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Feature

Understanding Wages in 2026

Dealing with RSUs and Termination

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Introduction

It is well established that equity, when worded correctly, is not considered wages under the Ontario *Employment Standards Act, 2000* ("*ESA*"). Though, as Restricted Stock Units ("**RSUs**") become a more common element of employee compensation packages, the courts have had to address recurring challenges relating to employee entitlement to RSUs upon termination.

Two recent decisions at the Ontario Superior Court have taken on these challenges and should be on your radar.

1. RSUs are Not Wages: Continued Vesting is not Guaranteed for Statutory Notice Period

In *Wigdor v Facebook Canada Ltd.*, 2025 ONSC 4861 ("*Wigdor*"), the Court had to decide a) whether the applicant's employment agreement was void because its termination clause contravened the ESA, and b) whether the applicant was entitled to the value of the forfeited RSUs and other benefits which would have vested during the notice period.

The Court quickly found the employment agreement to be void as the termination clause contravened the *ESA*, and turned its attention to the RSUs and the plan documents governing their terms ("RSU Plans"). One set of the RSU Plans stipulated that unvested RSUs are forfeited upon termination and that the date on which a termination occurs will not be extended by any period, unless "applicable employment standards legislation explicitly requires continued entitlement to vesting during a statutory notice period". Another set of the RSU Plans stated the relevant termination date for the purpose of terminated vesting occurs when the participant ceases to perform services. The applicant argued the language was unenforceable for failing to account for scenarios where employees cannot be lawfully terminated (job protected leaves, reprisal, etc.).

After reviewing the RSU Plans, in citing *North v. Metaswitch Networks Corporations*, 2017 ONCA 790, the Court concluded that:

- RSUs, like stock options, do not constitute "wages" under the ESA;
- RSUs are not a benefit akin to a health or dental benefit, which must be continued for the statutory notice period; and
- Accordingly, the ESA's sections 61 (Pay instead of notice) and 60 (Requirements during notice period) cannot be seen as guaranteeing the continued vesting of RSUs during the statutory notice period.

In fact, the Court went so far as to say that, had the legislature intended for the statutory definition of "wages" to encompass stock options and RSUs, it would have adopted a more expansive definition to include such other forms of remuneration. This confirmed that the forfeiture language in the RSU Plans was enforceable.

THE CONFLICT: Importantly, in rejecting the applicant's arguments, the Court in Wigdor also affirmed RSU Plans should not be assessed the same way as employment agreements. In *Liggett v Veeva*

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Software Systems, Inc. and Veeva Systems Inc., 2025 ONSC 7010 ("*Liggett*"), that decision came to the exact opposite conclusion.

2. Risk Assessment of Equity Plans include Analysis for ESA-Compliance

In *Liggett*, the Court confirmed that since equity compensation is part of an employee's remuneration, that courts should analyze forfeiture provisions using the same principles that apply to salary, bonuses, and other compensation. As such, RSU forfeiture provisions should be analyzed using the same legal framework as traditional termination clauses in employment agreements. The Court expressly rejected that because a forfeiture clause appears in an equity plan rather than the employment agreement, it should be treated differently. Rather, the Court held that employers should expect that where a clause affects compensation during the statutory notice period, it will be reviewed through the same ESA compliance lens.

The Court's findings relied heavily on *Matthews v. Ocean Nutrition Canada Ltd*., 2020 SCC 26 ("*Matthews*"). *Matthews* reaffirmed the principles of contractual interpretation, namely that when the terms are unilaterally imposed on employees, the provisions of the agreement must be absolutely clear and unambiguous to remove the entitlement to a bonus or other advantage.

When analyzing the contract in dispute in *Liggett*, the Court found several aspects of the employment agreement to be ambiguous.

Notably, the Stock Option Grant provided that the option would expire where unvested as of the termination date. Termination was considered to be "the date that you are no longer actively providing services to the company". The Court noted this is the very clause that was discussed in *Matthews* and was subsequently found not to deprive the employee of their right to bonus or benefits arising during the notice period. Further, the vesting clauses at issue also provided that "the Committee shall have the exclusive discretion to determine when you are no longer actively providing services for the purposes of the restricted stock unit, including whether you may still be considered to be providing services while on a leave of absence." The Court found that this discretionary authority, without providing guidelines for the exercise of such discretion, gave an ambiguous message to employees as to their vesting entitlements.

In the end, the Court found that ambiguous language that violates the ESA voids termination clauses because employees may be misled as to their entitlements and not recognize that they are forfeiting rights the common law gives them. As such, the Court further concluded that a similar approach must be used in interpreting equity contractual language that seeks to deprive employees of bonus or stock options to which they would have been available during the notice period.

Key Takeaways

Ontario, if not the Canadian judiciary at large, is presently trying to sort out its decisions concerning an employee's right to incentive compensation over their statutory notice period.

While Wigdor is pending appeal in 2026, that Court was clear: stock options and RSUs are not "wages" pursuant to the ESA. Employers are nonetheless well advised to ensure RSU documents, or other incentive plans, include forfeiture provisions and termination language that clearly terminate continued vesting at the end of employment.

In Liggett, the Court took issue with the language in the equity plan which provided that an employee's

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equity would be forfeited upon termination of their "service" because an employee's service actually ends at the end of the ESA notice period. As a result, the Court found this breached the ESA and did not unambiguously extinguish the employee's right to their equity-based compensation.

Employers may well receive greater clarity on this subject shortly, as the Ontario Court of Appeal is set to hear more about this soon. Until then, employers should prepare for plaintiff counsel and the courts to continue to heavily scrutinize the language of all equity compensation plans.

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