

## ***Be Nice or Pay the Price***

A record breaking monetary award in the Ontario decision of *Galea v. Wal-Mart Canada Corp.* proves that employers need to follow their employment agreements with employees, or else they may find themselves paying a hefty price.

Ms. Galea was hired by Wal-Mart Canada Corp. (the “Company” or “Wal-Mart”) in 2002 as District Manager-in-Training. In a short period, she was promoted several times and eventually ended up in the senior position of General Merchandise Manager. When she entered this position, she signed a non-competition agreement which aimed to prevent her from working with another mass retailer for two (2) years if and when she was terminated from the Company (regardless of the cause or the reason for termination). In turn, the non-competition agreement provided “transition payments” to Ms. Galea that Wal-Mart would be required to pay for the two (2) year period. Specifically, Ms. Galea would receive her base salary, any incentive payable in accordance with the Annual Incentive Plan in effect on the date of termination, and the Company’s portion of health and dental benefits premiums in accordance with such plans as are in effect on the date of termination.

After this, Ms. Galea was further given the title of Vice President and General Merchandise Manager.

However, in early 2010, Ms. Galea was told that due to reorganization, her position was being eliminated but they would try and find a new position for her and even sent her to Harvard University for an eight (8) week executive management program. Over the next ten (10) months, Ms. Galea’s employment was in constant flux and eventually was given the choice between the role of Senior Vice President E-Commerce, or a severance package. Ms. Galea’s employment was terminated ten (10) months after the meeting in early January.

The problem therein laid in the fact that Wal-Mart then only continued to pay Ms. Galea for eleven and a half (11.5) months following her termination instead of the two (2) years as agreed upon in the non-competition agreement.

After the Ontario Court of Justice reviewed the details of the claim, including Wal-Mart’s behaviour over the course of the 2010 year prior to Ms. Galea’s termination, their efforts to only continue payments for 11.5 months post-



termination, and the fact that they purposely delayed litigation, the Judge awarded Ms. Galea \$250,000 in moral (aka “bad faith”) damages. An additional \$500,000 in punitive damages was awarded based on what the court deemed “callous, highhanded, insensitive and reprehensible” behaviour, considering they felt that Wal-Mart knew Ms. Galea’s employment was over long before they terminated her.

This case serves as a lesson to not only treat your employees with respect leading up to termination but also to follow the terms agreed upon in any enforceable agreement (subject to very few exceptions). If you have any questions regarding this case, or any other termination related question, please do not hesitate to contact us to speak with an e2r® Advisor

