

SEVERANCE AND BENEFITS

Benefits After Termination of Employment

Introduction

When an employer terminates an employee “with notice”, all terms of the employment contract continue -- the employee continues to be actively at work, continues to receive their salary, and is entitled to the continuation of all benefits.

In most cases, however, employers choose to provide a severance package in lieu of notice. This severance package provides payment that is considered equivalent in overall value to termination with notice.

Statutory notice period

The statutory notice period is the minimum amount of notice of termination that an employer must provide to an employee. Depending on the jurisdiction of the employer, this period is determined by federal and provincial employment standards.

An employer may ask that the employee work until the end of the statutory notice period, or instead, terminate employment immediately and provide the employee with pay in lieu of working notice (“severance package”).

Where an employee receives a severance package the employee’s benefit coverage still ends on the last day worked, unless the employer is required by the applicable employment standards to continue coverage during the statutory notice period.

Benefits and the employment contract

Employee benefit coverage terminates on the day that employment ceases or the end of the month (depending on the Insurance contract). In the case of a termination with notice, benefits continue until the end of the notice period.

If an employer offers a severance package, it must include benefits up to the statutory minimum. However many severance agreements will extend the notice period past the statutory minimum based on case law, particularly for long-term or senior employees. And employers will often seek to extend benefits coverage to the end of the notice period.

Severance packages

If the employer does choose to extend coverage, the employee is no longer “actively at work,” and, as such, most insurers do not automatically extend coverage beyond the employee’s last day of “active work.” To have coverage continued, the insurer must approve each case.

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Because the offerings of any benefit extension is the obligation of the employer, you need to be sure that the insurer will agree to the arrangements you have planned before providing the offer to the terminating employee.

Liability for coverage offered in severance packages is the responsibility of the employer. If you offer benefits to the terminating employee and the insurer has not agreed to continue coverage, you (the employer) are responsible for covering any costs associated with benefits included in the severance package.

Since this can become extremely expensive – for example, employers may be liable for a life insurance claim, not just the premiums owed - it is very important to get approval to extend coverage before making the offer.

What will the insurer agree to?

Most insurers will agree to extend coverage for all benefits up to, but not beyond, the statutory provisions in the applicable Employment Standards Act. Depending on the province of residence this will vary, but has a maximum limit of eight weeks.

Under no circumstances will any insurer extend disability coverage (WI and LTD) for any period longer than eight weeks. In many cases, they will not agree to extend WI and LTD at all. They may, however, give consideration to extending the life insurance benefits, AD&D, extended health care (EHC) and dental benefits for periods longer than eight weeks.

Limitations to extended health coverage

While most insurers will agree to extend some benefit coverage longer than the statutory period, they will likely restrict some of the EHC provisions. In particular, they may remove the travel insurance component of most EHC plans. Therefore, employees who plan to travel during the severance period would need to obtain separate travel insurance coverage.

Alternatives to consider

Life Insurance

Group life insurance has a conversion privilege. This will allow employees to convert their coverage to an overall maximum, without a medical questionnaire, if they apply within 31 days of the termination of employment.

Accidental Death and Disablement (AD&D)

In some cases, this benefit can be converted. If the AD&D contract does not have a conversion option, alternate coverage can be easily and inexpensively obtained, without medical information.

Long Term Disability

A few insurers provide a conversion option that allows employees to convert their LTD to an individual policy, without submitting medical information. However, the majority of insurers do not offer this option. If conversion is not available, employees who are healthy can obtain interim coverage matching the length of the severance period.

Extended Health and Dental Care

A few insurers offer conversion options, regardless of the group insurer being terminated. Coverage must be applied for within 30 to 60 days (depending on the insurer). Pre-existing condition clauses as well as claims waiting periods may be waived.

Always get approval from the insurer **before** extending a severance package offer that includes extended benefit coverage.

Contact us for assistance.

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