Ontario Court rules that a temporary lay-off provision is not a “termination” provision

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Recently, the Ontario Superior Court delivered a rare win for the employer in *Taylor v. Salytics Inc.*, 2025 ONSC 3461. The issue before the Court was whether a temporary lay-off provision in an employment agreement constituted a “termination” provision, such that the principles established over the recent years by the Ontario Court of Appeal with respect to the enforceability of termination provisions must be applied to a temporary lay-off provision.

Sensibly (and fortunately for employers), the Court said “no” – a temporary lay-off provision is not a “termination” provision. The Court made this finding despite the fact that (a) the temporary lay-off provision at issue was found within the termination section of the employment agreement; and (b) the termination provisions in the employment agreement were otherwise agreed to be invalid.

Background

Mr. Taylor was temporarily laid off from his employment with Salytics Inc., pursuant to a lay-off provision in the employment agreement. While Mr. Taylor was ultimately recalled to work by the employer six months later – and did return to work – he nevertheless took the position that his lay-off was a constructive dismissal, and that he was entitled to wrongful dismissal damages for the period that he was on lay-off, without income.

Mr. Taylor relied heavily on the Ontario Court of Appeal’s decision in *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, where the Court of Appeal held that an otherwise enforceable “without cause” termination provision in an employment agreement is rendered unenforceable where the employment agreement also contains a “for cause” provision that violates the *Employment Standards Act, 2000* (ESA).

Mr. Taylor acknowledged that his employment agreement contained an express provision which stated that he could be placed on a temporary lay-off. Relying on *Waksdale*, Mr. Taylor argued that (a) the temporary lay-off provision was a termination provision; (b) the for cause termination provision was unenforceable as it violated the ESA; (c) therefore, the entire termination provision, including the temporary lay-off provision, must be struck; and (d) by striking the temporary lay-off provision, his terms of employment did not contain a provision which permitted lay-offs, and therefore, his

lay-off was a constructive dismissal. Notably, the temporary lay-off provision at issue was found within the “Termination” section of Mr. Taylor’s employment agreement.

The employer did not dispute that the “for cause” termination provision in Mr. Taylor’s employment agreement was unenforceable, and that by implication, all of the termination provisions in the employment agreement were unenforceable, pursuant to *Waksdale*. However, the employer’s position was that the temporary lay-off provision was not a termination provision, such that the invalid “for cause” termination provision did not invalidate the temporary lay-off provision.

The question before the Court was therefore, “is a temporary layoff provision a ‘termination’ provision?”

The Court’s decision

The Court agreed with the employer and found that the temporary lay-off provision was not a “termination” provision, and therefore remained enforceable notwithstanding the unenforceable termination for cause provision. In reaching this conclusion, the Court made the following findings:

a. The placement of the lay-off provision under a “Termination” heading is not determinative of the issue of whether a temporary lay-off provision is a “termination” provision. The Court explained the question is not where in the employment contract the provision is found, but whether it is, in substance, a termination provision.
b. A lay-off is a (constructive) termination when there is no clause in the employment agreement permitting the employer to lay-off the employee; however, when there is such a clause, the lay-off is not a constructive dismissal, and therefore not a termination.
c. The Court found that it was bound by section 56(4) of the ESA, which specifically provides that a temporary lay-off is not a termination.

Takeaways for employers

Taylor v. Salytics Inc. is a welcome win for Ontario employers and indicates a potential shift to a more balanced determination of wrongful dismissal cases by the Ontario Courts.

This decision confirms that when an employment agreement contains a provision permitting the employer to lay-off an employee, a temporary lay-off is not a constructive dismissal, and that in such cases, a temporary lay-off is not a termination.

Employers are also reminded to ensure that termination provisions are properly drafted. Given (constantly) evolving case law, it is wise to ensure your employment agreements are reviewed regularly by your employment counsel.

For more information, please reach out to any of the key contacts listed below.

By

Alyssa Jagt

Expertise

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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