Top Employment Law Developments In 2014 – What Employers Need To Know In 2015

written by Rory Lodge | March 6, 2015

The decisions outlined below gave rise to what we believe were the most noteworthy employment law developments of 2014.

1. Supreme Court of Canada endorses broader availability of summary judgment

The Supreme Court endorsed an expanded use of summary judgment under Rule 20 of Ontario's Rules of Civil Procedure in*Hryniak v. Mauldin* and *Bruno Appliance and Furniture Inc. v. Hyrniak*.[1] [2] The Court called for a "culture shift" towards more expeditious proceedings and access to justice, encouraging both summary judgment motions in appropriate cases and tailored summary trials where summary judgment is not granted. The decision could lead to greater reliance on summary judgment motions in wrongful dismissal matters.

2. Resigning executive must honour contractual notice obligation

In *BlackBerry v. Marineau-Mes*, the Ontario Superior Court found that an executive's contractual obligation to provide six months' notice of resignation was binding.[3] The Court found that the contractual notice obligation was enforceable, and was not the equivalent of a non-compete covenant, particularly because BlackBerry had made it known that the executive must remain available to perform duties during the notice period.

3. A termination clause loophole is closed

In *John A. Ford & Associates Inc. v. Keegan*, the Ontario Superior Court held that a contractual termination without cause provision need only satisfy statutory minimum notice entitlements at the date the notice of termination is given.[4] Rejecting a common line of argument, the Court declined to find the provision void on the basis that it might fail to satisfy those minimum requirements at some future date.

4. Payroll outside Ontario included in determining statutory severance obligation

Under Ontario's *Employment Standards Act*, 2000, employers are required to provide severance pay to an employee following termination if: (a) the employee was employed for five years or more; and (b) the employer has a payroll of $2.5 million or more. Until this year, the prevailing view had been that only an employer's Ontario payroll needed to be considered for the purpose of determining the statutory severance obligation. However, in *Paquette c. Quadraspec Inc.*, the Ontario Superior Court found that an employer's payroll both inside and outside Ontario must be included in the calculation.[5]

5. Breach of confidentiality clause requires repayment of settlement funds

In *Jan Wong v. The Globe and Mail Inc.*, the Ontario Divisional Court found that the breach of a confidentiality clause in a settlement agreement required the repayment of settlement funds.[6] The Globe and Mail had settled a grievance with respect to the termination of Jan Wong's employment. The terms included that settlement funds would have to be repaid in the event of breach of confidentiality. The Court found that the confidentiality clause was of prime importance to the employer and that the repayment mechanism was reasonable. The decision confirms that employers have an effective remedy in the event of breach of confidentiality by an ex-employee.

6. Constructive dismissal in the context of fixed-term contracts

In *Thompson v. Cardel Homes Limited Partnership*, the Alberta Court of Appeal upheld a finding of constructive dismissal for an employee working under a fixed-term contract.[7] One month before the end of the term, the employer advised that it would not renew the contract and that the employee would be paid to the end of the term, but was not required to report to work. The Court found that this constituted a constructive dismissal, entitling the employee to a 12-month termination payment. The termination clause would not have been triggered if the employee had been permitted to work to the end of the term or had consented to the early termination.

7. WSIAT opens the door to mental stress claims

Sections 13(4) and 13(5) of the Ontario *Workplace Safety and Insurance Act* have long been interpreted to prohibit employee mental stress claims, unless they fit within the narrow circumstances of "an acute reaction to a sudden and unexpected traumatic event" during employment. However, in *Decision No. 2157/09*, the Ontario Workplace Safety and Insurance Appeals Tribunal found those provisions to violate equality rights under the *Charter of Rights and Freedoms* by depriving workers with gradual-onset mental stress claims the opportunity to present evidence of their individual circumstances.[8] The decision opens the door to a broader category of mental stress claims in the workers' compensation arena, including those based on long-term or chronic conditions.

8. Supervisor's unchecked harassment leads to significant damages

In *Boucher v. Wal-Mart Canada Corp.*, the Ontario Court of Appeal awarded over $400,000 in damages to a former Wal-Mart employee who had been subjected to ongoing, abusive conduct by her supervisor.[9] The Court found that Wal-Mart failed to properly investigate and respond to the employee's complaints about the supervisor's conduct, neither complying with its own policies nor accepting co-worker evidence that supported the employee's complaints. The Court awarded $110,000 in mental suffering

and punitive damages against the supervisor and $300,000 in aggravated damages and punitive damages against Wal-Mart.