JRSB205 (summer 2010)

Topic 4, Lesson 2, Activity 1: Employment Issues

Group E

Facts:
• You have now been in business for ten years.
• One of your key employees, the manager you hired to oversee operations nine years ago, is doing a fine job. This individual has good “people skills” and the rest of your staff respects this manager.
• The problem you have is that an energetic, younger individual has approached you, seeking this job. This new candidate has even better skills and is well connected, with potential clients you’ve been trying to attract. You’re sure that if you put this new candidate into the manager’s role, profits would increase. Furthermore, this candidate recently married into the family.
• You and the co-owners of the business wish to hire the new candidate, but you cannot afford to keep your manager if you do.

1. In your small groups, determine how your fictional business should handle terminating the current manager. Identify the legal issues that may arise upon termination of this long-term employee. Your goal is to minimize the risk—or to reduce the chance that a lawsuit will be brought against your business.

According to the statement of this assignment, the co-owners of the business wish to hire the new candidate. This implies that the cost and profit analysis for Le Petit was done, and it shows that it has a benefit for Le Petit. This means that the co-owners have taken into consideration the associated risks and the ways to address all decisions and risks around that.

It will be very difficult for Le Petit co-owners to find a vindictive cause to fire the manager. She has worked for many years, and she is doing a fine job. The real cause that triggers the events, theoretical better performance and potential new clients, it is not cause of firing the manager. Le Petit should adequately compensate the manager and an agreement between Le Petit and the manager could be the better way. To be sure about this agreement avoiding potential future claims, Le Petit should consult to a specialized lawyer.

The key issue to negotiate is the reasonable notice period and the amount of money that it represents. The test of reasonable notice is not how long it takes an individual to get a job once terminated, assuming reasonable efforts, as the employer is not fixed with all responsibility for the lack of employment opportunities. For a manager working for nine years, this period of time
could be extensive (*Ansari v. British Columbia Hydro and Power Authority*, 1986 CanLII 1023 (BC S.C.)). According to:
- Zimmermann v. Calgary District Hospital Group, 1994 CanLII 9083 (AB Q.B.)
- Carr v. Irecu Canada II Inc., 1991 CanLII 5849 (AB Q.B.)
- Loehle v. Purolator Courier Ltd., 2008 CanLII 30292 (ON S.C.)
- Michaud v. RBC Dominion Securities inc., 2001 BCSC 526 (CanLII)

[1]
The reasonable notice should be in between 2 and 9 months, considering similar and/or intra/extrapolation of age, employee on charge, responsibilities, etc.

In addition, Le Petit should consider the damage that the manager incur in other benefits (e.g. health plan, retirement, bonus, etc).

In spite of the legal and economic issue, this situation creates a negative environment at Le Petit in relationship with Le Petit and its employees. This has a hidden cost and some ethical concerns. The situation is not easy, what happen if the manager is hired only to establish the relationship with the new customers and then is fired; or Le Petit co-owners find other person with better contacts.

Previous to any decision, and supporting a better position in the negotiation process, Le Petit should find documentation that it shows that Le Petit
- has established an open communication since the manager joins Le Petit;
- has helped the manager understanding the strategic goals of the company;
- has conducted and communicated specific performance expectations;
- has created in conjunction with the manager a periodic articulated performance goals;
- has checked with the manager her progress toward meeting their goals;
- has set goals for the coming periods;
- has provided opportunities of improvement in her skills as part of the professional development plan;
- has used only legitimate business reasons for all decisions related to the terms and conditions of employment;
- has created clearly articulated at-will employment policies;
- has included a disclaimer in the manager handbook that Le Petit reserves the right to change, amend, and terminate HR policies at the company's discretion, but the at-will policy will never be changed;
- has required to the manager to sign an acknowledgment of receipt of the HR policies;
- has established a performance management process that encourages ongoing performance conversations between supervisors and employees throughout the year and hold your supervisors responsible in this regard.
- has developed an interactive training for supervisors regarding at-will employment, discipline, and the performance-management process.
- has trained managers about workplace laws, how those laws impact their daily relationships with employees.
Le Petit should consider as baseline for this agreement compensation according to the law. This represents to take into consideration many topics (considering that the signed contract has not any interference with the following topics). Le Petit at least should consider in the Employment Standards Code, (2000) [1] (and to read carefully Employment Standards Regulation [2]):

a. s.9 Termination of employment by employer - payment of earnings; it states the general responsibilities from the employer under termination of employment.
b. s.10 Termination of employment by employee - payment of earnings; it states the timing for payment to the employee.
c. s.42 Vacation pay on termination of employment; it states general responsibilities from the employer under termination of employment related with vacation.
d. s.52 Termination of employment prohibited during maternity leave and parental leave; it states the protection of the employee under maternity leave and parental leave.
e. s.54 Termination of employment; general condition for termination.
f. s.55 Options for employer to terminate employment; it states the termination options that Le Petit has:
   (1) Unless subsection (2) applies, an employer may terminate the employment of an employee only by giving the employee
       (a) a termination notice under section 56,
       (b) termination pay under section 57(1), or
       (c) a combination of termination notice and termination pay under section 57(2).
   (2) Termination notice is not required
       (a) to terminate the employment of an employee for just cause,
       (b) when an employee has been employed by the employer for 3 months or less,
       (c) when the employee is employed for a definite term or task for a period not exceeding 12 months on completion of which the employment terminates,
       (d) when the employee is laid off after refusing an offer by the employer of reasonable alternative work,
       (e) if the employee refuses work made available through a seniority system,
       (f) if the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee’s place of employment,
       (g) when the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer,
       (h) if the contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer,
       (i) if the employee is employed on a seasonal basis and on the completion of the season the employee’s employment is terminated, or
       (j) when employment ends in the circumstances described in sections 62 to 64.
g. s.56 Employer’s termination notice; it states the termination notice:
   To terminate employment an employer must give an employee written termination notice of at least
       (a) one week, if the employee has been employed by the employer for more than 3 months but less than 2 years,
(b) 2 weeks, if the employee has been employed by the employer for 2 years or more but less than 4 years,
(c) 4 weeks, if the employee has been employed by the employer for 4 years or more but less than 6 years,
(d) 5 weeks, if the employee has been employed by the employer for 6 years or more but less than 8 years,
(e) 6 weeks, if the employee has been employed by the employer for 8 years or more but less than 10 years, or
(f) 8 weeks, if the employee has been employed by the employer for 10 years or more.

h. s.57 Termination pay; it states the payment.
   (1) Instead of giving a termination notice, an employer may pay an employee termination pay of an amount at least equal to the wages the employee would have earned if the employee had worked the regular hours of work for the applicable termination notice period.
   (2) An employer may give an employee a combination of termination pay and termination notice, in which case the termination pay must be at least equal to the wages the employee would have earned for the applicable termination notice period that is not covered by the notice.
   (3) If the wages of an employee vary from one pay period to another, the average of the employee’s wages for the 3-month period immediately preceding the date of termination of employment is to be used to determine the employee’s termination pay.

Works Consulted
