Make up your mind already! A classic employee resignation story

It is well-established law in Canada that an employee's resignation must be a clear and unequivocal demonstration of the employee's intention to resign. Additionally, employers generally have to provide employees with a "cooling off period" in cases where an employee's resignation was emotionally driven or was in response to other extenuating circumstances.

However, what happens when an employee has provided a clear intention to resign and the employer has accepted the resignation? In such case, can the employee rescind their resignation? Does the employer need to have detrimentally relied on the resignation in order to say no to the employee? According to a recent Ontario decision, the answer is no.

In the case of *English v. Manulife Financial Corporation*, an employee decided to retire when the company announced it would be introducing a new computer system which she didn't want to learn. She met with her manager and provided her manager with a letter she prepared in advance announcing her intention to retire as of December 31 of that year. The manager asked if she was sure about her decision, to which she reiterated her desire to retire at the end of the year.

Approximately 1 month later, the company announced that it would not be proceeding with the new computer system for some time. The employee then approached her manager and informed him that she no longer wanted to retire. The manager did not respond to the employee at the time. A few weeks later, the manager sent an email to the employee advising her that the company would continue to honour her notice of resignation.

By way of note, while the company had put plans in place to redistribute her work to other employees, these plans could have easily been cancelled to permit the employee to stay.

After the employee left the company at the end of the year, the employee sued the company for wrongful dismissal. The employee argued that she had the right to rescind her notice of resignation at any time up to her date of retirement.

The Court, however, found that such an argument defied basic contractual principles. In particular, she offered her resignation willingly and freely, which was accepted by her manager after a discussion in which she was provided the option to withdraw her resignation. Once the resignation was accepted, a contract was formed to which she was bound, subject to the parties' mutual agreement. Therefore, the company was under no obligation to allow the employee to rescind her resignation, and accordingly, the court dismissed the employee's claim for wrongful dismissal.

Of note, the Court found that it was not necessary for the company to demonstrate detrimental reliance in order to enforce her resignation date. In doing so, the Court ignored principles from prior Ontario case law. Instead, the Court found that the law has now evolved to reflect the application of basic contractual principles.

While this case is certainly a win for employers, we suspect this case may be appealed in light of the Court's rejection of prior case law which requires employers to demonstrate detrimental reliance. Accordingly, in the event you are ever in a similar situation, we recommend you contact e2r® to speak to an Advisor about recommended next steps.

Keep an eye out for upcoming e2r® alerts on possible changes to the *Ontario Employment Standards Act, 2000*, as amended, in light of the recent government announcement that the government is reviewing the recent amendments passed in November of last year (ie. Bill 148). Further information will be provided as soon as more concrete information is provided by the government.