

## Case In Point

# (Yet Another) Ambiguous “ESA-only” Termination Provision Unenforceable

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Another “ESA-only” termination provision in an employment contract has been found unenforceable by the Ontario Superior Court. In [Howard v Benson Group](#), the Court decided that the termination provision providing only *Employment Standards Act, 2000* (“ESA”) minimum entitlements was ambiguous; therefore, the common law applied and the plaintiff was entitled to reasonable notice of termination.

The provision in question read:

8.1. Employment may be terminated at any time by the Employer and any amounts paid to the Employee shall be in accordance with the Employment Standards Act of Ontario.

The problematic language was “any amounts paid to the Employee”, as it did not make reference to any other minimum entitlements guaranteed by the ESA, such as continuation of benefits during the statutory notice period. Since the provision referred only to “amounts paid”, it was not sufficiently clear that the plaintiff would receive all his entitlements under the ESA and not just the payment of termination and severance pay.

This is yet another decision in a line of cases that has found termination provisions in employment contracts unenforceable because they do not clearly comply with all obligations under the ESA.

It is important for employers to remember that the ESA provides not only for payment (or notice) of termination and severance pay (where applicable), but also continuation of benefits during the statutory notice period, which may include not only group benefits, but also pension contributions, car allowances, etc. ([Miller v. A.B.M. Canada Inc.](#)). Also, where the contract is not compliant with the ESA, provision of all ESA entitlements by the employer “does not alter the reality that the employment contract drafted by the employer is contrary to law” ([Stevens v. Sifton Properties Ltd.](#)); the termination provision will still be unenforceable despite actual compliance with the ESA.

These cases serve to remind employers of the following:

1. Courts are reluctant to enforce ESA-only termination provisions which are ambiguous.
2. A well-drafted employment contract or offer letter is important to have at the outset of the employment relationship as it will provide employers with certainty as to their exposure at

the time of employment termination.

3. Employment contracts or offer letters should be reviewed regularly to ensure that the language of any termination provision is not only compliant with the ESA, but also with the most recent decisions at common law.