

Torys on Pension and Employment

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Is Notice Enough? Changing a Fundamental Term of Employment in Ontario

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In *Wronko v. Western Inventory Service Ltd.*,¹ the Ontario Court of Appeal held that an employer cannot unilaterally change a fundamental term of employment if the employee refuses to accept the proposed change – even if the employer provides reasonable notice of the change. This decision restricts the ability of companies to change pension and benefit plan terms and other terms of employment.

Darrell Wronko was employed by Western Inventory Service Ltd. under an agreement that entitled him to two years' salary on termination of employment. Western proposed a new agreement that reduced Wronko's termination entitlement. Wronko rejected the new agreement. Western then gave Wronko notice that the new agreement would take effect in two years. Wronko continued to work for Western during the two-year notice period and continued to reject the new agreement. After the notice period ended, Western told Wronko that the new agreement had come into effect and that if he did not accept it, his employment would be terminated. Wronko brought a claim for wrongful dismissal.

Implementing a Change to a Fundamental Term of Employment

Employers should now consider the following when making changes to terms of employment:

1. Seek legal advice before making any changes to employment terms that could be fundamental.
2. Give reasonable written notice of a change to terms of employment whether the terms of employment are oral or written and whether they are in an agreement or a pension or benefit plan.

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3. Carefully consider whether to seek express consent to the change or to rely on the employee's acquiescence. Express consent provides certainty and comfort to the employer, but it also provides an opportunity for an employee to reject the change. Even a failure to sign back a consent could be interpreted by the courts as a rejection of the change.
4. Since an employee who rejects a change to a fundamental term of employment may not be subject to the change, consider giving the employee notice of termination (or payment in lieu) and, if desired, re-hire the employee on the new terms. ¹

¹ [2008] O.J. No. 1589 (Ont. C.A.).