Wilson Vukelich LLP
Lawyers

Fixed-Term Employment Agreements Create an Unexpected Cost for Employers on Terminations

September 2023 Employer Alert

There are a variety of reasons an employer may wish to use a fixed-term employment agreement. For example, they may wish to confirm that the agreement is only a seasonable agreement, or confirm that the employment is only a backfill position. Intuitively, a fixed-term employment agreement should be the perfect solution for short-term employees and should limit your termination obligations. The reality is though, that a fixed-term employment agreement all too often increases termination obligations.

How can fixed-term employment agreements increase termination obligations? As a starting point, it is important to understand that when dismissed, an employee will normally be entitled to both their statutory termination entitlement and their common law termination entitlements. However, with a proper termination provision in an employment agreement, an employee can be limited to only their statutory minimum termination entitlements. For example, with a proper termination provision, an employee's termination entitlements can be decreased from several months to only a few weeks. Without a limiting termination provision, an indefinite employee will be entitled to notice calculated based on several factors (e.g. their age, length of service, position). For an employee with a few years of service, this could mean a few months' compensation. However, with a fixed-term employee, the Court will often award the employee the balance of the term. As

Authors

Christine Ashton
905-940-0526
cashton@wvllp.ca

Andrew Au-Yeung
Articling Student

Our Employment/Labour Lawyers


Christine Ashton


Daniel Condon


Doug Langley

such, for an employee with a 5-year fixed-term employment agreement, if they were dismissed only a few weeks into their employment, they would normally be awarded the remaining 5 years' pay.

This hard lesson was recently learned by an employer in the matter of *Tarras v. The Municipal Infrastructure Group Ltd*. In that case, the employee was dismissed 1 year into a 3-year fixed-term agreement. There was an employment agreement, but the termination provision contained therein was unenforceable as it was improperly drafted. In review, the Court confirm that, where a fixed-term employee is dismissed and there is no enforceable termination provision, the employer must pay the remaining balance of the term of the contract. As such, the employee was awarded the remaining 2 years' salary, amounting to almost $500,000.00.

This decision serves as a caution for employers in regards to fixed-term employment agreement. If the employment is not truly for a fixed term, then traditional indefinite term employment agreement should be used. If the employment is for a fixed term, the employment agreement should be properly drafted, with an enforceable termination provision. In particular, there should be a termination provision in the employment agreement that limits the employee to only their statutory minimum termination entitlements (or some other defined greater entitlement). Further, as an extra precaution, employers should consider only brief fixed terms and properly renewing the agreement, if needed, before the expiry.

For more information or for assistance with drafting a proper and enforceable fixed-term employment agreements, please contact our firm.