provided, if an employee is re-employed at a lower level of compensation, nothing in this section prevents an employer from providing to the employee an amount equivalent to the difference between their former compensation level and their compensation level upon re-employment.

Term of employment contracts

7 If an employee is employed under a contract of employment for a definite term the contract must

(a) subject to paragraph (b), be for a term of not more than 5 years, and

(b) if employment under the contract may be extended for more than 5 years, make the extension conditional on a renegotiation of the contract during the term of the contract.

[en. 2002-64-Sch, s. 6.]

Provisions of the *Public Sector Employers Act*, R.S.B.C. 1996, c. 384, relevant to the enactment of this regulation: section 14.4]
