

# How Trump's proposed tariffs will affect executive employment contracts | Frank Portman

By **Frank Portman**

Law360 Canada (February 26, 2025, 9:53 AM EST) -- The recent threats by the Trump administration of tariffs against Canadian goods, and the recent imposition of global tariffs against American aluminum and steel imports, have caused great consternation on both sides of the border. By some estimates, in a worst-case scenario tariffs could cost over 600,000 Canadian jobs and devastate the economy generally, according to the Feb. 3 *Globe and Mail* article by Vanmalla Subramanian titled "Tariffs would lead to job losses in auto and resource sectors, economists predict."

Tariffs could have significant impacts on employee rights and obligations. Employers will have to take measures to adapt to this uncertain economic landscape, and yet established employment law principles restrict how far employers can go.



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As an executive employment lawyer, I thought there would be wisdom in discussing how Canadian executives and their respective executive employment contracts might be affected by Trump's tariffs.

## 1. Tariffs can impact variable compensation

Although not directly, it is valid for employers to reduce or even eliminate discretionary variable compensation, such as bonuses, as a response to incoming tariffs.

Most bonuses in Canadian employment relationships are discretionary. This is by design to permit employers to react to changes in profitability such as the tariffs represent. When tariffs increase the cost of imported materials, companies may face higher production costs, resulting in reduced profits. Consequently, employees' bonuses, which are usually based on the company's financial health, may be adversely impacted.

Most non-discretionary bonuses in Canadian employment are commission-based, meaning that they are calculated as a portion of some type of sale or profit for which the employee is responsible. Both sales and profits are likely to be impacted by the tariffs, though not as directly. In the absence of particular language, an employer is going to be unlikely to change the structure of a commission plan that is clearly established through an executive employment contract. That is to say, the tariffs are unlikely to change the calculation of the commission.

However, in those circumstances, the total payable amount of commissions is likely to go down simply because there are likely to be fewer sales, particularly to American customers. This is going to result in a lower pool of profits within which the commissioned employee can participate.

It is also unlikely that employers will be able to modify equity grants, such as option vesting schedules, in response to the tariffs, without an explicit provision in their executive employment contract permitting them to do so.

Employers and executives must understand what flexibility is permitted in their executive employment contracts before implementing or accepting any change in variable compensation.

## 2. Tariffs cannot give rise to 'just cause' dismissals

The ugly truth is that the imposition of significant tariffs is almost certain to lead to job losses. This is inevitable. In many cases, employers may have no choice but to reduce their workforce to lower operating costs.

Employees who are dismissed as a result of this, however, are legally considered to be dismissed "without cause" and are entitled to whatever notice, contractual or common law, that their employment entitles them to.

While the words "just cause" are often colloquially interpreted as meaning "for good reason", that is not correct. "Just cause" only arises due to employee actions. An employer's impetus for a dismissal, no matter how reasonable, necessary, or good faith, cannot be just cause.

### **3. Tariffs cannot reduce the severance payable to dismissed employees — even executives**

Importantly, as executive employment lawyer, I am advising clients this: Not only can tariffs not result in just cause for termination, they also cannot be used to pay a shorter notice period.

Ontario courts have consistently held that financial difficulties do not justify terminating an employee without proper notice or severance pay (*Michela v. St. Thomas of Villanova Catholic School*, 2015 ONCA 801). This would include financial difficulties caused by tariffs. Common law reasonable notice is assessed solely in relation to the employee, not the employer.

What does this mean? An employee who is dismissed solely as a response to tariffs will be entitled to no less notice than an employee who is dismissed without cause during a booming economy.

Employers have to consider whether dismissals in response to tariffs are the best measure to address losses in revenue, given that they could require the payment of significant accrued severance and notice. Likewise, executive employees should know that, no matter how defensible they may perceive an employer's decision to dismiss them, it will not reduce the severance they are owed.

### **4. Tariffs can increase a notice period**

While the impact of tariffs cannot reduce a notice period, they could extend the notice period.

This is because tariffs could create a much more difficult employment market for employees dismissed during their operation. Obviously, this would make it more difficult for such dismissed employees to find alternative employment, which can result in longer notice periods.

It has long been accepted that "Economic factors such as a downturn in the economy or in a particular industry or sector of the economy that indicate that an employee may have difficulty finding another position may justify a longer notice period," according to *Yee v. Hudson's Bay Company*, 2021 ONSC 387 at para 21. In essence, the common law period attempts to roughly mimic the time it ought to take the employee to obtain new employment.

Any employee dismissed as a response to tariffs will be forced into a job search while the economy attempts to absorb at minimum the threat of tariffs, if not the tariffs themselves. This could very well lead to the type of extended notice periods that arose during the COVID-19 pandemic.

While it is difficult to predict and therefore mitigate against tariffs, there is merit in having an experienced executive employment lawyer draft and review your executive employment contract to ensure your entitlements are protected.

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