



e2r Alert!

Termination Language - Ontario

Over the last several years employers in Ontario have witnessed the repeated striking down of termination provisions in employment agreements. It has been an uphill battle for employers to stay on top of continuously evolving case law and ensure that their employees have enforceable termination clauses in their employment agreements.

However, there may now be light at the end of the tunnel for Ontario employers. In a recent Ontario Court of Appeal decision, *Bertsch v. Datastealth Inc.*, 2025 ONCA 379, the court upheld the lower court's decision which held that the termination provisions contained in an employee's employment agreement were enforceable and limited the employee's entitlements to the minimums required under the Ontario's *Employment Standards Act, 2000* (the "ESA").

This decision found that the language in the termination provision:

- was clear and unambiguous, reinforcing the standard of "how would the language be reasonably interpreted";
- included minimum ESA entitlements for "with or without cause" termination;
- did not contravene the minimum standards per the ESA; and
- clearly articulated that the employee was not entitled to common law notice.

This is welcome news for Ontario employers who now have clarity as to what Ontario courts must accept as enforceable termination clause language. While e2r® believes our current termination clause language is more elegant than the language approved by the court, we welcome the opportunity to incorporate this new language in our employment agreement templates to ensure enforceability for all of our clients.

As a best practice, we recommend that you review your employment agreements on a regular basis (at a minimum of annually) to ensure your templates continue to stay enforceable with relevant changes in case law.

If you have any questions about your employment agreement templates or wish for us to review your current termination provisions, please do not hesitate to contact ClientCare.