INSIGHTS

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ISSUED QUARTERLY

IN THIS ISSUE...

If you have ever worked with your employment lawyer to prepare a severance package for one of your employees, then you have probably had a discussion about disability, and specifically the risks associated with deciding not to continue an employee's disability coverage throughout the notice period. The dangers associated with such a decision were highlighted in a decision released last year involving Canac Kitchens (a division of Kohler Canada Co.) and Luis Romero Olguin.

PLEASE NOTE

Not all providers of Long Term Disability coverage are willing to extend disability coverage beyond the Statutory Notice Period. Please check with your LTD carrier while preparing any severance coverage to see if they will continue coverage. This commentary reflects the opinion of its author(s) and in no way constitutes official or unofficial policy of RWAM or any affiliate.

An Employer's Worst Nightmare

Mr. Olguin started working for Canac in 1979 following his emigration from Chile. In 2003, he was dismissed without cause after 24 years of service and at the age of 55 because of a restructuring. At the time, he was a team leader, earning around $70,000. By way of severance, he was paid only the minimum amounts to which he was entitled under the applicable employment standards legislation and all of his benefits were discontinued after eight weeks, (the minimum period required by statute). Although Mr. Olguin found another job relatively quickly, it was at a rate significantly less than what he had been earning at Canac. Several months later, Mr. Olguin was diagnosed with cancer.

Based on his age, length of service, position and compensation, the trial judge fixed the notice period at 22 months and confirmed that Mr. Olguin was entitled to be "made whole" for this period of time. Damages were assessed by calculating the salary that Canac would have paid Mr. Olguin had he worked through this period and then deducting Mr. Olguin's earnings in new employment. However, the real damages lay in the disability benefits to which Mr. Olguin claimed he would have been entitled had his long-term disability benefits been continued by Canac throughout the notice period.

Mr. Olguin underwent treatment and surgery for his cancer but was found to be disabled under the policy by the trial judge for the balance of the notice period and beyond. He was awarded damages for the loss of the benefits throughout this full period of disability and, unlike a typical severance award which ends at the conclusion of the notice period, these damages continued until the period of disability ended, which was almost two years after the conclusion of the notice period.

The Canac decision was decided last year by the late Mr. Justice Echlin. However, the decision was appealed and the Court of Appeal recently released its decision, upholding the award of disability benefits.

What does this mean for employers?

1. You take a "gamble" if you discontinue LTD during the notice period.

The trial judge in Canac specifically found that the employer had lost this "gamble". An employer is best insulated from a claim like Canac where it can continue LTD coverage for its employee as part of the severance package. It is worth checking with your LTD carrier to see if this option is available when preparing a severance package, especially with those employees who are at highest risk, such as older employees or those who have suffered from some form of illness and/or disability in the past.

2. Check the language in your release.

To be most effective against a claim for lost disability benefits, an employer's release will need to make

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Changes to Taxability of Employer Contributions Effective January 1, 2013

In March of 2012 the Federal Government announced that effective January 1, 2013, employer-paid premiums for Accidental Death & Dismemberment (AD&D) and Critical Illness (CI) for group insurance plans will become a taxable benefit in the hands of employees for federal income tax purposes.

This is similar to how employer contributions to group Life and Dependent Life insurance premiums are currently handled. They are considered a taxable benefit in the hands of employees.

Payroll systems may need to be revised to accommodate this change in tax legislation. Since each employer has their own employee/employer cost-sharing formula, employers will need to review the formula to ensure that it complies with the new legislation.

Please note that premium and applicable tax billed and paid for the 2013 fiscal year for AD&D and/or CI (if included in your group plan) will be included in the RWAM summary for T4 purposes sent to all RWAM clients each year with their December billing statement, commencing November, 2013.

If you have any questions please contact your group insurance advisor or RWAM.

Premium Summary for Life & Dependent Life Benefits

A summary has been sent to each group outlining the monthly volume of employee life insurance and the associated premiums. The monthly premium includes dependent life premium (if applicable to your group).

The employee's individual total premium includes any applicable taxes.

According to the Income Tax Act, any portion of this total that is employer paid is considered a taxable benefit and should be reflected as such on each employee's T-4.

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specific reference to these benefits so that it is clear to the employee that, in signing the release and accepting the severance package, he or she is waiving any rights to later bring a claim for disability benefits.

3. Hoping the employee will obtain replacement LTD coverage is not enough.

In this case, Canac argued that Mr. Olguin failed to mitigate his damages since he made no efforts to secure replacement LTD coverage. The argument was rejected outright by the trial judge and this finding was upheld on appeal. Both levels of court affirmed that it is the employer's obligation to establish a failure to mitigate and since Canac had no evidence which showed that Mr. Olguin could have obtained replacement coverage elsewhere, this argument failed.

4. In appropriate cases, consider offering some money in a severance package to offset the cost of obtaining replacement LTD coverage.

If existing LTD coverage cannot be continued, consider offering the employee some money to secure replacement coverage. This, in addition to a release that references disability specifically, will provide an employer with the best protection against a future claim for lost disability benefits.

Until next time...

Source: From Employers' Alert by Christine Thomlinson, www.rubinthomlinson.com (416) 847-1814. Reprinted with permission. Rubin Thomlinson LLP is a Toronto-based employment law firm that focuses on providing employers and employees with optimal legal solutions to their challenging workplace issues. They also act as workplace investigators and offer comprehensive workplace investigation training for human resources professionals.

1two3 Small Group Program Renewal 2013

Plan Changes and Summary

RWAM's 1two3 group insurance product currently insures over eleven hundred people, representing more than 765 businesses throughout Canada. This year we welcomed 90 new members/groups to the 1two3 product. Over the past year $1.4 million was paid for Health and Dental claims.

Mandatory Benefits

Life Insurance, Dependent Life, AD&D, Extended Health Care & Out-of-Canada

All Eligible Employees

Single Coverage	$ 81.95 /month
Family Coverage	$175.60 /month
Exempt Coverage	$ 16.00 /month

Optional Benefits

Dental

All Eligible Employees

Single Coverage	$ 47.00 /month
Family Coverage	$115.75 /month

Long Term Disability

Some occupations are not eligible for LTD coverage due to the nature of the risk.

All Eligible Employees $ 2.65/$100 of benefit

The following rates will be changing for 2013:

- Your Life insurance rate will have a slight increase from 0.46 to 0.48 per $1,000 of coverage. This translates into a premium increase of $0.50 per month.
- We are pleased to advise that the Extended Health Care and Long Term Disability rates will be held at 2012 levels for this year.
- Your Dental rates have increased due to utilization trends, resulting in a 5% increase.
- The Out of Province/Canada rate was increased by 10% for all RWAM clients.