

Ontario worker's discrimination complaint derailed by valid release

'An employer should always give a terminated employee time' to review and seek advice: lawyer



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“If there is no consideration paid in exchange for a release, it will not be enforceable - the employer must offer an amount over and above what the employee would be entitled to either under employment standards legislation or their employment contract.”

So says Zack Lebane, an employment and labour lawyer at Sherrard Kuzz in Toronto, after the Ontario Human Rights Tribunal dismissed a worker's discrimination complaint because they had signed a valid release in exchange for payment beyond their statutory termination pay amount.

The worker began her employment with Tractel Swing Stage Limited, a provider of working-at-height safety services and solutions based in Toronto, in 2014.

On March 23, 2018, Tractel terminated the worker's employment. The company gave her three weeks' pay in lieu of notice and paid out her accrued vacation time for 2017 and 2018.

At the termination meeting on March 23, the worker was presented with a termination letter and a release. The termination cover letter said that if the worker agreed to sign the release, they would be paid an additional four weeks' pay.

Release of all claims

The release stipulated that the worker fully released Tractel "from all actions, causes of action, suits, debts, demands, and all other liabilities of any kind existing now or which are not now known or anticipated but which arise in the future out of, or in any way related to, your employment with Tractel or the permanent layoff of my employment with the Tractel including, but not limited to, any entitlement you may have under common law, or pursuant to the Employment Standards Act of Ontario as amended."

The release also stated that it released Tractel from any claims under the Ontario Workplace Safety and Insurance Act and the Ontario Human Rights Code. It also indicated that, by signing it, the worker declared that they had the opportunity to obtain legal or other advice and understand the purpose of the release.

A director of Tractel who was at the meeting told the worker that they should not sign the release right then, but they should take it home to review and ensure they understood it. The director also suggested that the worker seek legal advice. However, the worker signed the release shortly after the termination meeting and Tractel paid them the additional four weeks' pay. The worker didn't ask for any clarification or say that they didn't understand the release.

A few months later, in July, the worker filed a human rights complaint alleging discrimination with respect to employment because of sex, including sexual harassment. Tractel requested that the tribunal dismiss the application because the worker signed a "full and final release" and to continue with the worker's complaint would be an abuse of process.

The company asserted that the worker was "an educated person who worked in a sophisticated engineering environment" and had never indicated a lack of understanding of the release.

Release not clear: worker

The worker argued that the contents of the release weren't clear, particularly because it didn't refer to human rights. They claimed that they signed the release in order to get termination pay because they had "just been unexpectedly fired and needed income." The worker also said that if they knew that the release would have prevented them from continuing with the discrimination complaint, they wouldn't have signed it.

The worker also argued that the release didn't indicate that there was consideration for signing it – the termination cover letter said that they were “entitled” to the additional four weeks pay, which made the worker believe that this was part of their legal rights.

The tribunal noted that “when two parties contract to settle legal matters between them, the principle of finality demands that the contract be given effect and prevents parties from litigating settled matters, unless there are compelling reasons to set the contract aside altogether.” This meant that the release should be considered legally binding unless there were compelling reasons to set it aside, the arbitrator said.

The tribunal also noted that the worker's statutory entitlement for three-and-a-half years of service was three weeks' pay in lieu of notice, which she initially received. The worker claimed that the wording of the cover letter led them to believe that the additional four weeks' pay was part of their entitlement, but his wasn't the case and the worker was free to seek legal advice or clarification, said the tribunal.

Tractel could have been clearer that the four weeks' pay was over and above the worker's statutory entitlements and that the worker would receive the latter anyway, but the worker should have sought clarification, says Lebane.

Opportunity for advice on release

The tribunal found that Tractel management advised the worker not to sign the release right away and urged them to seek advice, and the worker didn't ask any questions. The release clearly said that by signing it, the worker agreed that they had read it and had the opportunity to seek advice. Tractel did all that it could to ensure that the worker had a [fair opportunity to understand the release](#), the tribunal said.

In addition, the release expressly released Tractel from claims under the Human Rights Code, the tribunal said.

“An employer can always include more in its release, such as a specifying that if the employee brings a claim against the employer, the release will act as a complete bar to the claim,” says Lebane. “However, as the tribunal said in the decision, where ‘the literal and [ordinary meaning of the release](#) demonstrates a clear intention on the part of the parties to fully and finally release the respondents from all claims,’ it should be given deference.”

The tribunal acknowledged that the worker may have felt pressure for income, but there was no evidence that it was beyond the normal pressure a worker would feel when they lose their job. The encouragement of the worker to take the release home and review it added to the fact that there was no undue duress for the worker to sign the release that day, the tribunal said.

“An employer should always give a terminated employee time - at least a week and possibly more, depending on the circumstances - to consider whether to sign the release and to seek legal advice if they so choose,” says Lebane. “This allows the employer to [defend against a claim](#) that the employee did not understand what they were signing or signed under duress.”

“This case is a great example of that defense in action, as the tribunal completely rejected the employee’s argument,” he adds.

Freely entered into release

The tribunal determined that the release was valid and the worker freely entered into it. As a result, the human rights complaint was an abuse of process and must be dismissed, the tribunal said.

Although the employer here covered its bases by advising the worker to take some time and seek legal advice, but employers should be careful if there could be any concerns about the worker’s state of mind or capacity, says Lebane.

“Legal capacity to enter into a release may be more likely to be an issue in a human rights matter, specifically relating to disability,” he says. “If an employer has a concern an employee may not have the mental capacity to appreciate and understand the release due to a disability, the employer should seek legal advice before proceeding.”

See [Kamal v. TRACTEL Swing Stage Limited, 2023 HRTO 1388](#).