

Member's Quarterly

Fall 2026 Edition

Feature

Good News: Wayfair Upholds "At Any Time" Termination Language

"At Any Time" not always fatal

Employers in Ontario have long wrestled with the risks of using standard language in employment agreements—especially phrases like “at any time”—that courts have, in some cases, interpreted as potentially violating the Employment Standards Act (“ESA”). Following decisions like *Dufault v The Corporation of the Township of Ignace* (“Dufault”), termination clauses have been struck down for ambiguous language, and for non-compliance with the ESA.

However, a recent Ontario Superior Court decision in *Li v. Wayfair Canada ULC.*, 2025 ONSC 2959 (“Wayfair”) offers some good news, especially for employers. The Court upheld a termination clause in an employment agreement that allowed the employer to terminate the employment relationship “at any time”.

In this article, we break down the Court’s reasoning in *Wayfair*, explore what it means for employers and employees, and discuss how this decision fits into the broader landscape of enforceability in Ontario employment contracts.

Background

Song Li was hired by Wayfair and worked as a Senior Product Manager. He was subsequently terminated on October 17, 2023, after just under nine months of service. At the time of his dismissal, he was 45 years of age. On termination, Li was—in accordance with the employment agreement—paid one week of base salary and benefits. Li argued that as the employment agreement was not enforceable, he was entitled to five months of common law reasonable notice.

Termination Clause

The employment agreement included the following ‘without cause’ termination clause:

After your probationary period concludes, in the absence of Cause, the Company may terminate your employment **at any time and for any reason** by providing you with only the minimum statutory amount of written notice required by the ESA or by paying you the minimal amount of statutory termination pay in lieu of notice required by the ESA, or a combination of both, as well as paying statutory severance pay required by the ESA, providing benefits continuance for the requisite minimum statutory period under the ESA and all other outstanding entitlements, if any, owing under the ESA [**emphasis added**].

The “with cause” section was as follows, and defined “cause” later on in the agreement:

The Company may terminate your employment **at any time** for Cause without notice, pay in lieu of notice, severance, benefits continuance or other compensation or damages of any kind” which goes on to add “unless expressly required by the ESA in which case only the minimum statutory entitlements will be provided.



Ruben Goulart
LL. B.
Founder,
Goulart Workplace
Lawyers



Arshad Auckbarallee
J.D.
Associate,
Goulart Workplace
Lawyers

Member's Quarterly

Fall 2026 Edition

Feature continued

[...]

For all purposes in this letter, "Cause" means any willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the company that constitutes "cause" under the ESA.

Li challenged the enforceability of this clause, and relied on *Dufault* where the Ontario Superior Court of Justice found that containing the words "at any time" could not comply with ESA minimum standards because of its attempt to contract out of the minimum entitlements under the ESA.

In distinguishing the case from *Dufault*, the Court in *Wayfair* noted that though the employment agreement used the words "at any time", it incorporated ESA language and entitlements, and included definitions of cause and references to all minimum statutory payments. Therefore, when read as a whole, there was no attempt at contracting out of the ESA, which was the basis for the unenforceability of the clause in *Dufault*.

Ultimately, the Court upheld the enforceability of the termination provision

TAKEAWAY: "At Any Time" Not Always Fatal

Following the *Dufault* decision, many Ontario employers believed that including the phrase "at any time" in a termination clause could render it unenforceable, exposing them to common law notice entitlements—often significantly more generous than those set out in the contract. However, the recent *Wayfair* decision clarifies that this phrase does not automatically invalidate a termination clause. Instead, courts will assess the agreement as a whole to determine if it complies with the ESA and does not unlawfully contract out of minimum entitlements. This underscores the importance of clear, carefully drafted employment agreements.

Ruben Goulart is the founder of the firm Goulart Workplace Lawyers and can be reached via email at rgoulart@goulartlawyers.ca.

Arshad Auckbarallee is an Associate with Goulart Workplace Lawyers and can be reached via email at aauckbarallee@goulartlawyers.ca.