

“At Any Time And For Any Reason” Termination Clause Found Enforceable



Over the past few years, Ontario law with respect to enforceability of termination provisions in employment contracts has evolved significantly. Both the Ontario Superior Court and the Court of Appeal have weighed in on, and dissected, the language contained in “for cause” and “without cause” termination provisions.

One of the most hotly contested aspects of termination provisions has been “at any time” language. Since 2020, and significantly in 2024, a few principles began to emerge from the case law regarding termination provisions:

- a “without cause” termination provision that purported to give the employer “sole discretion” to terminate an employee’s employment “at any time” may be unenforceable;¹
- an unenforceable “for cause” provision invalidates all termination provisions in an employment agreement, including the “without cause” provision;² and
- language stating that an employer will comply with the ESA does not automatically save a provision that otherwise contravenes the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the ESA).³

These decisions marked a significant shift in employment law and, arguably, ran contrary to prior decisions that upheld similar termination language. However, in *Li v. Wayfair Canada Inc.*,⁴ the Ontario Superior Court has recently upheld a termination provision with “at any time” language.

In *Li*, the plaintiff had been employed by Wayfair Canada Inc. (Wayfair) for just under nine months at the time his employment was terminated without cause. On termination, Wayfair paid the plaintiff one week of base salary and benefits. Wayfair relied on the following “without cause” termination provision in the plaintiff’s employment agreement:

*After your probationary period concludes, in the absence of Cause, the Company may terminate your employment **at any time and for any reason** by providing you with only the minimum statutory amount of written notice required by the ESA or by paying you the minimal amount of statutory termination pay in lieu of notice required by the ESA, or a combination of both, as well as paying statutory severance pay required by the ESA, providing benefits continuance for the requisite minimum statutory period under the ESA and all other outstanding entitlements, if any, owing under the*

ESA. [emphasis added]

The employment agreement also contained the following “with cause” termination provision and definition of “cause”:

The Company may terminate your employment at any time for Cause without notice, pay in lieu of notice, severance, benefits continuance or other compensation or damages of any kind, unless expressly required by the ESA in which case only the minimum statutory entitlements will be provided.

For all purposes in this letter, “Cause” means any willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the company that constitutes “cause” under the ESA.

The Court found that when read as a whole, the “for cause” provision was valid and enforceable as it clearly defined “cause” as the standard prescribed under the ESA.

With respect to the “without cause” provision, the Court found it persuasive that the clause “clearly and repeatedly indicates payments will be made as ‘required by’ or ‘under the ESA.’ ”

The Court went on to distinguish the termination provisions in Li’s employment agreement from the language that was found unenforceable in both the *Dufault* decision and the *Baker* decision. The Court noted that while the termination clause in *Dufault* contained the phrase “at any time,” the critical issue was that the wording in *Dufault* failed to provide for all types of wages such as vacation pay or sick days. The Court did not provide a discussion of why the *Baker* clause was distinguishable from Li’s. The Court also did not expressly address the “for any reason” language in Li’s “without cause” termination provision.

The Court instead focused on the “at any time” language and found it did not automatically render the “without cause” provision unenforceable. Since the provision complied with the requirements under the ESA, the Court held that the termination provisions were valid and enforceable. The Court dismissed the plaintiff’s claims for common law damages beyond the ESA minimum payment already provided.

It is worth noting that, if the termination provisions were unenforceable, the Court found the appropriate notice period would have been four months.

The *Li* decision provides very helpful guidance for employers that have been grappling with the use of “at any time” language in their termination provisions. This is the first decision following *Dufault* where a Court has upheld a termination clause with “at any time” language. This case highlights the Court’s willingness to read employment agreements as a whole and find termination clauses valid that comply with the provisions of applicable employment standards legislation. Properly drafted, a termination provision can effectively oust an employee’s common law entitlement to reasonable notice.

Footnotes

1. *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029, upheld on appeal (2024 ONCA 915) [Dufault] only on the basis that the “for cause” termination provision failed to comply with the ESA. See also *Baker v. Van Dolder’s Home Team Inc.*, 2025 ONSC 952 [Baker].

2. *Waksdale v. Swegon North America Inc.*, [2020 ONCA 391](#), followed by *Dufault v. The Corporation of the Township of Ignace*, 2024 ONCA 915, at para. 23.

3. *Campbell-Givons v. Humber River Hospital*, 2021 ONSC 6317.

4 *Li v. Wayfair Canada Inc.*, [2025 ONSC 2959](#) [Li].

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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