

Termination Traps: Don't Get Burned by the Wrong Release Agreement



Settling employment disputes with terminated employees who are suing you is much less risky than taking your chances in litigation. You pay out a discrete sum of money in exchange for the peace of mind of knowing that the ex-employee has agreed to drop the case and “release” you from future claims. But the strategy can backfire if you don’t draft the right kind of settlement agreement. One common gaffe is assuming the settlement bars all future claims when, in fact, it bars only the immediate dispute.

Employer Gets Burned by Partial Release

A recent BC case involving the owners of a nail salon is a good illustration of what can happen when an employer makes this assumption. The antagonist in the case was a nail technician hired in January 2016 whose employment ended in December 2017. Exactly what happened wasn’t clear. The salon owners claimed they had concerns about the technician’s job performance, which they conveyed verbally and via text messages.

The technician denied ever receiving any such messages. In her view, the problems began in August 2017 when she told the owners she was pregnant. In December, after taking a month off, the technician notified the owners that she was going on maternity leave in March. Since the salon was undergoing renovations, the owners suggested she take the month of January off to clear her head and reflect on her performance. They expected her to return but she never did. So, they figured she quit. But the technician claimed she was fired and sued for termination notice under the BC *Employment Standards Act* (ESA).

Rather than risk a negative ruling by the BC Employment Standards Branch, the owners decided to settle with the technician. But before the ink had dried on the settlement agreement, the technician sued them for discrimination claiming the owners terminated her because she was pregnant. The owners contended that the new lawsuit violated the settlement agreement. It was only then that they discovered their mistake: The settlement agreement released only the technician’s claims under the ESA and “included no wording to the effect that it was intended to release the owners from liability in a human rights complaint.” So, the BC Human Rights Tribunal refused to dismiss the case [[Wang v. Petit Couture Nail Salon and another](#), 2019 BCHRT 180 (CanLII), August 27, 2019].

Takeaway: Bar All Claims in Settlement Agreements

To avoid falling into a similar trap, recognize that there are 2 basic kinds of releases:

- **Specific releases** cover just the claims at issue in the litigation;
- **General releases** cover all of the employee's claims.

To secure a general release, make sure the settlement covers "any and all claims" the employee may assert against you, your company and its principals, including claims "known and unknown" in connection with the employee's employment and termination. Here's some model language. [Click here](#) for a full Model Settlement and Release Agreement that you can adapt.

Settlement Agreement Release Clause

I, [Employee], in consideration of the terms and conditions set out in the attached letter of [Date], do hereby release and forever discharge [Company], their officers, agents, servants, employees, predecessors, successors and assigns from any and all actions, causes of action, complaints, appeals, requests, covenants, contracts, claims, including bonus claims under any terms of employment whether express or implied, and demands whatsoever, whether arising at common law, by contract, by statute, or otherwise, which I have ever had, now have or which my heirs, executors, administrators and assigns, or any of them hereafter can, shall or may have by reason of my employment with or termination of employment from [Company] effective on or about [Date].