Ontario Superior Court Upholds "At Any Time" Termination Clause Post-Dufault

Summary

A recent decision from the Ontario Superior Court of Justice has upheld the enforceability of a termination clause which contained the phrase "at any time". The clause limited the employee's entitlement at termination to one week of salary and benefits – the employee's minimum entitlements under the *Employment Standard Act, 2000* (the "*ESA*").

Significantly, this is the first decision to uphold the enforceability of a termination clause containing "at any time" after the Court of Appeal for Ontario held in *Dufault v The Corporation of the Township of Ignace* ("*Dufault*") that a termination clause containing "at any time" violated the *ESA*. We have previously discussed the *Dufault* decision in our previous Insight (available here) and the subsequent decision in *Baker v. Van Dolder's Home Team* ("*Baker*") that followed the reasoning of *Dufault* in our previous Insight (available here).

Facts

In *Li v Wayfair Canada Inc.,* 2025 ONSC 2959 ("*Li*"), the plaintiff's employment was terminated on a without cause basis. The plaintiff has signed an employment agreement that contained a termination provision which limited any amounts owing to the plaintiff to only those available under the *ESA*. Relying on this provision, the employer provided the plaintiff, who had just under nine months of service, with one week of his base salary and benefits.

The termination clause read, in part:

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.

Elsewhere in the employment agreement, the employer defined "cause":

For all purposes in this letter, "Cause" 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 plaintiff also attempted to challenge the enforceability of the termination clause based on the probationary period clause. The probationary period clause in the agreement read:

After your probationary period concludes, in the absence of Cause, the Company may terminate your employment at any time and for any reasons […] 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*.

The Decision

The Court concluded that the termination clause was enforceable and dismissed the plaintiff’s claim for common law notice damages. The plaintiff argued, relying on the *Dufault* decision, that the right of an employer to dismiss an employee is not absolute and that the termination provisions in the agreement were similar to those in the *Dufault* decision, specifically pointing to the “any time” language.

However, the Court found that the termination provisions in the *Dufault* and *Baker* decisions were distinguishable from the one before the Court. While acknowledging that both provisions contained the phrase “any time”, the Court found that the termination provision in Dufault did not refer to the *ESA* in its definition of “cause” nor did the wording of the provision provide for all types of wages.

The Court acknowledged that employment contracts are interpreted differently than commercial contracts in order to protect the interests of employees who may have less bargaining power. Accordingly, Courts generally favour interpreting employment contracts in a manner to give a greater benefit to the employee.

Even with this principle in mind, the Court concluded that the employment contract, when read as a whole, properly complied with the terms and provisions of the *ESA* and limited the employer’s obligations at termination to only those under the *ESA*.

Takeaways

This is a positive development in the ongoing struggle for Ontario employers to successfully enforce termination provisions which limit the amounts owing to an employee at termination to only those amounts under the *ESA*. The *Dufault* decision endangered termination provisions which contained the phrase “at any time”. The decision in *Li* illustrates that these provisions, depending on the exact wording, have the potential to be upheld as enforceable by the Courts.

Providing clarity to employees and limiting the legal and monetary risk at the time of termination of employment is a key aspect of any well-drafted employment agreement. The decision in *Li* is encouraging to employers and illustrates that it is possible to have an enforceable termination clause. With the shifting jurisprudence, we again encourage employers to have their employment agreement templates reviewed on an annual basis, at a minimum.

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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