

Here's Why We Tell You to Continue LTD After Termination...

WHAT'S NEW AT RUBIN THOMLINSON LLP

- ◆ Limited space still remains for our two-day "Respect at Work" training session on January 19/20, 2006. This package consists of a day of Human Rights/Harassment training, and a day of Workplace Investigation training.
- ◆ Read "Employment Law 101", a weekly column appearing Wednesdays in *Metro News*, by Rubin Thomlinson LLP employment lawyer, Daniel A. Lublin.
- ◆ Join Christine M. Thomlinson on the morning of January 31, 2006, for a year in review of the top "Just Cause" cases of 2005. Stay tuned for invitations via e-mail.

We work with our clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

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In a recent decision involving one of Stelco's associated companies, the employer was found liable for an award in excess of \$350,000, the majority of which was attributed to losses suffered by Deborah Held when she was fired and her long-term disability ("LTD") benefits were discontinued. Ms. Held was a plant security guard with 17 years of service who was fired because of her absenteeism. She was offered 9 months' pay in lieu of notice on dismissal, which she refused, choosing instead to sue for wrongful dismissal. The trial judge awarded her 12 months. However, within this period of time, Ms. Held became totally disabled from working. Because Stelco had discontinued her disability benefits after termination, Ms. Held could not apply for and received no LTD benefits. When the court assessed the damages that flowed from her wrongful dismissal, specific consideration was given to the employer's discontinuation of LTD coverage.

Reasons for Decision

Specifically, the trial judge found that, had Ms. Held been working during the notice period, she would have qualified for short-term disability, and thereafter LTD benefits. Although Stelco was insured by Sun Life for LTD, the court found there to be no basis for a claim as against Sun Life. Since Stelco had breached the employment contract by failing to provide Ms. Held with proper pay in lieu of notice on dismissal, the award was properly issued as against Stelco. Ms. Held received damages for those LTD benefits lost up to the date of trial as well as compensation for future benefits.

Here's Why We Tell You to Continue LTD After Termination... (Cont.)

DID YOU KNOW?

- Most employees who work in the retail sector may **refuse** to work on a prescribed statutory holiday (this includes Boxing Day!). Even if an employee had originally agreed to work on any of these days, they may still give their employer **48 hours advance notice** of cancellation prior to the first scheduled hour to be worked.
- This right of refusal does *not* apply to workers that:
 - Sell prepared meals (restaurants, cafés, etc.)
 - Rent living accommodations (hotels, etc.)
 - Provide educational / recreational services to the public (museums, sports stadiums, etc.)
 - Sell goods and services that are incidental and located on the same premises as the businesses above (museum gift shops, etc.)
- Source: Ontario Ministry of Labour

What Does this Mean for Employers?

- Employers who discontinue disability benefits during the notice period run the risk of being placed into the shoes of their insurers if a dismissed employee becomes disabled during this period. Ideally, if an employee has not agreed to a severance package and signed a release, disability benefits should, if at all possible, be continued to minimize legal liability.
- Not all third party insurers will continue disability benefits beyond the date of dismissal. In such cases, consider instead sourcing alternate coverage and assuming the cost for the dismissed employee.
- If alternate coverage cannot be found, at a minimum, consider offering the employee a lump-sum of money designated for the purpose of allowing the employee to source their own replacement disability coverage. If the employee takes no steps in this regard, it might be possible to argue that the employee has not taken reasonable steps to mitigate his or her losses flowing from the dismissal.
- If you are aware that the employee has health issues or is at higher risk of becoming disabled during the notice period, extra care should be taken to minimize risk and protect the employee.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.