

# 26 weeks severance added to 54 weeks working notice

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*Severance is separate compensation, regardless of whether notice is working or paid out: Court*

**The Ontario Small Claims Court** has reinforced the importance of providing statutory severance in strict accordance with the terms of the province's Employment Standards Act, 2000. The decision provides that since the legislation indicates that severance must be provided in a lump sum - unless the employee agrees to receive the payment in installments - statutory severance must be paid in addition to any working notice provided to the employee. As a result, the employee in this case, who received 54 weeks of working notice - well in excess of all statutory payments owed - was awarded an additional lump sum payment of 26 weeks for severance.

The employee, Shirley Mattiassi, worked for Hathro Management Partnership and Toronto law firm Thomson, Rogers, for 26 years. On Nov. 16, 2009, Mattiassi received notice of termination indicating that she would be provided with 54 weeks of working notice, ending on Nov. 30, 2010. Mattiassi worked the 54 weeks of notice, during which time she received her regular pay. On Nov. 19, 2010, Hathro provided Mattiassi with a letter reminding her that her employment would officially come to an end on Nov. 30. Additionally, this letter included a cheque for \$8,041.67, representing an amount equal to about two months of her regular pay. This gratuitous payment brought the total amount of notice provided by Hathro to 62 weeks. On Nov. 30, Mattiassi completed her last day of work with Hathro. She later brought an action against Hathro seeking payment of her severance pay in accordance with the Employment Standards Act, 2000. [Read more...](#)

## **Severance pay independent of notice**

Mattiassi argued that she was entitled to both termination pay and severance pay in accordance with the Employment Standards Act, 2000. However, Hathro argued that the total amount of notice provided to her - 54 weeks working notice and an additional two months' pay in a lump sum - were in excess of the combined legislative requirements for termination pay and severance pay, and should therefore disentitle Mattiassi to any further payments.

The court did not accept the position argued by Hathro and stated that the Employment Standards Act, 2000 "has clearly set up two distinct and separate entitlements," and that "each provision stands on its own, serves a different purpose and provides different and distinct benefits or entitlements to the employee." Additionally, the court indicated that the Employment Standards Act, 2000 "requires payment in lieu of notice only in the event of failure to give the required notice of termination. On the other hand, payment of severance pay is mandatory. It cannot be avoided by giving notice."

Therefore, the court determined that Mattiassi was entitled to receive the 26 weeks of severance pay claimed, indicating that the working notice provided to her could not reduce the severance pay owed. Severance pay must be paid separately from any working notice provided, given that working notice is "earned pay" and severance pay is provided as "compensation."

## **Tips for employers**

Despite an employer's attempt to provide an employee with her full notice obligations upon termination through working notice, *Mattiassi* highlights the necessity to ensure that both the correct amounts of statutory payments are made and that such payments are provided in the correct manner upon termination. As demonstrated above, failure to do so can result in costly litigation to determine whether the requirements under employment standards legislation have been fulfilled, and may result in the employer being obligated to provide more notice than otherwise required had the severance been paid correctly.

In many instances, employers may be able to avoid this otherwise expensive landmine by having the employee sign a termination letter indicating that the working notice being provided includes her statutory entitlements. By doing so, the employee may be found to have agreed to receive her severance in installments, as permitted by Ontario's Employment Standards Act, 2000. However, without such an agreement with the employee, an employer may be left exposed to possible litigation. Employers should be aware of the *Mattiassi* decision, the possible implications that may result if severance is not provided in the proper form, and the need to ensure that the requirements under the legislation are always fulfilled.

See *Mattiassi v. Hathro Management Partnership* 2011 CarswellOnt 1431 (Ont. Small Cl. Ct.).



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