

News

Ontario Court Voids Termination Provision for Non-Compliance with the *Employment Standards Act*

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In [Miller v. A.B.M. Canada Inc.](#), the Ontario Superior Court again nullified a termination provision in an employment contract because it did not strictly comply with the requirements of the *Employment Standards Act, 2000* (“ESA”).

The plaintiff worked for the defendant for 17 months in a middle management position at an annual salary of \$135,000. The plaintiff had prior human resources experience and the position he was hired into was responsible for, among other things, monitoring compliance with legislation such as the ESA. The termination provision in his employment contract provided for payment of salary during the notice period but not for payment of his car allowance or his 6% pension contribution during this period, an omission which resulted in the Court’s finding of non-compliance with the ESA.

The Court also found that given the plaintiff’s background in human resources and the role that he accepted (where he was responsible for compliance with employment legislation), he had some responsibility for the fact that the contract fell below ESA standards. It awarded three months’ notice, a notice period which is on the low end for a short service middle management employee.

It is not clear if, or the extent to which, the Court took into account the plaintiff’s role in entering into an unenforceable contract. However, it remains to be seen whether future courts will hold plaintiffs somewhat accountable where it is found they are partially responsible for agreeing to an unenforceable term in an employment contract.

For a more detailed discussion of this case, see our Case in Point blog post “[Another Reminder to Employers: Draft Termination Notice Provisions with Care.](#)”