Termination – 2023 Year in Review



ONTARIO

LAWS & ANNOUNCEMENTS

May 8: Under current ESA rules, terminations of 50 or more workers over a 4-week period require "enhanced" notice of up to 8, 12 or 16 weeks. To qualify for enhanced notice, workers must work at the employer's "establishment." If and when it passes, Bill 79, *Working for Workers Act, 2023*, which is now through Second Reading, will make remote workers eligible for the same enhanced notice as in-office workers.
Action Point: Find out how to comply with group termination rules

Sep 26: Newly passed Bill 79, the *Working for Workers Act, 2023*, makes remote workers eligible for the same enhanced notice as in-office workers. Previously, terminations of 50 or more workers over a 4-week period required "enhanced" notice of up to 8, 12 or 16 weeks. To qualify for enhanced notice, workers must work at the employer's "establishment."
Action Point: Find out how to comply with group termination rules

Nov 25: New ESA regulations revise the group termination notice information that employers must provide the Employment Standards Director and affected employees (under Section 58 of the ESA) when terminating 50 or more employees at the establishment in the same 4-week period and how that information must be provided.
Action Point: Find out how to comply with group termination rules

CASES

Termination: Employee's Fear of COVID-19 Doesn't Justify Time Theft
Using GPS data tracking the location of response vehicles, a gas company determined that a technician had billed and received payment for over 153 hours (23.4% of total hours) of work for which he didn't show up, leaving his partner to do all the work alone. The results confirmed an audit from an earlier period finding 46+ hours of billed but unperformed work. The union claimed the technician did nothing wrong—the work orders were safe and the technician didn't want to spend time in the vehicle with a co-worker due to fear of catching COVID and bringing it home to his vulnerable wife. Instead of firing him, the company should have recognized him as a hero willing

to work during the pandemic, the union argued. While agreeing with that sentiment to some degree, the Ontario arbitrator found that the technician "went way too far by taking advantage of the situation while the Company and most employees were scrambling to maintain essential services to the public, at some risk to themselves." **Result:** It found just cause to terminate [*Enbridge Gas Inc. v UNIFOR, Local 975*, 2023 CanLII 2937 (ON LA), January 24, 2023].
Action Point: Take 6 steps to prevent your employees from committing time theft

Termination: Employer Has Just Cause to Fire Employee for Theft
Relying on video surveillance camera evidence, a rug dealer fired an employee for removing and stealing 2 rugs from the store. The union denied the allegation, blaming the theft on a co-worker. But the arbitrator found the company's evidence credible, concluding that the co-worker who testified against the employee was more believable. The Ontario court said that the arbitrator's ruling of just cause to terminate was reasonable and refused to reverse it [*Labourers' International Union of North America, Local 183 v. Multy Home LP*, 2023 ONSC 747 (CanLII), January 31, 2023].
Action Point: Take 6 steps to prevent your employees from committing time theft

Termination: Employer Justified to Conclude that Missing Worker Quit
With the NBA and NHL preparing to resume their seasons, a sports arena recalled a worker on temporary COVID layoff. You need to get your second vaccination dose by Oct. 18, the worker was informed. But he didn't respond. Nor did he submit his required notice of availability for the months of October and November. If you don't show up for the scheduled Nov. 10 meeting, we'll assume you resigned the arena told him. He didn't and the arena took him off payroll. The worker claimed he never quit and sued the arena for not assigning him any work. The Ontario arbitrator ruled that the arena was justified in concluding that the worker had resigned and dismissed his grievance [*Teamsters Local Union 847 v Maple Leaf Sports and Entertainment*, 2023 CanLII 18102 (ON LA), March 13, 2023].
Action Point: Avoid liability when terminating employees who disappear while on leave or layoff

Termination: High Court Tosses $150 Million Fiduciary Duty Claim against Former VP
A VP sued his employer for constructive dismissal, claiming that the toxic work environment forced him to retire early; the employer countered by suing the VP for $150 million for breach of fiduciary duties during his employment. Both parties asked the court to dismiss the other side's complaint and after a series of appeals, the case reached the Ontario Court of Appeal, which upheld dismissal of both claims. The difference: The Court ruled that the VP could amend his claim and thus continue his case [Boyer v. Callidus Capital Corporation, 2023 ONCA 233 (CanLII), April 6, 2023].

Termination: Trial Court Must Decide If Employee Accepted His Layoff
A welder who was temporarily laid off during the pandemic after 20 years of service sued the company for constructive dismissal. The company tried to get the case dismissed by claiming it had an implied contractual right of layoff and that the welder condoned, that is, "consented freely to the" layoff. The Ontario Court of Appeal upheld denial of the employer's motion to dismiss, saying that a trial would be necessary to decide both the contract and condonation issues [*Pham v. Qualified Metal Fabricators Ltd.*, 2023 ONCA 255 (CanLII), April 13, 2023].

Termination: Failing to Return Customer's Lost Money Is Just Cause to Terminate
A meat manager buying groceries on break sees a $100 bill fall from a customer's pocket. She very discreetly scoops it up from the floor and sticks it into her own pocket and eventually stashes it in the glove compartment of her car. The customer who dropped the bill makes a commotion and eventually leaves without buying anything. After watching the surveillance tape, the store managers realize that the manager took the money. When she shows up for her shift the next day, she's called into an

investigation meeting and suspended for not turning in the money. Two days later, she's fired. The manager insists that she was intending to return the money but just hadn't gotten around to it yet. The Ontario arbitrator rules that the store has just cause to terminate for breach of trust. Failure to return the money at the time of the incident and the next day wasn't just a lapse in judgment but an act of dishonesty, the arbitrator concludes [*Metro Ontario Inc. v United Food & Commercial Workers Canada Local 175*, 2023 CanLII 66348 (ON LA), July 21, 2023].
Action Point: Find out when lying is just cause for termination

Termination: Time Theft Is Just Cause to Fire Nuclear Plant Manager
A nuclear plant fired a front-line manager responsible for a 7-member crew for time theft, alleging that he: i. altered schedules to ensure that he and crew members got pay to which they weren't entitled; and ii. certified time he wasn't at work as time worked on his worksheet. Failure to answer questions honestly and cooperate with the investigation contributed to the decision to terminate. Unpersuaded by the union's contention that the supervisor's schedule swapping was common practice that "everybody else did," the Ontario arbitrator found that the evidence supported the charges and that the company thus had just cause to cut ties [*Society of United Professionals v Bruce Power LP*, 2023 CanLII 77866 (ON LA), August 24, 2023].
Action Point: Take 6 steps to prevent your employees from committing time theft

Termination: Unsafe Driving Is Just Cause to Fire a Bus Driver
A TTC bus driver lost his job after hitting a 70-year-old pedestrian crossing an intersection within a properly marked crosswalk while the light was green. TTC contended that the incident, which luckily wasn't fatal, wouldn't have happened had the driver followed his defensive driving safety training; the union claimed the incident was the result of an unfortunate mistake that couldn't have been prevented, while urging that the driver be reinstated to a non-driving position. After weighing all the evidence and the driver's disciplinary record, including an 8-day suspension for unsafe driving, the Ontario arbitrator sided with TTC and dismissed the grievance [*Toronto Transit Commission v Amalgamated Transit Union, Local 113,* 2023 CanLII 78836 (ON LA), August 14, 2023].
Action Point: How to create a vibrant safety culture at your organization

Termination: Wrongfully Dismissed Employee Didn't Do Enough to Mitigate His Damages
An employer claimed that a wrongfully dismissed driver who eventually caught on with another company didn't do enough to mitigate his damages, citing the more than 100 available driving jobs that were available in the local area during his period of unemployment. The Ontario court agreed and reduced the driver's damages accordingly. It also refused to award him *Wallace* damages for bad faith termination because there was no evidence that the driver suffered mental distress or that the employer engaged in any outrageous or egregious conduct [*TTC v ATU, Local 113*, 2023 CanLII 87759 (ON LA), September 27, 2023].
Action Point: Find out about the 7 things wrongfully dismissed employees must do to "mitigate" their damages

Termination: Serious Safety Violation Doesn't Cost Sawmill Worker His Job
In 2018, a sawmill plant worker lost his life after getting pinned between a loader and a bundle of wood. The company was also fined $250,000 for an OHS violation. Almost 5 years from the date after the tragedy, a similar loader incident took place, luckily resulting only in property damage. The company investigated and determined that the accident was caused by the worker operating the loader without the necessary training or authorization. So, it fired him. The union claimed the penalty was too harsh. The Ontario arbitrator agreed. The worker had a history of discipline, the arbitrator acknowledged. But none of those infractions involved safety, other than one incident where the worker was disciplined for not wearing safety goggles. There

was no evidence to support the company's contention that the worker was reckless or that he couldn't be redeemed by more experience or training. So, the arbitrator knocked the penalty down to a 4-month suspension while requiring the company to provide him through re-training in safety [*Greenfirst Forest Products (Qc) Inc. – Chapleau Sawmill v United Steelworkers, Local 1-2010*, 2023 CanLII 110265 (ON LA), November 21, 2023].
Action Point: Find out about the 5 ways you can get socked with punitive damages for bad faith termination

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