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PUBLICATION

Employment Update: Protecting Your Employment Contracts from Costly Mistakes

Date: September 30, 2025
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Recent Ontario case law is grappling with the interpretation of phrases such as “at any time,” “sole discretion” and “for any reason” in relation to an employer’s contractual right to limit an employee’s entitlement to common law notice. Notably, three decisions, *Dufault v. The Corporation of the Township of Ignace*, (“*Dufault*”), 2024 ONSC 1029, *Baker v. Van Dolder's Home Team Inc.*, (“*Baker*”), 2025 ONSC 952, and most recently *Chan v. NYX Capital Corp.*, (“*Chan*”), 2025 ONSC 4561, have cast doubt on the enforceability of termination clauses containing such language, suggesting that these phrases may render a clause void for contravening the *Employment Standards Act, 2000* (the “*ESA*”).

In contrast, other recent decisions like *Li v. Wayfair Canada ULC.*, (“*Li*”), 2025 ONSC 2959, and *Jones v. Strides Toronto*, (“*Jones*”), 2025 ONSC 2482, have adopted a different stance, holding that the inclusion of “at any time” does not automatically invalidate a termination clause.

This divergence has generated significant uncertainty in Ontario employment law. While the Court of Appeal has yet to provide definitive guidance, having dismissed the *Dufault* appeal on unrelated grounds, it is anticipated to weigh in on the issue in the *Baker* appeal. Until then, the most recent decision in *Chan* stands as the latest judicial voice highlighting concerns over such termination clause language, indicating continued uncertainty ahead.

Background: The Legal Landscape

Over the past several years, Ontario courts have scrutinized the language of termination clauses in employment contracts, particularly those that purport to allow termination “at any time” and “for any reason.” In *Dufault*, the Ontario Superior Court held that a termination clause reserving the employer’s right to terminate “at any time” and at its “sole discretion” was unlawful for breach of the *ESA*, reasoning that such language might allow termination during job-protected *ESA* leaves or after an *ESA* complaint. *Baker* followed *Dufault*, finding that the inclusion of “at any time” was enough to void the clause, even without reference to “sole discretion.”

In *Chan*, the Ontario Superior Court found a termination clause using “at any time” and “for any reason” to be unenforceable, following the reasoning in *Dufault* and *Baker*. The Court held that such language violated the *ESA* and further found the clause problematic because it released the employer from claims that cannot be contracted out of under the *ESA* and failed to define “cause” in accordance with the *ESA* standard. As a result, the Court awarded the plaintiff three months’ reasonable notice, despite the employer’s assertion that the employee was probationary.

However, other decisions have cast doubt on this analysis. In *Li*, the Ontario Superior Court upheld a termination clause with “at any time” and “for any reason” language, distinguishing *Dufault* on the basis that there were no flaws related to the definition of cause or the scope of termination payments. Similarly, in *Jones*, the Court held that “at any time” language, in the absence of “sole discretion,” does not contract out of the *ESA*, though the clause was found unenforceable for other reasons.

The ongoing division in the case law means that employers must exercise particular caution when drafting termination clauses. The Ontario Court of Appeal’s recent decision in *De Castro v Arista Homes Limited*, (“*De Castro*”), 2025 ONCA 260, further underscores the perils of imprecise drafting in employment contracts. In *De Castro*, the Court strictly scrutinized the termination clauses and found that any language permitting termination without notice in circumstances beyond those authorized by the *ESA* will render the clause unenforceable.

The *De Castro* decision reinforces two key principles:

1. employment contracts must strictly comply with the *ESA* and avoid any language that could be interpreted to allow termination without notice except for willful misconduct, disobedience, or willful neglect of duty as defined by the *ESA*; and

2. any ambiguity in an employment contract will be interpreted in favour of the employee, given the remedial nature of the *ESA*.

To reduce the risk that an employment contract is found to be offside the *ESA* and rendered unenforceable, Ontario employers are strongly encouraged to adopt a cautious, *ESA*-compliant approach, especially in light of ongoing legal developments.

Practical Implications for Employers

The above-noted decisions underscore the importance of:

- **Careful Drafting**: Termination clauses must be drafted with precision, ensuring clear references to the *ESA* and compliance with all statutory requirements.
- **Defining "Cause" in Accordance with the *ESA***: As seen in *Li*, including the *ESA* definition of “cause” can help distinguish a clause from those found unenforceable in *Dufault, Baker,* and *Chan*.
- **Avoiding Overboard Releases**: Clauses that attempt to release the employer from all claims upon termination may be found to violate the *ESA*.

- **Regular Review**: Given the evolving and unsettled case law, employers should have their employment contracts reviewed regularly to ensure continued compliance and enforceability.

Properly drafted termination clauses can significantly reduce an employer's potential liability to reasonable notice under the common law in the event of an employee's termination. Employers who invest the time and resources into crafting clear, comprehensive termination clauses not only protect their businesses from costly disputes but also promote transparency and fairness in the employment relationship, ultimately fostering a more stable and productive workforce.

For specifically tailored advice on your employment contracts, please reach out to a member of Blaney's Employment & Labour Group.

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