

e2r Alert!

UNENFORCEABLE TERMINATION CLAUSES – IS YOUR ORGANIZATION AT RISK?

A recent decision from the Ontario Superior Court of Justice serves as a reminder to all employers that termination clauses contained in employment agreements must, in all circumstances, meet or exceed minimum statutory employment standards.

In *Wright v. Young and Rubicam Group of Companies (Wunderman)*, the Company terminated Mr. Wright's employment without cause after he had completed just over 5 years of service. In accordance with the termination clause contained in Mr. Wright's employment agreement, the Company provided him with 13 weeks' notice, an amount which was in excess of his statutory entitlement. Wright sued the Company for wrongful dismissal, arguing that the termination clause was unenforceable.

In its ruling, the Court set aside the termination clause because it did not refer to benefits during the statutory notice period and in certain circumstances (which were not applicable in the Plaintiff's wrongful dismissal case), the termination payment fell slightly below the minimum notice and severance pay requirements as outlined in the *Ontario Employment Standards Act*. Although the amounts given to Mr. Wright were in excess of his statutory entitlement, given that the clause gave rise to the possibility of falling below minimum employment standards, it was deemed to be unenforceable.

This case highlights the importance of ensuring that employment agreements contain termination clauses which meet the minimum employment standards requirements, in all circumstances. Unenforceable termination clauses provide terminated employees with the opportunity to receive common law reasonable notice – a consequence that may carry an expensive price tag for employers.

If you have any questions about your current termination clauses, or would like to have new employment agreements drafted, we encourage you to contact an e2r Solutions® Service Provider.

If you do not wish to receive further e2r Alerts!, please reply to this email with the word Unsubscribe in the subject line of your reply and your email address will be deleted from our distribution list.

e2r Solutions®
"Real Human Resources Advice in Real-Time"

70 The Esplanade, Suite 401 | Toronto, ON M5E 1R2 | 1.866.327.7657 | tel 416.867.3093 | fax 416.867.1434

Visit us online:  e2r Solutions® Website |  Facebook |  LinkedIn

e2r Solutions® is a service of Woolgar VanWiechen Ketcheson Ducoffe LLP, a certified MDP.

IMPORTANT/CONFIDENTIAL: This email message and any attached files are intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately by telephone at 416.867.3093 and destroy original message.