

Termination Of Employment Agreements: Careful Drafting



In labour law, termination of employment agreements generally give rise to a document called a “transaction and release”. This document stipulates that the employer and the employee (and/or the union, if applicable) agree to put an end to their dispute and to waive, by means of the *release*, all possible recourse associated with various situations that arose during the employment or with the end of employment itself.

A recent decision¹ rendered by the *Administratif Labour Tribunal* (hereinafter the “court”) reminds us of the importance of properly drafting these settlement agreements so that the parties can *truly* turn the page.

The facts

In January 2021, a daycare worker fell at work when a child pulled out the chair she was about to sit on. The worker filed a claim with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (hereinafter the “**CNESST**”) to have this event recognized as an employment injury. Her claim was rejected by the CNESST and then by the review body, leading the worker to contest it before the court.

Alongside this dispute, the employer terminated the worker's employment in May 2021, and the union contested the worker's termination by filing a complaint. A few days before the beginning of the arbitration scheduled for November 2022, the parties agreed on a settlement to *put an end* to the dispute. At that time, they agreed to provide each other mutual releases on:

“any and all sums due, damages, or claims, under any law whatsoever, arising or which may arise out of Ms. (...)’s employment with the Employer and/or the termination of her employment with the Employer;”² [Our translation]

It was on the basis of this release that the employer then presented a preliminary exception before the court, asking for the dismissal of the worker's claim for employment injury. The worker maintained her claim before the court, claiming that, according to her understanding and the information provided by her union representative, the release that was agreed upon in the arbitration process related solely to her employment termination.

The decision and principles to keep in mind

The court ruled in favour of the worker, **mainly because the waiver of rights was not drafted with sufficient precision and clarity to cover the worker's employment injury claim.** In fact, the court felt that if the parties' intention was to put an end to all litigation involving the worker, **they should have formally identified the occupational health and safety dispute in the release.**

The court then followed the jurisprudential trend that a waiver of rights requires a specific clause that clearly refers to the rights to be waived.

This case is also an important reminder that an action aimed at recognizing an event as employment injury is not an "action against an employer," but merely "exercising a right". From the court's perspective, employment injury claims constitute a right which does not oppose the worker to his or her employer, but the worker and the CNESST.

It is therefore very important for employers to pay close attention to the way in which agreements are drafted, especially in the context of a case involving occupational health and safety considerations. While the court's conclusion that a worker's employment injury claim is only between the worker and the CNESST is true *in principle*, the fact remains that such claims can have a significant financial impact on the employer, particularly in terms of its assessment rate.

Furthermore, we take this opportunity to remind readers that important tax changes took effect in 2023. Some of these changes concern the obligation to disclose employment termination agreements to the tax authorities in specific situations. This disclosure obligation, if applicable, is not to be taken lightly, and militates in favour of appropriate legal guidance.

Footnotes

¹ *Gueye v CPE Maimonide Côte St-Luc*, 2024 QCTAT 213

² para 18

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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