

Releases Protect Employers From Human Rights Complaints

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Human rights complaints to the Human Rights Tribunal of Ontario (the "Tribunal") from dismissed employees have become an increasingly common occurrence. Such complaints do not cost anything to file, applicants do not require lawyers and can often obtain free legal advice and representation from the Ontario Human Rights Legal Support Centre, and, unlike a lawsuit, an unsuccessful applicant does not have to worry about being ordered to pay the other side's legal costs.

Although employers and employees are not permitted to agree between them that the employer is not subject to the Ontario Human Rights Code (the "Code"), the Tribunal may enforce settlements between the parties which take into account human rights allegations. This means it is more important than ever for employers to try to obtain a comprehensive release of potential claims from dismissed employees when carrying out terminations. Fortunately for employers, several recent cases from the Tribunal demonstrate that it will enforce releases where they are properly drafted and entered into.

Recent Tribunal Cases

In *Cuba et. al. v. Global Egg*, a group of terminated employees who had all signed releases, filed an application under the Code alleging that they had been discriminated against on the basis of their ethnic origin. The Tribunal held that the releases were binding on the applicants and dismissed the application.

The dismissed employees argued that they did not understand the release. However, the Tribunal found that the employer provided sufficient information and time for the employees to fully familiarize themselves with the release. The contents of the termination letter and the release were explained to the employees in English and in Spanish (which was their native language),

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the employees were given one week to review the releases and they were urged to obtain advice from a third party to ensure they understood the contents of the release, which they did.

The applicants claimed that they believed they were required to sign the releases in order to receive their minimum entitlements to termination pay under the Ontario *Employment Standards Act, 2000* even though the company clearly explained that the release only pertained to the additional sum of money offered to the terminated employees in exchange for signing the release. The Tribunal held that lack of sophistication is not a general factor that serves to nullify a release. In addition, although the applicants faced economic pressure to sign the release, this alone was not sufficient to set it aside.

In *Monteiro v. Inspec-Sol*, a former employee filed an application under the Code alleging discrimination. The employee, Ms. Monteiro, was offered five additional weeks of salary on the condition she sign a release. She was given one week to consider the offer. She returned to the company's offices three days later to ask questions about her termination and the release, however, when the individual she intended to speak with was unavailable she signed the release anyway instead of scheduling a meeting for a later date. Ms. Monteiro argued that she signed the release under duress and that she did not understand the contents of the release fully when she signed it.

The Tribunal examined two issues in deciding that the application should be dismissed. First, it considered if the release on its face prohibited the applicant from making a claim under the Code. In order to be binding, the language used in the release must be clear and unambiguous. In this case the release, in very clear language, prohibited the applicant from commencing a claim against the company under the Code.

Second, the Tribunal considered whether there were any other reasons why the applicant should not be bound by the release. Examples include duress (both economic and psychological), fraudulent misrepresentation on the part of the company and the applicant's capacity to understand the terms of the release.

The Applicant alleged that she signed the release under duress. The legal threshold for proving duress is high. A vital element of duress is the presence of pressure that (1) the law regards as illegitimate and (2) is applied to a degree as to amount to "a coercion of the will".

Ms. Monteiro was unable to show how failing to receive an explanation for her termination amounted to duress. She also acknowledged that she did not indicate to anyone at the company at the time of signing the release or immediately thereafter that she was under duress. The Tribunal found that the employer had conducted itself properly in giving the applicant a written description of the offer and also providing her with one week to consult with a third party about its terms. In addition, the Company did not pressure her to sign the release when she returned to its offices to ask questions about her termination.

Ms. Monteiro also argued that the release should be set aside because she did not appreciate what she was giving up when she signed the release. The Tribunal made a distinction between her

capacity to understand the release and her *actual* understanding of the release. An applicant who does not take the time to understand a release cannot rely on a lack of understanding to nullify it. The Tribunal found that she had the capacity to understand the document, but she did not take the time to do so. The Tribunal dismissed the application.

In [*Arora v. Weston Bakeries*](#), the applicant's employment was terminated after it was discovered that he was doing work for another company while on WSIB disability leave due to an injured shoulder. Weston Bakeries, the employer, had asked the employee, Mr. Arora, to sign a full and final release in exchange for the conversion of his termination into a resignation, a neutral reference letter and a note in his record of employment that he was being laid off due to a shortage of work.

Mr. Arora argued that he signed the release because he believed that the employer was going to report him to the WSIB and the police for fraud. The employer had reported the behaviour to the WSIB, as it was entitled to do. Although the WISB found that the work he was doing for the other company was within his limitations and he was entitled to the benefits, the employer had not acted deceitfully in reporting his conduct.

Mr. Arora also argued that he had no time to consider his options or consult a third party. The Tribunal found that the applicant had a reasonable amount of time to consider his options and seek consultation. During the two days of meetings he had with the employer he had many opportunities to express doubts and concerns to his union representative. In addition, he did not express any regret afterward signing the release to either the company or the union. The Tribunal dismissed the application.

Tips for Employers

The employers in the cases discussed above were able to protect themselves from human rights complaints because the releases were properly prepared and entered into. To help ensure that your organization can similarly benefit from the value of a release, the following guidelines should be followed:

1. The release should have appropriate language to protect against human rights complaints. At a minimum this should include a reference to the Ontario *Human Rights Code* and a representation by the employee that the employer has complied with the Code and has not discriminated against the employee in his or her employment. A clause to this effect should also be included in any termination letter or agreement given to the employee. The letter and release should be reviewed by a lawyer to ensure that they are properly drafted.
2. Explain to the employee in the termination meeting that the release language means that the employee is agreeing that the employer has not discriminated against him or her contrary to the Code.

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3. Offer a package that exceeds the minimums required under the Ontario *Employment Standards Act, 2000*. If the employee signs a release but only receives the minimums, the release will not likely be enforceable because the employee will not have received any “consideration” for the release.
4. Give the employee sufficient time to obtain legal advice in regard to the meaning of the release and recommend that the employee seek such advice.

Although the Tribunal does have the power to set aside a release in appropriate circumstances, following the guidelines above will greatly reduce the risk of exposure to human rights complaints against your organization.

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