

# EMPLOYMENT ALERT!

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## FEDERALLY REGULATED EMPLOYERS CAN NOW DISMISS EMPLOYEES 'WITHOUT CAUSE'

In a momentous decision that overturns 35 years of arbitral case law, the Federal Court has just confirmed the right of Federally regulated employers, including private sector companies and crown corporations, to dismiss their non-unionized employees on a 'without cause' basis. Such a right has long been availed to Provincially regulated employers.

### Background

Until now, the majority of arbitrators held that Federal employers, who are subject to Part III of the *Canada Labour Code* ("**CLC**"), could only terminate their employees for "just cause". It was a generally held view that, when Parliament introduced the *CLC*'s dismissal legislation in 1978, the intent was to provide non-unionized employees with the same protection given to their unionized counterparts.

### The Law

In *Atomic Energy of Canada Limited v. Wilson* (T-1531-12) (02 July 2013)\*, the Court, in its judicial review of one such arbitral award, quashed this notion and expressly stated that "there is no basis for concluding that the *CLC* only permits dismissals for cause". This is particularly so in light of the express provisions in the legislation that permit employers to dismiss employees in the absence of 'just cause' simply by providing them with appropriate notice (or termination pay in lieu thereof) and severance pay. The Court further stated that, had Parliament intended to create a legislative regime under which employers could only dismiss employees for cause, it would have expressly provided for it as it has done in other Federal legislation.

The decision also clarifies that, where an employee has been provided with a severance package and the adjudicator considers it to be 'unjust', the adjudicator can exercise his or her broad remedial powers to grant the employee further relief as may be appropriate in the circumstances.

### The Decision's Impact on Employers

- Federal employers no longer have to wait until they have "just cause" to dismiss an employee, such as on the basis of misconduct, incompetence or permanent incapacity. They can now terminate employees on a 'without cause' basis by providing them with termination and severance pay;
- Where an employee views his or her severance package to be "unjust" and files a complaint under the *CLC*, the employer will have to demonstrate the 'justness' of the package;
- Employers cannot dismiss employees contrary to legislation (such as on a prohibited ground pursuant to the *Canadian Human Rights Act*) under the guise of having terminated the employees on a 'without cause' basis. Where such a breach is found to have occurred, adjudicators may exercise their broad remedial powers, including making orders for reinstatement and/or awards for aggravated and/or punitive damages.

\*The Respondent has until 30 September 2013 to appeal this decision.



Ronald Snyder, who successfully argued this case on behalf of AECL, is the author of the annually updated and regularly cited treatise, *The Annotated Canada Labour Code, 2013* (Carswell) and is a certified specialist in Labour Law by the Law Society of Upper Canada.

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