

Terminated Employee Receives 26 Years of LTD Benefits from Former Employer

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A recent Saskatchewan case illustrates the significant liabilities that can arise when an employee becomes disabled during their common law notice period. Mr. Pasap was a former maintenance manager with the Saskatchewan Indian Gaming Authority (SIGA) who worked at its casino. In 2012, SIGA said it began to have concerns about Mr. Pasap's attendance and performance. Mr. Pasap was called into a meeting with his manager. The events of that meeting were disputed in the litigation but the Saskatchewan Court of the Queen's Bench (as it then was) accepted Mr. Pasap's evidence that he was told in that meeting that he had to resign or he would be fired. The Court held that this was an ultimatum that amounted to termination and, as such, Mr. Pasap was terminated without cause. At the time of his termination, Mr. Pasap was 38 years old, had five years of service and was in a supervisory maintenance role requiring him to oversee approximately 15 SIGA employees. The Court held that he was entitled to eight months of reasonable notice of termination.

While the notice period is somewhat generous given Mr. Pasap's youth and relatively short service with SIGA, what made this case most notable is what happened during Mr. Pasap's eight month notice period. Not only did Mr. Pasap not obtain new employment, but four months after his termination date, Mr. Pasap suffered a catastrophic medical event that resulted in a permanent disability. At the time of this medical event, Mr. Pasap did not have any disability insurance coverage. Mr. Pasap argued that he was entitled to be compensated for the value of all lost compensation and benefits during the notice period, including the value of the lost Long Term Disability insurance coverage he had received as part of his SIGA benefits package. The Court agreed. Since Mr. Pasap had become totally disabled within the meaning of SIGA's disability benefits plan terms and was expected to remain so until he turned 65 years old, he was entitled to the value of the lost LTD benefits over the entire 26 year period of total disability. This amounted to just over \$1.2 million, minus approximately \$66,000 for miscellaneous income Mr. Pasap was able to earn while disabled. He also received damages in lieu of eight months of notice on top of the award for lost disability benefits and a further \$25,000 for bad faith on the part of SIGA.

This case is a dramatic illustration of how our courts will allocate risk in cases where a disputed termination leaves an employee without disability coverage and they subsequently suffer a disabling illness or injury. Had this been a straightforward termination without cause, SIGA may have been able to rely on an enforceable termination provision in an employment agreement to establish that it had no obligation to continue benefits during any common law notice period. However, since SIGA had taken the position that Mr. Pasap had resigned from his employment, they did not take any steps to treat the departure as a without

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cause termination. This outcome may be a helpful reminder to employers of the potential advantages of extending certain termination entitlements on a without prejudice basis even if they want to maintain a legal argument that the employee has resigned or was terminated for cause.

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