

No Constructive Dismissal: Why A Contractual Lay-Off Provision Is Not A Termination Provision



In *Taylor v. Salytics Inc.*, 2025 ONSC 3461, the Ontario Superior Court of Justice concluded that a temporary lay-off provision in an employment contract is not a termination provision, and was therefore not invalidated by the other termination provisions in the contract. As such, when the employee was placed on a temporary lay-off, he was not constructively dismissed.

What Happened?

Prior to joining Salytics Inc. (the “Company”) in July 2013, the employee signed an employment contract. One of the sections in the contract was labelled “Termination” and contained the following clauses:

Termination

Salytics may terminate your employment at any time for cause.

Salytics may terminate your employment without cause at any time by providing you with the minimum notice, or pay in lieu of such notice, and any severance pay required by the Employment Standards Act, 2000 and no more except in the event a lay-off is required within the first six (6) months of your employment without cause, you will be entitled to continue receiving salary up to the end of this six month period.

In the event a temporary lay-off is ever required, it may be implemented in accordance with the requirements of the Employment Standards Act, 2000.

In April 2024, due to experiencing financial difficulties, the Company placed a number of employees on a temporary lay-off, including the employee. Several months later, the employee sued the Company, seeking a declaration that he was dismissed from his employment and seeking damages in lieu of 12 months’ notice.

In September 2024, the Company sent a recall notice to the employee for his return to work on a full-time basis. By the end of September 2024, the employee returned to work. The employee was therefore without income for a period of about six (6) months (though his benefits were continued throughout).

Both the Company and the employee agreed that the “for cause” termination language in the 2013 employment agreement was unenforceable. As such, all other termination provisions in the employment agreement were also void, in accordance with the Ontario Court of Appeal’s decision in [*Waksdale v. Swegon North America Inc., 2020 ONCA 391*](#).

In his lawsuit, the employee argued that the temporary lay-off provision in his employment contract was a termination provision that should also be declared void. The employee reasoned that the lay-off provision was tainted by the “for cause” termination provision which was void. As a result, the employee sought damages as he argued the temporary lay-off constituted a constructive dismissal.

The Company took the position that his temporary lay-off was expressly provided for in his 2013 contract of employment, and so did not constitute constructive dismissal. Since the contractual lay-off was not a constructive dismissal, it could not constitute a “termination provision” that should be invalidated.

What Did the Court Decide?

The Court determined that the primary question in this case was whether a temporary lay-off provision in an employment contract was ultimately a termination provision. The Court answered no.

At common law, an employer has no right to lay off an employee. Absent an express or implied term in an employment agreement to the contrary, a unilateral layoff (temporary or not) by an employer is a substantial change in the employee’s employment contract that constitutes constructive dismissal. However, the Court found that this principle does not make a lay-off provision in an employment contract a termination provision. A lay-off will be considered a termination only when there is no clause in the employment agreement permitting the employer to lay-off the employee. When there is such a clause, the lay-off is not a constructive dismissal, and therefore not a termination.

In coming to this conclusion, the Court also took note that the placement of the temporary lay-off provision in the employment agreement was irrelevant. The fact that it was under the heading “Termination” did not make it was a termination provision. What matters is the substance of the actual provision.

The Court also found that it was bound by the definitions in s. 56(4) of the ESA, which specifically provides that a temporary lay-off is not a termination.

The Court therefore found that the lay-off provision in the 2013 employment contract was not a termination provision, and was therefore not invalid. The employee was not constructively dismissed when he was temporarily laid off.

Key Takeaways

- Consistent with *Waksdale*, the placement of the lay-off provision under the heading “Termination” is not determinative of whether it is in fact a termination clause.
- Contractual lay-off provisions are not termination provisions and are generally enforceable, meaning a contractual lay-off does not amount to a constructive dismissal.

Of course, this decision could be subject to appeal, but it is too soon to tell at the time of writing whether the case will be followed or not. Also, the Court explicitly noted that no argument was made that the lay-off provision in the employment contract was in itself inconsistent with the ESA, so this question could

be argued in the future.

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: [Jasmine Law](#)

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