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Fall 2026, Volume 24, No. 4

Sharlene Rollins
RPR
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Perspective

Is It Time to Improve Bereavement Benefits?

It's more than just a day or two off

Most of us will experience the loss of someone dear to us during our working years. Yet, we talk very little about death and dying, grief and grieving. These have a direct impact on our ability to work, at least for a period of time following such an event. Isn't it time that we, as managers and directors, started talking more openly about this? In addition, isn't it past time that we reviewed our employee bereavement policies and practices?

Grief and loss have a tremendous impact on employees. We can see it with our own eyes. There is often a marked drop in productivity, focus and performance on the job. Some people get depressed and suffer from mental health distress. Others develop physical ailments and become more susceptible to picking up seasonal illnesses and have an increased risk for chronic conditions and things like heart attacks. We offer what support we can, but is it enough? Is there more we can and should do?

In Canada, we have a hodgepodge of regulatory requirements when it comes to bereavement leave. In Ontario, most full-time employees have the right to take two days of unpaid leave each year because of the death of certain family members. For federally regulated industries, employees can take three paid days of bereavement leave and up to an additional seven more days unpaid leave under certain circumstances. Most employers in Canada offer something in between these provisions and there are also informal arrangements that organizations will make on an ad hoc or as requested basis.

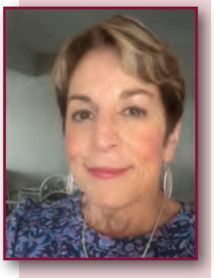
From many employees' perspectives, none of the above, even the most generous, would likely be enough. A survey by the Society for Human Resource Management (SHRM) found that while the vast majority of employers provided some bereavement leave, about 30 percent of employers said they had to use vacation or sick days after the death of a family member. In another American survey, employees said that more paid time off after the loss of a loved one was the most important thing they wanted from their employer.

But while bereavement leave or more time off would be helpful, it's not the only thing that employers can do to help their workforce go through the grieving process. Organizations of all sizes are providing access to grief counsellors, mental health apps for mobile phones, funeral or memorial service support and allowing more hybrid, remote and staggered work scheduling to assist their employees.

This may be even more important than an extra day off. Grief is not a linear process and everyone will take their own time to go through it. Providing ongoing support will be crucial as they walk their way through this process and return to some form of normal at work. So, too, are kind words and encouragement as the grief rises and falls. Employees will be appreciative of this concern shown by their employers at possibly one of the most difficult times of their working careers.

Sharlene Rollins is Manager, Administration for IPM [Institute of Professional Management].

"I'm a little concerned, Byron. I gave you $100,000 on Monday to develop our website, and on Tuesday you show up for work in a Porsche 911 Carrera. "



Nathaly Pascal
RPR, CMP, RPT
President

President's Message

Take My Advice

Employment law experts can help you

We often chat here about how to properly handle formal complaints from employees. But what if the complaint is against you, the manager or director? How can you best protect yourself in such circumstances? Yes, you do need to protect yourself.

My advice to managers who find themselves in such a predicament is to retain your own legal counsel. With all respect to HR, they will provide you with some advice and suggestions. However, they serve the organization's interest first, as they should. Their primary focus is to try and avoid lawsuits and costly payouts. Their legal obligation is to the employer.

My second suggestion is to make that phone call to get legal representation as soon as you hear about any complaint against you. A good employee relations lawyer will be able to get your defense started off in the right way. This will usually mean documenting everything that you have heard, said and done that might impact this situation – everything. Hold nothing back so that your counsel can prepare your best case.

Once you have started this process, it is also very important to listen and follow your lawyer's advice. That might include not meeting to discuss this issue unless you have representation with you and certainly not signing anything without their review. Your friends may have many suggestions to offer and you should accept them gracefully. Always remember that when it comes to following through, it is always wise to trust your legal expert.

In today's workplace, there are many more employee complaints than ever. That's not a bad thing. Employees have a right to a safe and healthy workspace and to be free of harassment and bullying at work. But managers and directors also have rights. That includes having access to due process to clear their name and reputation. Sometimes the internal processes do not easily facilitate that and that's why we sometimes have to act to protect ourselves and our interests.

Getting a lawyer or seeking legal advice does not mean you are guilty of anything. It is simply a measure of protection that is your right as an individual and as a manager. Don't wait until after the internal process or investigation to get advice. It may be too late to save your job or your reputation. Be proactive in your own defence and you won't have any regrets later.

Nathaly Pascal is President of IPM [Institute of Professional Management].

INSIDE THIS ISSUE

Providing a Negative Reference ~ *Employers beware*

Members Quarterly Staff Writer

Feature

We all want to be honest and we certainly don't want to burden another employer with a 'problem' employee. But prudence and caution should prevail when it comes to giving less than glowing references to former or departing employees. That's because there is now a fair body of legal jurisprudence that suggests employers could be liable for a number of penalties and leave themselves open to lawsuits from disgruntled ex-employees.

Ontario is the Canadian province with the most experience with some of these situations, but most provinces and territories will have similar legislation and courts that might be perceived as leaning towards employees. In Ontario, the Employment Services Act (ESA) is designed to protect employees and set minimum standards for most workplaces in Ontario. Employers are prohibited from penalizing employees in any way for exercising their rights under the ESA.

It is important to note that the ESA doesn't outlaw negative job references entirely. But it does have a ban on reprisals. That means you can't punish an ex-employee by giving a negative reference to try and somehow get even with them. The courts take this matter very seriously. Organizations who are found guilty of reprisals against former employees can be reinstated or compensated for claims of lost wages or employment opportunities.

You can also be sued for defamation for some negative references if it can be proven you acted in bad faith or provided false, misleading or malicious information that prevented a person from gaining employment with another business or organization. That's why you can provide some negative information, as long as you have supporting or corroborating data that you can provide to document and show your case against the former employee. This would include things like attendance records or letters written on an employee's personnel file.

Some general suggestions for giving all employee references might include keeping them fact based, avoiding speculation and/or personal attacks, have the paperwork to back up your claims, and wherever possible, take a neutral approach and tone. Courts tend to react less than positively to opinion and that's why references should be primarily be based on facts. It's safer and actually easier. Stay away from guessing about whether an employee might fit in another organization and avoid generalizations like stating that they have a poor attitude. Those kinds of statements can come back to haunt you later.

Here's a few more tips about how to avoid the pitfalls that negative references may create.

Stick to the Facts

As noted above, unless you can back it up, don't say it in an employee reference check. Avoid giving your personal opinions, particularly if they are the less than positive sort, but even positive ones, just because you might really like the person. Give your honest evaluation based on your experience and you should be fine. Whatever you say could have a tremendous impact on both an employee and their future employment prospects. Your personal belief is subjective and should likely be kept to yourself and remember that in a new situation, an employee could act completely different. When in doubt, stick to the facts, and keep your personal opinions, personal. If it's not documented, don't mention it.

Don't Overplay Your Hand

Even if you have a strong urge to come right out and tell the reference checker to stay away from a certain employee, resist that urge, too. Sometimes, just by saying that you have nothing to say, other than to confirm their employment is enough of a statement to warn others off. Saying that you have nothing to say implies that you have nothing good to say. That may be good enough. The only exceptions to this suggestion might be if there are civil or criminal proceedings or an ongoing workplace investigation into harassment or workplace bullying. You need to give any prospective employer a heads up in these kinds of situations. But again, stick to what you have evidence of and avoid speculation of any kind.

Don't Overshare

There is a range of information that is off bounds in an employee reference scenario. This might include but is not limited to medical information or if they have taken certain kinds of leave or been off on disability. In fact, any of the prohibited grounds for a human rights complaint like their appearance, age, weight, gender, or sexual orientation would be similarly off limits. Check with your HR advisors or legal counsel if you are unsure about matter which might be appropriate in an employee reference check. The bottom line is that if you feel uncomfortable, don't answer the question and end the session as quickly as you can.

Centralize Your References

Your HR department should be the lead on all references. They have easy access to the documentation and can refer requests to the appropriate manager and provide them with support and suggestions. This will ensure that you have common language and approaches to providing references and limit your exposure to any supervisor or manager who is acting as your company's representative. Managers should be trained on what they can and should not say in employee references. This will help prevent sticky legal situations from arising in the future.

Members Quarterly Staff Writer

Monika Jensen
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Ask the Expert

Virtual Call Fatigue

Q: Why Do We Find Virtual Calls So Draining?

Since working from home became the norm, many people have felt exhausted after a day with Zoom or Teams meetings. The term "Zoom fatigue" has gained traction on social media, and Google searches for it have steadily increased. We still rely heavily on virtual communication as we return to the office or even continue to work remotely.

Why are virtual calls so exhausting? They require intense concentration to absorb the material. Unlike in-person meetings, where side conversations and clarifications are more natural, virtual meetings often lack these nuances. Missing something during a call means relying on the private chat feature or waiting for a chance to unmute and ask for repetition.

Research-Backed Tips to Combat Virtual Call Fatigue

Avoid Multitasking

It's tempting to use virtual meetings as an opportunity to multitask, but research shows this reduces performance. Stanford researchers found that multitaskers have poorer memory recall than those focusing on a single task. Close any distracting tabs or programs, put your phone away and stay present during meetings.

Build-In Breaks

During longer calls, take mini-breaks by minimizing the window, moving it behind other applications, or looking away from your screen for a few seconds. This is not an excuse to start another task but a chance to rest your eyes. For back-to-back calls, consider scheduling meetings for 25 or 50 minutes instead of the usual 30 or 60. This allows time to get up and move around between sessions.

Reduce Onscreen Stimuli

Research indicates that people often focus on their faces during virtual calls, leading to distractions. Hide your self-view to avoid this. Additionally, visual distractions can be reduced by encouraging plain backgrounds, like a peaceful beach scene, to minimize mental fatigue from others' faces and backgrounds.

Switch to Phone Calls or Emails

Review your upcoming meetings to see if any could be handled via email instead. If you're feeling fatigued by late afternoon, propose switching a one-on-one virtual meeting to a phone call or rescheduling it. For example, say, "I'd love a break from virtual calls. Can we do this over the phone?" The other person will likely appreciate the change as well.

Avoid Defaulting to Virtual for External Calls

Do not automatically default to virtual meetings, especially with people outside your organization. While virtual calls have become common, they can feel invasive. Opt for phone calls for external communications when appropriate.

Implementing these tips might be challenging at first, but they can help alleviate the exhaustion associated with virtual meetings. As we adapt to this new normal, making virtual calls more manageable will ease some strain.

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Feature

An ounce of prevention may not be enough

Employers pay if employees don't comply with safety rules

Worker safety is of utmost importance in all workplaces and all provinces have legislation to ensure employers make worker safety a priority. That is the case even if employees have momentary lapses despite having completed safety training.

One example is a recent decision from the Manitoba Labour Board, *Above All Roofing & Exteriors Inc. and Manitoba (Director, Workplace Safety & Health), Re*, dealing with an appeal of an administrative penalty.

In this decision, an improvement order was issued in April to the employer for failing to use fall protection systems contrary to section 14.6 of the *Workplace Safety and Health Regulation*, because an employee was seen on a residential roof above 3 meters without the use of fall protection systems. A stop work order and improvement order were then issued in July, because a worker was seen on a roof above 3 meters, not using fall protection equipment available at the site. An administrative penalty of $2,500 was issued in August.

Despite these contraventions, the employer provided evidence of its history of commitment to safety. For example:

1. The employer has a Certificate of Recognition since 2010;
2. New employees are onboarded on fall protection;
3. Additional training is provided on the job site;
4. Toolbox talks, weekly safety training, and daily hazard assessments are done;
5. The employer engaged a safety consultant; and
6. There is a disciplinary policy for safety breaches.

The safety consultant added:

1. "All employees are trained by reviewing the legislation, how and when fall protection measures are to be used, and how to wear and connect all components of the necessary equipment"; and
2. "There is zero tolerance for employees who disregard fall protection measures. If someone is not tied off, they are suspended for the day, sent home and retrained the following day".

The employer's position was that while the *Workplace Safety and Health Act* requires an employer to comply "so far as is reasonably practicable", it did not mean 100% compliance at all times and it was unjust to receive an administrative penalty given their significant efforts. Counsel for the employer also highlighted that it was the employees' failure to use the equipment that was at issue and not because safety equipment was not available.

However, the Board has limited powers in revoking an administrative penalty, mainly if the penalty had not been issued in accordance with the *Workplace Safety and Health Act*. Under the *Workplace Safety and Health Act*, an administrative penalty can be issued:

> When the director determines that a person has failed to comply with a prescribed provision of this Act or the regulations, and the director is of the opinion that the failure involves, or is likely to involve, an imminent risk of serious physical or health injury to a worker or other person.

The officer concluded that there was a risk of serious injury should the worker fall, as the worker was working without being tied off. Because of this, the Board concluded that the administrative penalty was issued in accordance with the Workplace Safety and Health Act, so the penalty was confirmed.

While the Board commended the employer on its efforts to ensure its employees were trained and having progressive discipline for failing to perform work safely, the Board referred to *Spar Marathon Roofing Supplies, v. Workplace Safety And Health (Director)*, Case No. 84/18/WSH, which confirmed that section 4(1)(a) of the *Workplace Safety and Health Act*, which states, "Every employer shall in accordance with the

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An ounce of prevention may not be enough

Employers pay if employees don't comply with safety rules

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objects and purposes of this Act ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his workers" is an absolute liability provision and due diligence is not an available defense. As such, the Board is unable to take the employer's efforts into consideration in determining whether to revoke the penalty.

Key Takeaway

The decision demonstrates that an ounce or even a pound of prevention through training may not be enough, as all it takes is a momentary lapse by one worker. Because of this, employers, their supervisors, and their employees need to be constantly vigilant at the worksite in ensuring that all employees are complying with safety legislation at all times. Otherwise, if any employee has a momentary lapse in compliance, the employer may be liable for administrative penalties despite significant efforts and diligence in ensuring worker safety.

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Employment Agreement Pitfalls

Let's go beyond the termination clause

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Feature

Most employers are acutely aware that termination clauses need to be reviewed and revised often to keep up with the moving target legal challenges that continue to arise. However, even a well-drafted, legally current termination clause is only as good as the processes followed and its fellow terms of employment. Put another way, a perfect termination clause can still be at risk of being rendered unenforceable be other legal missteps along the way.

Updating termination language alone will not be sufficient if certain key aspects of an agreement are not reviewed and updated in tandem. Further, updating contract language will hold little weight if the timing and process surrounding those changes are not diligently considered. Let's review some of the more common pitfalls we see when it comes to successfully drafting and implementing Employment Agreements beyond the Termination Clause.

Illegal Probationary Periods and/or Other Terms: We see this often. An employer has implemented a shiny new termination clause into their Agreements but does not review the remainder of the Agreement itself for compliance with the applicable employment standards legislation. A very common example in Alberta, following 2018 amendments to our legislation, is maintaining a 3-month probationary period, or longer, in the contract. While the length of the probationary period itself is not illegal, any language purporting to allow termination without notice during the first 3 months of employment would run afoul of the legislation, which now only allows termination without notice during the first 90 days of employment. This is because in almost every scenario, the calculation of a 3-month period will exceed 90 calendar days.

Notably, many employers believe if they define a probationary period, no matter the length, they can terminate an employee during that period without any notice. This is not the case, rather, an employer's ability to terminate without notice is directly tied to the applicable employment legislation and the minimum notice requirements set out therein. Once an employee has been employed longer than that statutorily prescribed period of time, they will be entitled to at least the minimum notice required by the legislation. In relation, employers cannot impose new probationary periods on current employees, either during employment or upon promotion. Doing so, particularly in relation to termination entitlements can result in the entire Agreement being non-compliant with the legislation and its termination provisions therefore unenforceable.

In relation if you have other terms and conditions which are incidentally tied to termination, and violate the applicable employment standards legislation, they may also raise enforceability concerns or in the very least could be susceptible to an attempted legal attack or challenge.

Poor Timing of Agreements: A perfectly drafted Employment Agreement in all other respects will fall short if it is not executed at an appropriate time by the employee. Now, what do we mean by an "appropriate time"? In order for an Agreement and its termination provisions to be enforceable, "consideration" (i.e. something of value to the employee) must be given to the employee in return to accepting the terms of employment. Generally speaking, for new employees, the consideration for an Employment Agreement and accompanying notice or severance limiting termination provisions is the job itself. However, if an employee is permitted to commence the job without signing the Agreement first, that consideration to bind the employee to the termination provisions no longer exists because they have now been given the benefit (the job) without it being contingent on agreeing to the Agreement terms. For current employees, the consideration can be a raise in salary or promotion. However, again, the Employee must accept the terms of the offered employment before they commence employment or the new role, in order for an Agreement's termination provisions to be enforceable.

Amending Agreements / Employment Terms: It is not uncommon for employment terms to be amended throughout the course of employment for a variety of reasons. However,

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Employment Agreement Pitfalls

Let's go beyond the termination clause

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if amendments are made to terms and conditions of employment and reference is not expressly made to the prior agreement and the terms that continue to apply, enforceability issues can arise. This issue can generally be addressed in two ways: 1) include a clause in your employment agreement that contemplates the termination provisions continuing to apply even in the event of a fundamental change of employment; 2) draft an amendment letter or amending contract which clearly sets out the terms that are being changed and those that will remain the same, including reference to the prior agreement and termination terms which will continue to apply.

Finally, before implementing changes, new agreements or new contractual language, we recommend speaking with a lawyer to ensure both process and drafting result in an enforceable Employment Agreement.

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Feature

Good News: Wayfair Upholds "At Any Time" Termination Language

"At Any Time" not always fatal

Employers in Ontario have long wrestled with the risks of using standard language in employment agreements—especially phrases like "at any time"—that courts have, in some cases, interpreted as potentially violating the Employment Standards Act ("ESA"). Following decisions like *Dufault v The Corporation of the Township of Ignace* ("Dufault"), termination clauses have been struck down for ambiguous language, and for non-compliance with the ESA.

However, a recent Ontario Superior Court decision in *Li v. Wayfair Canada ULC.*, 2025 ONSC 2959 ("Wayfair") offers some good news, especially for employers. The Court upheld a termination clause in an employment agreement that allowed the employer to terminate the employment relationship "at any time".

In this article, we break down the Court's reasoning in *Wayfair*, explore what it means for employers and employees, and discuss how this decision fits into the broader landscape of enforceability in Ontario employment contracts.

Background

Song Li was hired by Wayfair and worked as a Senior Product Manager. He was subsequently terminated on October 17, 2023, after just under nine months of service. At the time of his dismissal, he was 45 years of age. On termination, Li was —in accordance with the employment agreement—paid one week of base salary and benefits. Li argued that as the employment agreement was not enforceable, he was entitled to five months of common law reasonable notice.

Termination Clause

The employment agreement included the following 'without cause' termination clause:

> After your probationary period concludes, in the absence of Cause, the Company may terminate your employment **at any time and for any reason** by providing you with only the minimum statutory amount of written notice required by the ESA or by paying you the minimal amount of statutory termination pay in lieu of notice required by the ESA, or a combination of both, as well as paying statutory severance pay required by the ESA, providing benefits continuance for the requisite minimum statutory period under the ESA and all other outstanding entitlements, if any, owing under the ESA [**emphasis added**].

The "with cause" section was as follows, and defined "cause" later on in the agreement:

> The Company may terminate your employment **at any time** for Cause without notice, pay in lieu of notice, severance, benefits continuance or other compensation or damages of any kind" which goes on to add "unless expressly required by the ESA in which case only the minimum statutory entitlements will be provided.
>
> [...]
>
> For all purposes in this letter, "Cause" means any willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the company that constitutes "cause" under the ESA.

Li challenged the enforceability of this clause, and relied on *Dufault* where the Ontario Superior Court of Justice found that containing the words "at any time" could not comply with ESA minimum standards because of its attempt to contract out of the minimum entitlements under the ESA.

In distinguishing the case from Dufault, the Court in *Wayfair* noted that though the employment agreement used the words "at any time", it incorporated ESA language and entitlements, and included definitions of cause and references to all minimum statutory payments. Therefore,

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Concerning Increase in Termination Notice Period

Is there a new upper limit for Alberta?

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Feature

Historically, most Canadian courts have refrained from awarding reasonable notice periods in excess of 24 months and have saved the maximum of 24 months for C-suite executives. However, in a decision last year, *Lischuk v K-Jay Electric Ltd*, the Alberta Court of King's Bench set a new precedent awarding a long-term employee a reasonable notice period of 26 months.

Facts

The Plaintiff began working for the Defendant employer in 1978 as a helper, making his way up through the company until he became the General Manager in 2008. In 2002, he became a shareholder. He was terminated without cause in 2013 after a company decision to change direction.

At the time of his termination, he was 58 years old and earning $254,000 in base salary, a Christmas bonus, as well as $137 per month in benefits. He had a 20% equity interest in K-Jay and a compensation level substantially higher than others in similar management positions within the electrical industry. He did not have a written employment agreement and had worked for the Defendant for 38 years.

While his skill set was transferable within the electrical industry, it would not have been in other industries. Despite his transferable skills, there were only two other companies comparable to K-Jay in electrical contracting businesses near him. His ability to find similar and comparable employment would therefore be significantly limited as a result of working solely for the Defendant over three decades. The Court also focused on the employer's evidence that the Plaintiff was being terminated because he held an "old school mentality," which would not be attractive to potential future employers.

The Defendant acknowledged the Plaintiff was entitled to 24 months based on the Bardal factors and argued that is the maximum limit for reasonable notice any employee may receive in Alberta. The Supreme Court of Canada has confirmed that the assessment of reasonable notice depends on the circumstances of the individual plaintiff and that 24 months is "at the high end of the scale." In Alberta, courts have described 24 months as a "rough upper limit", and the Court in this case was unaware of any Alberta authorities that have awarded a reasonable notice period beyond 24 months.

The Court found that none of the cases before it stated that 24 months was a hard cap. Further, it found that "exceptional circumstances" usually arise where an individual begins to work for a company as a young adult and is terminated near potential retirement age after becoming a key employee. Therefore, upon termination, such employees are in a situation where the prospects of obtaining similar comparable employment are significantly limited and they have been effectively "forced into retirement."

The Court found that the *Bardal* Factors in this case gave rise to exceptional circumstances that necessitated awarding a reasonable notice period beyond the rough upper limit of 24 months. As a result, the Court found the reasonable notice period was **26 months**, totalling over $1.5 million damages, with no reduction for failure to mitigate (even though the Plaintiff did not take any steps to seek comparable employment).

Takeaways

This case is certainly an outlier, with some of the Court's conclusions subject to scrutiny. The Court's conclusions that there were exceptional circumstances are suspect and difficult to reconcile with other decisions. Some findings were made without reference to the evidence. In addition, it is questionable whether age 58 is close to retirement. Further, the Court assessed how long the Plaintiff was expected to take to find replacement employment rather than how long a person possessing the Plaintiff's *Bardal* factors would be expected to take. Finally, the Plaintiff's possession of an "old school mentality" is not a *Bardal* factor and arguably should not have been considered.

We question the correctness and applicability of this case. A notice period of 24 months is already extensive. Adding to that length appears to make employers an insurer against unemployment.

While this case shows that a reasonable notice period in excess of 24 months can be awarded, and no doubt we will now see greater damages

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Concerning Increase in Termination Notice Period
Is there a new upper limit for Alberta?
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being claimed by long-service employees, this case should not be taken as an indication that there is a new upper limit for common law notice periods in Alberta. This decision is very much fact specific, and it could be argued that it was based on assumptions and considerations that would not be as persuasive if argued again. We hope this decision is appealed or distinguished in future cases.

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Feature cont'd

Good News" Wayfair Upholds "At Any Time" Termination Language
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when read as a whole, there was no attempt at contracting out of the ESA, which was the basis for the unenforceability of the clause in Dufault.

Ultimately, the Court upheld the enforceability of the termination provision

TAKEAWAY: "At Any Time" Not Always Fatal

Following the *Dufault* decision, many Ontario employers believed that including the phrase "at any time" in a termination clause could render it unenforceable, exposing them to common law notice entitlements—often significantly more generous than those set out in the contract. However, the recent *Wayfair* decision clarifies that this phrase does not automatically invalidate a termination clause. Instead, courts will assess the agreement as a whole to determine if it complies with the ESA and does not unlawfully contract out of minimum entitlements. This underscores the importance of clear, carefully drafted employment agreements.

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Conflict Management for Non-Experts

Strategies for success

HR directors and managers are often the first line of defence when it comes to conflict management in the workplace. Even though it may not be their main area of expertise, they need a broad range of strategies and techniques to deal with all the different situations that may arise. They also need a basic understanding of conflict management, how it arises and the consequences that it can inflict on the workplace.

Workplace conflict can be generally described as any disagreement or behaviour that interrupts workflow, prevents people from working well together, or stifles creativity. The impact of conflict tends to extend beyond those directly involved and can have ripple effects in terms of how others feel at work or even how they view the organization. In order for conflict to be dealt with swiftly and effectively, it is important for those managing it to understand what and who they're dealing with and to communicate in appropriate terms. Here are some insights for managing conflict for the nonexperts.

De-escalation is the main goal

Conflicts happen - it is just a part of life and work. Throw in the added stress of being in a working environment with people who haven't chosen each other as colleagues and it can be difficult to always reach a meaningful compromise. If tempers are allowed to rise, people are likely to say things they don't really mean. A small argument can quickly get out of hand. For this reason, small disputes or simmering disagreements should be addressed head-on. Ignoring something until it is a crisis is the textbook definition of what not to do. If there appears to be trouble on the horizon, it is a manager's job to step in and help resolve the conflict before it escalates.

Both sides need to reach an agreement

All managers will sometimes be asked to play the mediator. The challenge in that role is to not be seen as favouring one side over the other, even as the manager does exactly that. Try not to force a winner at the onset. Instead, encourage the parties to talk and hopefully this will lead to some sort of concession by one of them. By simply ordering a ceasefire and insisting the conflict be left behind, the root of the problem will remain and will likely flare up again in the future. It is important to remember that conflict management is less about finding an actual solution to the immediate problem. It is more about offering strategies and methods that help the two parties to communicate productively with each other.

There is a difference between conflict management and conflict resolution

Conflict management is what takes place when there is a situation in which there's something that can be negotiated. It is generally the case that each side is expressing different interests and need help arriving at a compromise. Unlike conflict resolution which focuses on finding a solution to the problem as soon as possible, conflict management seeks to investigate and address the root cause.

Addressing internal conflicts

As a society, we're working towards a better understanding of mental health and how it affects people and their actions. Identifying and dealing with internal conflict is an important part of this. An individual may be struggling internally with a difficult decision, fear of failure or lack of confidence. Although this form of conflict rarely leads to disputes, it nevertheless has the potential to create problems. If an employee is struggling and hesitates to make decisions, their work will suffer as a result. It is important for leaders to be aware of such dynamics and to reach out to the individual who appears to be experiencing issues.

Addressing communication

Probably the most common type of conflict that needs to be managed at the workplace involves problems in communication. In many cases, no one starts off with bad intentions, but unexpected factors can come to light that escalate a situation which had previously been harmless. The best way to address this is to uncover the communication error and try to account for why it happened. In some cases, it will have arisen due to different personalities or the fact that people have divergent expectations. This is simply part of human nature and impossible to avoid completely. That is why it is important to have a standard procedure to follow to manage conflict when two personalities clash.

Addressing power conflicts

Within an organization, people fulfill different roles, sometimes planned and sometimes unplanned. One of the other common causes of conflict is when an employee sees themselves in a different role to that assigned to them. This can lead to a situation in which one party believed they're higher up than the other and a power struggle ensues, as neither wants to relinquish control. In this case, it is the role of the conflict manager to intervene and clarify the appropriate roles.

Keep it clean

You cannot eliminate all conflict in the workplace, but you can set rules of engagement for when it happens and then try to minimize the damage. Conflict should never be allowed to escalate into harassment or abuse, but sometimes it's okay to hash out differences. Everyone must keep it clean and agree that at some point, the discussion is over and it's back to work.

Members Quarterly Staff Writer

Understanding Wages in 2026

Dealing with RSUs and Termination

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Introduction

It is well established that equity, when worded correctly, is not considered wages under the Ontario *Employment Standards Act, 2000* (“***ESA***”). Though, as Restricted Stock Units (“**RSUs**”) become a more common element of employee compensation packages, the courts have had to address recurring challenges relating to employee entitlement to RSUs upon termination.

Two recent decisions at the Ontario Superior Court have taken on these challenges and should be on your radar.

1. RSUs are Not Wages: Continued Vesting is not Guaranteed for Statutory Notice Period

In *Wigdor v Facebook Canada Ltd.*, 2025 ONSC 4861 (“***Wigdor***”), the Court had to decide a) whether the applicant’s employment agreement was void because its termination clause contravened the ESA, and b) whether the applicant was entitled to the value of the forfeited RSUs and other benefits which would have vested during the notice period.

The Court quickly found the employment agreement to be void as the termination clause contravened the *ESA*, and turned its attention to the RSUs and the plan documents governing their terms (“RSU Plans”). One set of the RSU Plans stipulated that unvested RSUs are forfeited upon termination and that the date on which a termination occurs will not be extended by any period, unless “applicable employment standards legislation explicitly requires continued entitlement to vesting during a statutory notice period”. Another set of the RSU Plans stated the relevant termination date for the purpose of terminated vesting occurs when the participant ceases to perform services. The applicant argued the language was unenforceable for failing to account for scenarios where employees cannot be lawfully terminated (job protected leaves, reprisal, etc.).

After reviewing the RSU Plans, in citing *North v. Metaswitch Networks Corporations*, 2017 ONCA 790, the Court concluded that:

- RSUs, like stock options, do not constitute “wages” under the ESA;
- RSUs are not a benefit akin to a health or dental benefit, which must be continued for the statutory notice period; and
- Accordingly, the ESA’s sections 61 (Pay instead of notice) and 60 (Requirements during notice period) cannot be seen as guaranteeing the continued vesting of RSUs during the statutory notice period.

In fact, the Court went so far as to say that, had the legislature intended for the statutory definition of “wages” to encompass stock options and RSUs, it would have adopted a more expansive definition to include such other forms of remuneration. This confirmed that the forfeiture language in the RSU Plans was enforceable.

THE CONFLICT: Importantly, in rejecting the applicant’s arguments, the Court in Wigdor also affirmed RSU Plans should not be assessed the same way as employment agreements. In *Liggett v Veeva Software Systems, Inc. and Veeva Systems Inc.,* 2025 ONSC 7010 (“***Liggett***”), that decision came to the exact opposite conclusion.

2. Risk Assessment of Equity Plans include Analysis for ESA-Compliance

In ***Liggett***, the Court confirmed that since equity compensation is part of an employee’s remuneration, that courts should analyze forfeiture provisions using the same principles that apply to salary, bonuses, and other compensation. As such, RSU forfeiture provisions should be analyzed using the same legal framework as traditional termination clauses in employment agreements. The Court expressly rejected that because a forfeiture clause appears in an equity plan rather than the employment agreement, it should be treated differently. Rather, the Court held that employers should expect that where a clause affects compensation during the statutory notice period, it will be reviewed through the same ESA compliance lens.

The Court’s findings relied heavily on *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26 (“***Matthews***”). *Matthews* reaffirmed the principles of contractual interpretation, namely that when the terms are unilaterally imposed on employees, the provisions of the agreement must be absolutely clear and unambiguous to remove the entitlement to a bonus or other advantage.

When analyzing the contract in dispute in *Liggett*, the Court found several aspects of the employment agreement to be ambiguous.

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Understanding Wages in 2026

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Notably, the Stock Option Grant provided that the option would expire where unvested as of the termination date. Termination was considered to be "the date that you are no longer actively providing services to the company". The Court noted this is the very clause that was discussed in *Matthews* and was subsequently found not to deprive the employee of their right to bonus or benefits arising during the notice period. Further, the vesting clauses at issue also provided that "the Committee shall have the exclusive discretion to determine when you are no longer actively providing services for the purposes of the restricted stock unit, including whether you may still be considered to be providing services while on a leave of absence." The Court found that this discretionary authority, without providing guidelines for the exercise of such discretion, gave an ambiguous message to employees as to their vesting entitlements.

In the end, the Court found that ambiguous language that violates the ESA voids termination clauses because employees may be misled as to their entitlements and not recognize that they are forfeiting rights the common law gives them. As such, the Court further concluded that a similar approach must be used in interpreting equity contractual language that seeks to deprive employees of bonus or stock options to which they would have been available during the notice period.

Key Takeaways

Ontario, if not the Canadian judiciary at large, is presently trying to sort out its decisions concerning an employee's right to incentive compensation over their statutory notice period.

While Wigdor is pending appeal in 2026, that Court was clear: stock options and RSUs are not "wages" pursuant to the ESA. Employers are nonetheless well advised to ensure RSU documents, or other incentive plans, include forfeiture provisions and termination language that clearly terminate continued vesting at the end of employment.

In Liggett, the Court took issue with the language in the equity plan which provided that an employee's equity would be forfeited upon termination of their "service" because an employee's service actually ends at the end of the ESA notice period. As a result, the Court found this breached the ESA and did not unambiguously extinguish the employee's right to their equity-based compensation.

Employers may well receive greater clarity on this subject shortly, as the Ontario Court of Appeal is set to hear more about this soon. Until then, employers should prepare for plaintiff counsel and the courts to continue to heavily scrutinize the language of all equity compensation plans.

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