Ontario Court Confirms Temporary Lay-Off Clause Is Distinct From Termination Clause

In *Taylor v Salytics Inc.*, 2025 ONSC 3461 (*Taylor*), the Ontario Superior Court of Justice emphasized the importance of a substance-over-form analysis in the interpretation of employment agreements, concluding that a temporary lay-off provision in an employment agreement was not a termination provision and so, the validity of the lay-off provision is independent of the validity of the termination provision.

The decision is an important one for employers as it represents a sensible limitation to the application of the principles from the Ontario Court of Appeal's seminal decision in *Waksdale v Swegon North America Inc.*, 2020 ONCA 391 (*Waksdale*), which rendered most termination provisions in Ontario unenforceable in its wake.

Key Takeaways

- **Contractual lay-off provisions are distinct from termination provisions**: When an employment agreement expressly permits temporary lay-offs, an employer that implements such a temporary lay-off in accordance with Ontario's *Employment Standards Act, 2000* (ESA) and the terms of an employment agreement will not be deemed to have terminated that employee, regardless of whether the agreement's termination provision is invalid.
- **Substance over form**: The placement of contractual lay-off language in an employment agreement is not determinative of whether it is a termination provision. The question is not where the provision is located, but whether, in substance, it is a termination provision.

The Decision

In *Taylor*, the employee's employment agreement contained a "Termination" section that provided:

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 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 2024, Salytics experienced financial difficulties. The employee initially agreed to a temporary reduction in hours and pay, but the company's financial challenges grew and Salytics placed the employee on a temporary lay-off, effective April 1, 2024. The employee did not receive any income during the lay-off, but his benefits were continued during the lay-off period. The employee was issued a recall notice on September 6, 2024 and returned to work on September 30, 2024 (after 26 weeks).

On July 19, 2024, the employee commenced an application seeking a declaration that his employment had been terminated and seeking damages in lieu of notice. He relied on the reasoning in *Waksdale*, arguing that the contractual lay-off provision was a termination provision and, because the agreement's "for cause" and "without cause" termination language were inconsistent with the ESA and therefore invalid, the lay-off provision was also invalid. The employee emphasized the fact that the contractual language regarding lay-offs was included in the "Termination" section of the agreement and that, at common law, a lay-off is a constructive dismissal and is therefore a termination.

The Court dismissed the employee's application, rejecting the suggestion that the lay-off language in the employment agreement constituted a termination provision. In doing so, the Court found that the placement of the lay-off provision under the "Termination" section was irrelevant because a conclusion otherwise would prioritize the form and placement of the language over its substantive effect.

As well, the Court dismissed the notion that because a unilateral lay-off by an employer is a constructive dismissal at common law, a contractual lay-off provision in an employment agreement must be a termination provision. It noted that a lay-off is a termination "when there is no clause in the agreement permitting the employer to lay-off an employee." However, when there is such a clause giving the employer the authority to place an employee on a temporary lay-off, the employer's decision to do so is not a unilateral act and is therefore not a constructive dismissal (and by extension, not a termination).

Finally, the Court highlighted that s 56(4) of the ESA specifically provides that a temporary lay-off is not a termination. In this case, the length of the employee's lay-off had complied with the ESA's temporary lay-off provisions.

Conclusion

Taylor underscores the importance of substance over form when interpreting employment agreements. The Court clarified that a contractual provision, even if located within a "Termination" section of an employment agreement, is not inherently a termination provision. Instead, the provision's validity and enforceability is assessed independently of the agreement's termination provisions. The *Taylor* decision also reinforces that employers who include clear and express lay-off provisions in employment agreements (and who comply with the requirements of the ESA related to such lay-offs), can implement temporary lay-offs without being deemed to have terminated the employment relationship. Employers should ensure that their employment agreements are carefully drafted to reflect this distinction, while employees should be aware of the implications of such provisions in their contracts.

matter. Specialist advice should be sought about your specific circumstances.

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