

Glenn Commandments: Unenforceable Notice Limits Don't Invalidate Temporary Layoffs Clause



Firing employees can cost companies a fortune, especially when termination is without cause. In addition to minimum notice or wages in lieu under employment standards laws (“ESA notice”), wrongfully dismissed employees are also entitled to what’s called common law notice compensating them for the losses they suffer as a result of being terminated. While you can’t contract out of ESA notice requirements, employers often insert contract language purporting to waive an employee’s rights to common law notice, making ESA notice their sole remedy for wrongful termination.

However, [ESA notice limits](#) are extremely hard to enforce, and courts will seize upon the slightest ambiguity or irregularity to find them invalid. In so doing, they may strip away other, non-related provisions limiting an employer’s termination notice liabilities. However, there are indications that courts are coming to recognize that they’ve carried their anti-termination notice limits zeal too far.

Ontario High Court: Invalid Notice Limits Doesn't Invalidate Temporary Layoffs Clause

On September 3, 2026, Ontario’s highest court drew an important line by ruling that a properly drafted temporary layoff clause is distinct from a termination notice limits provision and remains enforceable even if those other termination limits in the contract are invalid. The case involved a constructively dismissed employee whose contract included a clause allowing the company to temporarily lay him off if it faced financial difficulties. And that’s just what happened.

The good news for the employee—or so he thought—is that the contract also included another provision limiting the employee’s termination notice to the *Employment Standards Act* (ESA) minimum if he was terminated without cause. As even the employer acknowledged, this latter clause ran afoul of the ESA and was thus unenforceable. The employee claimed that because the notice limits clause violated the ESA, all of the other termination provisions in the contract were also invalid, including the temporary layoff clause.

But the Court of Appeal disagreed, finding that the ESA notice limits and temporary layoffs clauses were distinct provisions and that the invalidity of the former didn’t

necessarily poison the latter. And unlike the notice limits clause, the temporary layoff clause did pass muster under the ESA and was thus enforceable. In addition to dismissing the appeal, the Court ordered the employee to pay the company \$10,000 in legal costs [[Taylor v. Salytics Inc.](#), 2026 ONCA 621 (CanLII), September 3, 2026].

Takeaway from *Taylor*

While ESA termination notice limits will remain difficult to enforce, *Taylor* is a significant case to the extent it signals that courts—at least in Ontario—won't lump them all together. Thus, clauses involving temporary layoffs and other ESA termination entitlements may yet survive even if the contract includes an ESA notice limits provision that's invalid. Although binding only in Ontario, the *Taylor* ruling might influence courts facing similar situations in other jurisdictions.

3 Steps to Take

Here are three things employers (especially but not just in Ontario) can do to take advantage of *Taylor* to shore up the enforceability of their own termination clauses:

1. Recognize that [temporarily laying off an employee will likely constitute constructive dismissal](#) unless the contract specifically authorizes temporary layoff.
2. Move temporary layoff clauses into a distinct section of the employment contract that's separate from the clause purporting to limit ESA termination notice rather than lumping them all together under a broad "Termination of Employment" section.
3. Ensure that the distinct clause complies with all [requirements governing temporary layoffs under the employment standards laws of your jurisdiction](#) so that it'll stand up to separate scrutiny to which courts will subject it.