



*Dawn Carney, Solicitor  
B. Corp. Law, LL.B., Dip. Emp. Law*

## LAY OFF AND SHORT TIME

A lay-off or a short-time situation generally occurs where, due to a temporary downturn in business, an employer decides that it is necessary to reduce costs in the short-term until business increases again. In order to achieve this, an employer seeks to either lay off its employees or place them on short time. The key issue is that such arrangement is expected to be a short term arrangement.

### *When does a Lay-Off situation arise?*

A Lay-Off situation arises where the services of an employee are suspended as there is no work available. This only arises where an employer expects that the cessation of work will be of a temporary nature. An employer must give notice to their employee beforehand that the break in employment is of a temporary nature.

### *When does a Short-time situation arise?*

A Short-time situation arises when an employer reduces an employee's earnings to less than half the normal week's earnings or reduces the number of hours of work to less than half the normal weekly hours because he/she has less work available for an employee than is normal. Again, this must be a temporary situation and an employer must notify their employee before the reduction starts.

### *Does an employer have a legal entitlement to implement lay-offs or short-time arrangements?*

An employer does not have an automatic entitlement to implement lay-offs or short-time arrangements. Such entitlement should be specifically reserved in an employee's contract of employment. If there is no such right reserved in the employment contract then an employer does not have a legal entitlement to implement such arrangements. Furthermore, unless a contract of employment specifically provides that an employee will not be paid during such temporary lay-off/short-time periods then an employer has no legal entitlement to reduce an employee's pay during such periods. It is imperative, therefore that an employer consult the employment contract before taking any steps to implement lay-offs or short-time arrangements.

Where an employer finds that such rights have not been reserved then it could still seek to implement these actions by agreement with the employees. Such arrangements may be acceptable to employees as the alternative would be an immediate redundancy situation.

***How does an employer decide which employees should be selected for lay-off/short-time?***

When selecting which employees to place on short-time/lay off an employer should apply the standard of selection criteria as for redundancy situations. Such criteria should be reasonable and applied in a fair manner. He/she should have objective reasons for selecting particular roles and employees for lay-off/short-time. Such criteria for selection may be based on 'Last-in/First-out' or may be based on identifying roles within the business which can achieve effective cost-cutting measures while still allowing the business to continue to operate. An employer should explain the selection criteria to employees for the lay-off/short-time in particular divisions of the business and ensure that employees are at all times fully informed.

***Can an employee claim redundancy if they are placed on continued lay-off/short-time?***

Where an employee has been laid off or kept on short-time or a mixture of both either for four consecutive weeks or for a broken series of six weeks where all six weeks occur within a 13 week period then they can give their employer notice that they intend to claim redundancy. Such notice should be in writing (e.g. via RP9 Form) and should be given to the employer no later than four weeks after the period of lay-off/short-time has ended. Unless an employee receives a counter-notice from their employer they will be entitled to a redundancy payment provided they are eligible for redundancy. In such circumstances an employee will be deemed to have left their employment and so will not be entitled to statutory notice. An employer can give their employee a counter-notice within seven days of the receipt of the notice where he/she is in a position to offer that employee not less than 13 week's work without lay-off or short-time within four weeks of the date of the initial claim for redundancy. Ultimately, if the employer is unable to meet this commitment, then the employee's claim for redundancy will succeed.

Where an employee was put on short time and is then subsequently made redundant their redundancy payment should be based on a full week's gross wage and not the reduced wage which applied while they were on short-time.