



# No Double Dipping: Employees Receiving Disability Benefits During a Notice Period Cannot Receive Compensation for Lost Wages

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Sheena L. Owens, Maja Zdravkovic

**Court of Queen’s Bench of Alberta affirms that employees receiving disability payments during the reasonable notice period cannot also receive payment for lost wages: *Belanger v. Western Ventilation Products Ltd.*, [2019 ABQB 571](#)**

The Court of Queen’s Bench of Alberta recently rendered a decision affirming that employees receiving disability payments during the reasonable notice period cannot receive double compensation for both disability payments and payments for lost wages. The decision is based on the principle that employees are entitled to damages based upon the amounts that they would have been entitled to receive during the notice period. Since employees receiving disability benefits would not be working, and therefore would not collect salary, they cannot be awarded both salary payments and disability payments in a wrongful dismissal claim.

## Facts

Mr. Belanger was terminated without cause from his employment with Western Ventilation Products Ltd. (“Western”). He was provided with approximately one year of working notice and continued benefits for at least two years from termination. During the working notice period Mr. Belanger became ill, was unable to work, and started receiving disability benefits through Western’s disability plan. Mr. Belanger was 64 years old at the time of the claim, and pursuant to the benefit plan, he was entitled to receive disability benefits until age 65, at which time the disability insurance payments terminated.

Mr. Belanger brought a claim for wrongful dismissal and sought a 24 month severance payment. Western sought summary dismissal based on the fact that Mr. Belanger would not have been able to work during any notice period, regardless of its length. As such the only payments he would have received during a 24 month notice period would have been the disability insurance payments until age 65. Since he was already being paid disability insurance payments until age 65, no further compensation was necessary.

## Decision

A Master in Chambers dismissed Mr. Belanger’s claim on the basis that there were no damages arising from the termination. Employees are entitled to damages based upon the amounts that they would have

been entitled to receive during the reasonable notice period. The foundational principle is that employees should be put in the same position that they would have been in but for the termination without reasonable notice.

In this case, the Master concluded that regardless of whether Mr. Belanger received 12 months or 24 months of working notice, he would have received disability benefits until the age of 65. Therefore, he was already in the same position he would have been in if he had received 24 months of working notice. The Master could not award payment of lost wages that would not have otherwise been received had Mr. Belanger not been terminated. The 12 months working notice period and continued disability benefits that Western had already provided placed Mr. Belanger in the same position he would have been in but for the termination without proper notice.

## Key Takeaways

The *Belanger* decision affirms that if an employee becomes disabled during the notice period, and starts receiving disability benefits, he or she cannot seek double compensation (both disability payments and payments to compensate for lost wages). However, employees will only be prevented from “double dipping” if they are actually receiving disability benefits. Therefore, employers should be careful about terminating disability benefits at the time of termination or during the reasonable notice period. This is especially true for older employees or those who have had prior health issues. If disability benefits are discontinued, and the employee becomes disabled during the reasonable notice period, the employer may be required to step into the shoes of the disability insurer. This means the employer may be on the hook for disability payments until the employee reaches the age of 65 (or such other age at which the disability benefits terminate pursuant to the terms of the disability plan in place). This can be an unexpected and costly surprise for employers. Such risk can be mitigated by continuing benefits during the reasonable notice period or providing a lump sum for payment in lieu of reasonable notice and securing a release that eliminates claims for lost benefits.

Each employee termination is unique and has its own facts. Prior to making any decisions to terminate employees, employers are encouraged to consult with experienced legal counsel to help mitigate their exposure to litigation and human rights claims.

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