An Employer's Right To Dismiss An Employee Is Not Absolute

Case Comment: Dufault v The Corporation of the Township of Ignance

In *Dufault v The Corporation of the Township of Ignance, 2024, ONSC 1029*, the court found that the plaintiff was wrongfully dismissed from her employment because a provision contained in her employment agreement allowed her employer to terminate her employment "at its sole discretion" and "at any time", in violation of the provisions of the *Employment Standards Act.*

Factual Background

On November 24, 2022, the employee entered into a fixed-term employment agreement with the Township in her role as Youth Engagement Coordinator until the end of 2024. Just over one year later, the employee's employment was terminated, effectively immediately, on a without cause basis.

The termination for cause provisions in the employee's contract stated as follows:

4.01 The Township may terminate this Agreement and terminate the Employee's employment at any time and without notice or pay in lieu of notice for cause […] ***upon the failure of the Employee to perform the services*** […]

The termination without cause provisions in the employee's contract stated as follows:

4.02 The Township may ***at its sole discretion*** and without cause, terminate this Agreement and the Employee's employment thereunder ***at any time*** upon giving to the Employee written notice […]

In relying on the termination provisions in the employment agreement, the employer paid the employee $2,884.61, representing two weeks' termination pay, plus benefits; the minimum requirements pursuant to the provisions of the *Employment Standards Act.*

The employee's position was that she should have been paid the amount of $157,071.57 being the balance of the term of her fixed-term agreement, less amounts already paid,

as the termination clause was unenforceable.

The Termination Clause is Unenforceable

The court held that the termination provisions were unenforceable, and that the plaintiff was to be paid full compensation until the end of her fixed-term employment agreement.

With respect to the for cause provisions, the court found that use of the wording "failure to perform services" enlarged the criteria for dismissal with cause. Terminating an employee for just cause must be for serious cases of wilful misconduct, disobedience, or wilful neglect. In light of the Ontario Court of Appeal's decision in *Waksdale v Swegon North America Inc*., the for cause termination provision was found unenforceable on the basis that it was overly broad and violated the regulations of the *Employment Standards Act*.

More importantly, the court also held that the without cause provisions were unenforceable because the employer was statutorily prohibited from terminating employees "at its sole discretion" and "at any time". The court found that the *Employment Standards Act* prohibits an employer from terminating an employee on the conclusion of an employee's leave pursuant to section 53 or in reprisal for attempting to exercise a right pursuant to section 74.

Even though the employer did not rely on the termination for cause provisions, the court found that the termination clauses of the employment contract in their entirety, contravened the *Employment Standards Act* and were found unenforceable.

What This Decision Means for Employers

The decision in *Dufault* reinforces the need to pay close attention to the language used in termination provisions contained in employment contracts. Employers should now also ensure that such clauses do not contain any language allowing the termination of the employment of employees "at any time" and "at its sole discretion" as such language will run the risk of being unenforceable due to lack of compliance with the provisions of the *Employment Standards Act.*

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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