



# Incentive Plans and the Departed Employee

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# The Buck Stops Here: The Problem

- Terminated employees (including those that “resign”) make claims for bonuses and other incentive pay.
- Courts traditionally award damages for all losses arising from an employer’s failure to give proper notice.



- Specifically courts typically include all pay and perquisites that an employee would have earned during notice period (group benefits, disability, bonus, LTIP, etc.).

- In particular, with proper wording in place employers can limit claim for hours and other incentive pay – including bonuses not yet paid.
- Recent case law from Alberta, Ontario & Nova Scotia confirm that employers can limit such claims.

- Courts will look at the intention of the parties as evidenced through the plain & ordinary meaning of the language used in the various plans.
- This is a departure from previous court decision, which would go out of their way to ignore limitations in plans.
- This approach is consistent with rules of contractual interpretation.

# What does this mean for you?

- You can draft plans that limit entitlements on departures.
- No longer will you have to pay out bonuses or other incentive pay to employees who are terminated or who may resign and move to a competitor.

# Recommendations

- Use clear language.
- The wording of the agreement/plan is key.
- Wording should remove any claim for damages whether dismissed with or without cause or “for any reason”.

- Make sure the bonus of other incentive plan is in writing.
- Take steps to bring the plan to the employee's attention.
- Use wording that explicitly precedes recovery even if employee is wrongfully dismissed and in relation to any notice period.
- Use “fail safe” language that limits or forfeits payment to minimum employment standards.



- Be precise on when an employee becomes ineligible (i.e. date of notice of termination) and limit any discretion.





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