

EMPLOYMENT MATTERS

May 2013

EMPLOYERS BEWARE OF *WRIGHT v. YOUNG and RUBICAM*

In *Wright v. Young and Rubicam*, the Court ruled that the termination clause contained in the employment agreement of Mr. John Wright was void. The result was not appealed and has been causing employer counsel headaches ever since.

The Facts: Mr. Wright signed an employment agreement which stipulated, in part:

The employment of the Employee may be terminated by the Employee at any time on 2 weeks prior written notice (one week's notice during Probationary Term), and by the Company upon payment in lieu of notice, including severance pay as follows: [...]

e) five years or more and up to ten years after commencement of employment – thirteen (13) weeks' Base Salary, plus one (1) additional week of Base Salary for every year from 6–10 years of service up to a maximum of 18 weeks; [...]

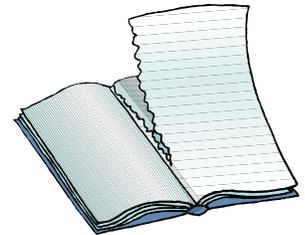
This payment will be inclusive of all notice statutory, contractual and other entitlements to compensation and statutory severance and termination pay you have in respect of the termination of your employment and no other severance, separation pay or other payments shall be made.

Mr. Wright's employment was terminated after 5 years of employment and he was provided with 13 weeks base salary, 13 weeks of RRSP matching contributions, 13 weeks of car allowance payments, 13 weeks of parking allowance payments and 13 weeks of continued group benefits coverage with the exception of disability and life insurance. **It was undisputed that the employer had complied with its obligations under the *Employment Standards Act* (the "ESA").**

The Arguments: Mr. Wright sued and claimed that the termination clause was unenforceable for two reasons: 1) because it did not provide for benefit continuation, and 2) the amount of pay in lieu of notice provided for in the agreement was less than the aggregate statutory minimums *in certain circumstances* (notably, not in his circumstances).

The Conclusions: The Court agreed with Mr. Wright on both points. The Court concluded that the language used in the agreement stipulating that the payments under the termination provisions were to be inclusive of "all ..entitlements to compensation" provided for base salary only—no benefits, which would be contrary to the ESA. The Court went even further and concluded that, while the minimum requirements of the ESA had been met in this case, the termination provision was unenforceable because it could have violated the ESA in other circumstances.

The Point: This case tells employers that: 1) they must specifically provide for the continuation of benefits during the statutory notice period in their employment agreements and 2) they must make sure their termination clauses meet the minimum requirements for notice and severance pay under the ESA at any time. ***It is strongly recommended that you review your employment agreements to make sure they meet the Wright v. Young and Rubicam requirements. This case has now been followed in other cases.***



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