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## *Limit Inducement-Related Liability When Recruiting New Talent*

If an employee is “induced” to leave their current employment, the recruiting employer may face additional liability if the new employee is later dismissed.

The risks associated with inducement were recently highlighted in a decision of the Ontario Superior Court of Justice - *Miller v Alaya Care Inc.*<sup>1</sup> In *Miller*, an employee who had been induced to leave secure employment was dismissed after only **seven months** and awarded **fourteen months**

of common law reasonable notice (more than \$200,000). How did this happen and how might this be avoided?



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### The legal concept of “inducement”

Inducement occurs when an employer actively persuades a candidate to leave secure, ongoing employment to join their organization, often with promises of higher pay, long-term stability, or advancement.

If a candidate has been induced to join a new employer, and their employment is terminated, courts will consider this an aggravating factor to increase the period of common law reasonable notice to which the employee is entitled. Whether inducement has occurred, and the degree of inducement, are highly fact dependent. A court will consider:

- The degree to which the employer initiated the hiring process.
- The reasonable expectations of both parties.
- How willing the employee was to leave their former employer.
- Whether there were assurances of long-term employment.
- Whether the employee undertook due diligence before accepting the position.

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- Whether the employer's conduct went beyond usual persuasion or "courtship" between an employer and prospective employee.
- The length of employment with the former employer.
- The length of time the employee remained in the new position.

## What happened in Miller?

Miller was employed by WellSky Inc. as a VP of Marketing, for approximately twelve years. She was 61 years old and the most senior employee in WellSky's Canadian operations.

WellSky was the largest competitor of the defendant, Alaya Care. Over the course of several months Alaya Care courted Miller in the hopes of convincing her to leave WellSky and join Alaya Care. Initially, Miller was not interested so, to sweeten the pot, Alaya Care:

- Offered increased salary, bonuses and equity set to vest over three years (to replace the roughly \$400,000 USD of stock options Miller might lose by leaving WellSky).
- Suggested Alaya Care was looking to grow under the leadership of Miller.
- Offered to pay for a lawyer to defend Miller in any action WellSky might bring against her.
- Several times wrote to Miller to "convince" and "lure" her and inquire "what it would take" to persuade her to join Alaya Care.

Eventually, Miller accepted Alaya Care's offer of employment as Vice President, Client Services, and resigned from her position with WellSky. She signed an employment agreement with a termination clause that stated, "In the unlikely event that you are terminated without cause, you will receive a minimum of 4 months of base salary".

Seven months later, Alaya Care terminated Miller's employment without cause, and Miller brought an action for wrongful dismissal.

## Inducement

Although employed with Alaya Care for just seven months, Miller submitted she was entitled to 22 months of common law reasonable notice on the basis of inducement. She argued that because she was induced to leave WellSky, she should be treated as if she had been an employee with 12.5 years' service.

The court largely accepted Miller's position and awarded her 14 months' notice. The court found Miller had been induced because the discussions with Alaya Care went "beyond the normal courtship between an employer and prospective employee." Specifically:

1. Alaya Care reached out to Miller first.
2. Alaya Care represented to Miller that her experience would assist in "growing" the company.
3. Alaya Care inquired into Miller's remuneration with WellSky, including bonuses and stock options, so as to "lure" her.
4. Alaya Care had hired a number of people in 2021 as part of an "aggressive growth strategy."
5. Alaya Care went so far as to indemnify Miller in the event WellSky commenced litigation against her for leaving it to join Alaya Care.

## Best practices for employers

Recruiting high-level performers to leave their employment often requires active persuasion. At the same time, employers engaged in recruitment should be aware of the risks associated with inducement. Although every case has its own facts and context, a prospective new employer should:

- Be mindful of language used (written and verbal) when communicating with a candidate.
- Avoid expressing or implying any guarantee regarding future length of employment or job security.
- Include in the employment agreement a provision that the employee confirms and agrees they were not induced to leave their prior employment.
- Include in the employment agreement an enforceable termination clause that defines the employee's entitlements in the event of termination of employment.

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When in doubt, to learn more, or for assistance contact your Sherrard Kuzz LLP lawyer or [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com)

<sup>1</sup> *Miller v Alaya Care Inc* 2025 ONSC 1028 [Miller].

## DID YOU KNOW?

Under Ontario's *Working for Workers* legislation, effective January 1, 2026, every employer that publishes a publicly advertised job posting and uses artificial intelligence to **screen, assess or select applicants** must include in the posting a statement **disclosing the use of the artificial intelligence**. To learn more and for assistance, contact Sherrard Kuzz LLP.



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## *Flawed Record-Keeping and Investigation Into Absences May Be Discriminatory ~ Human Rights Tribunal of Ontario*

Time theft is a well-recognized basis for termination of employment for just cause. However, if unlawful discrimination has occurred in the lead-up to termination of employment, even an employee who has committed

time theft, may be entitled to compensation.

In *Buckel v St. Joseph's Healthcare Hamilton*,<sup>1</sup> an employer's flawed investigation and disregard for human rights issues led the Human Rights Tribunal of Ontario to award an employee general damages arising out of discrimination, even though the Tribunal declined to overturn the employer's decision to terminate her employment on the basis of just cause.

### What happened?

Ms. Buckel was employed as a secretary in the Psychiatry Department at St. Joseph's Healthcare Hamilton. Through the use of timesheets, she was required to report to her manager her arrival and departure times, and times away from work. Her manager would then enter her information into the record-keeping system.

In October 2017, due to concerns about Buckel's record of absenteeism, the Hospital commenced a workplace investigation, including an examination of payroll and attendance records. The Hospital directed Buckel to attend an investigation meeting; however, she was given only five minutes notice and no prior warning of an investigation into her attendance at work. During the meeting, Buckel was unable to provide an acceptable explanation for the issues raised. She was also not shown any of the evidence collected during the investigation.

Ultimately, the investigation identified the following issues which the Hospital suspected as time theft:

- Buckel appeared to arrive at work late or leave early, while being paid for the full day.
- On nine occasions, Buckel was paid for periods when the Hospital's records showed her to be absent from work.
- There were instances of Buckel appearing to overstay her lunch break.

Immediately following the investigation meeting with her, the Hospital terminated Buckel's employment for wilful misconduct and deliberate neglect of duties.

### The Tribunal's decision

The Tribunal found significant gaps in the investigation, which impacted the reliability of many of its findings:

- During the hearing, Buckel demonstrated multiple inaccuracies in the Hospital's payroll records and timesheets, which occurred through no fault of her own.

- The investigation was unfair and unreasonable because Buckel was not provided an opportunity to identify deficiencies in the Hospital's evidence. Had Buckel been given time to review her payroll and attendance records, she would have been able to identify certain instances where the errors found arose due to her manager's failure to keep accurate records.
- The Hospital failed to interview Buckel's former managers and colleagues, resulting in questionable findings of culpability.

All told, the Hospital's tally of 164 alleged hours of time theft had been significantly overstated, in part, due to it treating legitimate disability-related absences, as unauthorized. These legitimate, disability-related, absences were therefore a factor in the Hospital's decision to terminate Buckel's employment.

Significantly, the Tribunal also found that the Hospital did not intend to discriminate and had legitimate, non-discriminatory, reasons for terminating Buckel's employment. However, in the end, the Tribunal confirmed that even if termination is legally justifiable on the basis of just cause, and even if there was no discriminatory intent, if discrimination was a *factor* in the decision to terminate employment, this violates the *Human Rights Code*.

Buckel was awarded damages of \$15,000 for injury to dignity, feelings and self-respect.

### Lessons learned

While time theft is misconduct, almost invariably justifying dismissal, failure to adhere to fairness principles during a workplace investigation can lead to an employer being found liable, even to a dishonest employee. To avoid such liability, an employer should ensure its processes are fair and reasonable, including the following:

- **Implement clear policies and procedures** that address reporting and record-keeping for lateness and absenteeism.
- **Regularly train** staff on policies and procedures.
- **Recognize a difference between culpable and non-culpable absenteeism.**
- **Ensure all requirements and efforts** to accommodate are well-documented.
- **Investigate** a concern promptly and thoroughly, following fair procedures, including interviewing all witnesses with material knowledge of the facts.
- **Ensure** an employee is made aware of and given reasonable opportunity to respond to any allegation of misconduct.

Finally, some investigations can be handled internally, whereas others require the assistance of a skilled external investigator. When in doubt, consult with an experienced workplace lawyer.

*To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer, or [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com).*

<sup>1</sup> 2024 HRTO 1324.

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**DATE:** Wednesday, September 17, 2025; 9:00 a.m. – 10:30 a.m.

**WEBINAR:** Via Zoom (registrants will receive a Zoom link the day before the webinar)

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