

Ontario Court Clarifies: A Layoff Provision Is Not A Termination Provision

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In *Taylor v. Salytics Inc.*, [2025 ONSC 3461](#), the Ontario Superior Court delivered a win for employers. The Court addressed whether a temporary layoff provision in an employment agreement should be interpreted as a termination provision, and if so, whether an unenforceable termination provision would invalidate the layoff provision such that the employer could not rely on its contractual right to lay off.

The Court held that a temporary layoff provision does not constitute a termination provision and therefore, regardless of the enforceability of the termination provision, the temporary layoff provision was not impacted. The Court reached this conclusion despite two key facts: (a) the employer acknowledged the termination provision was unenforceable; and (b) the temporary layoff provision in question was located within the termination provision section of the employment agreement.

Background

In 2024, due to financial challenges, Mr. Taylor was temporarily laid off from his employment pursuant to the layoff provision in his employment agreement. He was recalled to work by his employer six months later. The employer continued Mr. Taylor's benefits during this period; however, he did not receive any income. When Mr. Taylor returned to work, he took the position that the temporary layoff amounted to constructive dismissal.

Mr. Taylor commenced an application and sought twelve months of damages in lieu of notice, relying on the Ontario Court of Appeal's decision in *Waksdale v. Swegon North America Inc.*, [2020 ONCA 391](#) (Waksdale). In Waksdale, the Court held that an employment agreement must be interpreted as a whole and not on a "piecemeal basis, and as a result, a termination provision will not be enforced if it is in whole or in part illegal."¹

Mr. Taylor acknowledged that his employment agreement permitted temporary layoffs. However, relying on the Court's reasoning from Waksdale, he argued: (a) the temporary layoff provision formed part of the overall termination provision; (b) the "for cause" provision in his employment agreement did not comply with the Ontario *Employment Standards Act, 2000* (ESA); (c) as a result, the entire termination provision section, including the temporary layoff provision, should be void; and (d) without a valid contractual temporary layoff provision, his temporary layoff amounted to constructive dismissal.

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Salytics Inc. (Salytics) conceded the termination provision in Mr. Taylor's employment agreement was unenforceable. However, Salytics argued that the temporary layoff provision was not a termination provision, and therefore the "for cause" provision did not invalidate it.

The Court's Decision

The Court agreed with Salytics, concluding the temporary layoff provision did not amount to a termination provision and therefore was enforceable, even though the "for cause" termination provision in the employment agreement was unenforceable.

In reaching its decision, the Court made several key observations:

1. The placement of the temporary layoff provision under the heading "termination" cannot be determinative of whether it is a termination provision. Otherwise, an employer could simply rearrange the headings in an employment agreement.² The Court found that this would be inconsistent with the reasoning from *Waksdale* that the "court must focus on the substance rather than the form."³
2. A temporary layoff may be considered constructive dismissal, unless the employer expressly reserves the right to do so in the employee's employment agreement.⁴
3. Section 56 (4) of the ESA expressly states that a temporary layoff does not amount to a termination of employment.⁵

The length of Mr. Taylor's layoff had complied with the ESA's temporary layoff provision. Accordingly, the Court held that Mr. Taylor had not been constructively dismissed.

Key Takeaways

Taylor is a helpful decision for employers. The Court clarified that simply because a contractual provision is included under the "termination" heading, it does not automatically make the provision a termination provision. It also confirms that an employer cannot temporarily layoff an employee unless the employer expressly reserves the right to do so in the employee's contract. Without reserving the right, a temporary layoff would amount to a constructive dismissal.

This is also a helpful reminder that employment agreements should be reviewed regularly to ensure that termination provisions are properly drafted, given the evolving case law.

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¹ 2025 ONSC 3461 at [para 31](#).

² 2025 ONSC 3461 at [para 48](#).

³ 2025 ONSC 3461 at [para 48](#).

⁴ 2025 ONSC 3461 at [para 49](#).

⁵ 2025 ONSC 3461 at [para 52](#).

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