

Global Payroll Now Applies to Severance Pay Calculations in Ontario

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The world is shrinking, and the cost to multinational employers may have grown because of it.

In ***Hawkes v. Max Aicher (North America) Ltd., 2021 ONSC 4290*** ("Hawkes"), Mr. Hawkes was originally denied severance pay because the Ontario Labour Relations Board ("OLRB") found that his former employer, Max Aicher, had a payroll of just under \$2.5 million in Ontario.

This OLRB's finding effectively ended Mr. Hawkes' entitlement to severance because, under the *Employments Standard Act, 2000* ("ESA"), severance pay is only payable if (a) the employee has been employed with the employer for more than five years, and (b) the employer has payroll obligations in excess of \$2.5 million per year.

On appeal before the Divisional Court, Mr. Hawkes argued that the OLRB had made an error of law by only looking at payroll in Ontario. Instead, he reasoned that when considering whether an employer has a payroll of over \$2.5 million per year, the ESA requires a global assessment of the employer's payroll. The Court agreed, finding that given the purpose of the ESA, the ambiguity in the legislation had to be resolved in the favor of Mr. Hawkes.

Going forward, this decision will impact any employer with operations outside of Ontario because they will have to assess their entire global payroll in considering whether severance is payable to an employee under the ESA. In fact, employers may have to go a step further and consider subsidiary companies in their payroll calculations, as was the case in this decision.

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. We strongly recommend that you contact your Miller Canfield lawyer with your specific questions in regards to this change in the law so that those questions can be addressed properly with you.