



WHAT HAPPENS IF WE DO NOT COMPLY?

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What happens when employers don't comply with the requirements contained in labour legislation? Sometimes the legislation sets out specific penalties for specific violations, sometimes not. Either way, employers are well advised to comply or be prepared for consequences that may be significant.

Most legislation includes provisions that provide for specific consequences if certain requirements or minimum standards are not complied with. For example, a failure to pay an employee minimum wage may result in an order from the labour standards authority requiring that the minimum wage be paid for all hours worked by the employee. That legislation might also contain a general penalty section, and provide for fines if any of the legislative provisions are violated.

Where the legislation does not provide a specific penalty for violating a particular provision, the question is often asked "what happens if we do not comply?" The answer is that an employer could be charged, and convicted under the general penalty provisions.

Such prosecutions are rare. However, they do occur.

Recently, a British Columbia court fined an employer who failed to comply with the group termination provisions in the *Canada Labour Code*.

Facts

Servisair provides aviation ground services at ten Canadian airports. One of those services is aircraft grooming. At the time of this case, the aircraft grooming service in Vancouver was not profitable. Servisair approached the union which represented cabin groomers in Vancouver in an effort to revise the collective agreement to allow Servisair to continue to operate. A concessionary wage package was negotiated with the union, however the employees refused to ratify it.

As a result, Servisair decided to close down this division. In January 2008 they gave notice to all affected employees telling them of the closure, and that at that time Servisair did not have a fixed last date of operations. One hundred twenty employees would be terminated when this division closed.

Servisair was covered by the *Canada Labour Code*. This Code requires that when 50 or more employees are to be terminated, the employer must give the federal minister notice of the termination at least 16 weeks before the date of termination. The *Code* does not provide a specific penalty for violating this notice requirement, but does provide that a violation of any of the provisions concerning group termination could result in a fine of up to \$100,000.

Servisair wanted to outsource the grooming work in Vancouver. An agreement was reached to have another entity take it over. That agreement was signed on April 17, 2008. The new entity would begin aircraft grooming on May 26, 2008.



On April 18, Servisair gave notice to the minister that it would be terminating the division's employees. It gave less than six weeks' notice to the minister, much less than required. On that same date, Servisair gave notice of termination to all 120 employees, advising that their employment would terminate on May 26, 2008.

In its notice to the minister, Servisair asked the minister to waive the 16 week requirement, providing a rationale for its request. On May 16, Servisair was advised that the waiver request went to the minister, and Servisair was asked not to take any action on the group termination. On June 11, Servisair was told that the waiver request was refused.

Servisair was charged under the general penalty provisions of the *Code*, for failing to provide the required 16 weeks' notice to the minister.

Decision

The Court noted that there had been no reported cases dealing with a violation of the group termination provisions under the *Code*.

The Crown asked for an order that Servisair provide compensation to all of the affected employees equal to the amount that the employees would have earned had the 16 week notice period been provided to the minister as required by the *Code*. That amount was calculated to be \$466,000, not including overtime, vacation pay, pay in lieu of notice or any other entitlements that employees would have earned during that period. Alternatively, the Crown asked for a fine of \$10,000.

The Court found that Servisair had not acted in a cavalier fashion, and had made extensive efforts to negotiate a resolution of this issue with the employees and their union prior to issuing the notice of termination. The Court noted that the employees had notice in January of a closure which ultimately occurred in late May.

The Court determined that Servisair should be fined \$3,000 for its failure to provide the appropriate notice to the minister. Recall that the maximum fine provided by the *Code* was \$100,000.

The Court noted that Servisair could have provided the required notice to the minister, and was over-confident in expecting a waiver of the required notice would be provided.

While the fine is minimal, Servisair's experience should be a caution to employers that when they do not comply with legislative provisions, there may be consequences, and those consequences may be significant.