“Canadianizing” Employment Agreements And Challenges To Mitigation



Background

In the recent case of *Boyle v. Salesforce.com*, 2025 ONSC 2580, the Superior Court of Justice (the “Court”) discussed the enforceability of employment contracts containing references to “at will” employment from the defendant company’s American corporation. The Court also upheld the defendant’s challenge to the plaintiff’s mitigation efforts on the basis of a failure to produce a Notice of Assessment.

The plaintiff was employed by the defendant for approximately eight years when he was terminated as part of company-wide layoffs. At the time of his termination, the plaintiff was employed as a Senior Success Signature Engineer – Core and was 49 years old. The plaintiff’s employment contract contained a termination clause purporting to limit his entitlements on termination. However, the plaintiff argued that the employment contract did not comply with the *Employment Standards Act, 2000*(“*ESA*“) and was unenforceable.

“At Will” Employment Language

In a motion for summary judgment, the Court considered whether the plaintiff’s employment contract was enforceable and emphasized that employment agreements must be interpreted as a whole, rather than on a piecemeal basis. Significantly, the defendant’s “global employees handbook” (the “Handbook”) was attached to the contract, and the plaintiff was required to sign the Handbook when he accepted the employment offer. The Handbook contained language stating as follows:

The company is regulated by different local laws where it operates globally. If there is a conflict in these laws, you should consult the Company’s legal department to resolve the conflict appropriately. In general, local laws will apply.

Except for certain non-U.S. jurisdictions, the Company’s employment relationship with all of its employees is one of employment “at will,” which means that employment may be terminated by either the employee or the Company at anytime, with or without cause. If you are located outside of the U.S. and have an employment agreement, the terms of those agreements will prevail if there is any conflict with the policies in this handbook. However, all other policies will apply.

Additionally, directly above where the plaintiff was required to sign off on the

Handbook, it contained the following statement:

I understand that:

The policies in the Global Employee Handbook are not a contract and that my employment is "at will." This means that the Company or I can end my employment at any time with or without cause or advance notice.

The Company can change policies, procedures, or benefits at any time.

The Court found that, since the plaintiff was required to sign the Handbook prior to commencing employment, the references to "at will" employment in the handbook rendered the employment contract ambiguous. The plaintiff could not be expected to consult the defendant's legal department to seek clarification before starting employment or signing the employment agreement. As a result, the plaintiff's employment agreement was not compliant with the *ESA* and, therefore, unenforceable. Accordingly, the plaintiff was entitled to payment in lieu of common law reasonable notice.

Defendant's Challenge to Mitigation Efforts Upheld

After concluding that an 11-month notice period was appropriate in the circumstances, the defendant argued that the notice period ought to be reduced due to the plaintiff's failure to mitigate his damages. The defendant relied on the plaintiff's refusal to produce his Notice of Assessment during the mitigation period, and argued that the Court ought to draw an adverse inference regarding the plaintiff's actual income during the same.

The Court held that there was "no acceptable reason" to refuse production of the Notice of Assessment as it was a key document related to a significant issue in dispute. On this basis, the court drew an adverse inference from the refusal to produce the Notice of Assessment and reduced the reasonable notice period by 3 months.

Takeaways

Boyle v. Salesforce.com is a helpful caution and reminder to U.S-based and other multi-jurisdiction companies to refrain from incorporating policies from other jurisdictions into a Canadian employment agreement, as doing so can render an employment agreement unenforceable even if the language at issue is not contained in the employment agreement itself.

Additionally, the decision highlights the importance of seeking full production from an employee during the notice period. If an employee fails to produce their Notice of Assessment, employers may be able to challenge their mitigation efforts.

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.

Author: Naomi Santesteban

Filion Wakely Thorup Angeletti LLP