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Public Service Announcement for Federally Regulated Employers – Review your Employment Contracts!

Employers governed provincially and particularly those in Ontario have unfortunately become all too accustomed to courts deciding the termination provision in their employment agreements is unenforceable because it fails to meet the minimum standards set out in provincial minimum employment standards legislation.

It now appears this highly scrutinized approach to employment agreements has found its way into the federal jurisdiction and the application of the federal *Canada Labour Code* ("*Code*"). By way of reminder, the *Code* applies to employees who work in federally regulated industries, which include banks, air and railway transportation, radio and television broadcasting, and telephone and cable systems.

In *Sager v. TFI International Inc.* ("TFI") the Court held that a termination provision, which provided greater notice than required under the Code, was unenforceable on the basis that it did **not continue all employee benefits for the duration of the statutory notice period**.

Mr. Sager was the Vice President of Sales and Customer Care at a federally regulated, international transportation and logistics company. Mr. Sager's renumeration consisted of a base salary, participation in a bonus plan, and benefits including a group insurance and pension plan and car allowance.

His employment agreement provided that TFI could terminate his employment without cause upon providing him with

> "the greater of three months of base salary, or one month of base salary per year of completed service to a maximum of twelve months."

The contract also set out that,

> "payment shall be inclusive of any and all requirements"

that would be owing to Mr. Sager under the Code.

TFI terminated Mr. Sager without cause after almost three years of completed service. TFI provided Mr. Sager, in accordance with the terms of his employment contract, a lump sum payment of three months of base salary.

In response, Mr. Sager commenced a wrongful dismissal action and alleged the termination clause in his employment contract was unenforceable.

The Decision

The Court agreed with Mr. Sager the termination provision was unenforceable because the provision limited the employer's obligation upon a termination without cause to ***only the employee's base salary***. The termination language ***excluded*** any payment related to Mr. Sager's pension, car allowance, or bonus – all of which were terms of Mr. Sager's employment.

With no termination provision under the contract the Court awarded Mr. Sager nine months of reasonable notice of termination, which was inclusive of his base salary, benefits, car allowance, and RRSP contributions.

Why nine months for a three year employee? In addition to the fact short-service executives tend to get disproportionately higher notice awards, the Court considered very typical job selling statements related to Mr. Sager's future career pathing within TFI as an inducement which caused the Court to increase the reasonable notice period.

Key Takeaways

Federally regulated employers should consider reviewing the termination language in their employment contracts and take note that a termination provision will not necessarily be valid simply by virtue of the fact that it provides more notice than the employee would have received under the Code. Courts will review the entire termination provision with scrutiny, and if any aspect of the provision does not meet minimum standards, it may be held to be unenforceable.

If you have any questions about this, or would like to have your employment contracts reviewed, please do not hesitate to reach to speak with an e2r® Advisor.