

Ford hit with class-action lawsuit after backing out of 100s of job offers

Revocation of a job offer likely to be treated as repudiation of employment agreement leading to wrongful dismissal damages

An Ontario Court has certified a class-action lawsuit against Ford Motor Company that alleges the automaker reneged on job offers at its plant in Oakville, Ont.

The class action alleges Ford offered jobs to hundreds of individuals as assemblers during the week of July 14, 2008, with a start date of July 28. However, a week later, Ford announced it was postponing a third shift in Oakville because of a sudden decline in demand for vehicles. During the week of Aug. 8, 2008, Ford advised the individuals the shift would not be implemented at all.

Many of the individuals affected said they quit or gave notice to previous employers of their intention to join Ford. As a result, the individuals allege “anticipatory breach of contract, wrongful dismissal and/or a repudiation of the employment contract” stemming from Ford’s failure to employ them.

Ford took the position any employment agreement in place was “frustrated” due to factors beyond its control and any claim the individuals might have must be submitted through the grievance provisions of the collective agreement. However, the Canadian Auto Workers said it could not file a grievance as the individuals were not actual employees and, therefore, not yet union members.

Putting aside the issue of whether the individuals can file a grievance, employers might well question what exactly the courts can do about the repudiation of an employment contract. In other words, is an employer worse off if it advises an employee it cannot honour an employment offer than if it simply employed the person for a short period of time and then terminated the employment?

The general rule with respect to terminating a non-union employee — subject to any employment agreement in existence — is



LEGAL VIEW

THOMAS STEFANIAK

governed by the long-standing principle an employee is entitled to reasonable notice or pay in lieu of notice, subject to an employee’s duty to mitigate the damages from the termination.

But are there different principles — or damages on a different basis — if an employee accepted an offer of employment but never actually started because the employer decided it did not require her services? This is what is known as repudiation of the employment agreement, in that the employer indicates it does not wish to be bound, for whatever reasons, by the arrangement that was previously made.

In cases of constructive dismissal, courts commonly talk about the repudiation of the employment agreement if an employer makes changes to an employee’s job that indicate the employer no longer wishes to be bound by the original arrangement. It should not be surprising courts have little difficulty in treating the failure of an employer to allow an employee to start her job as a repudiation of the employment agreement.

There are many cases in Canada where this has occurred. The reasons are varied but, generally, the employer’s position is unexpected events or circumstances have arisen that make the employment of an individual problematic. In almost all these cases, the employer’s defence is

the anticipated job functions are no longer necessary and cannot be implemented. Courts have universally rejected this as a basis on which to deny an employee the ability to claim damages for the repudiation of the employment agreement.

The result is both good and bad news for employers. The good news is the repudiation of an employment agreement will generally not lead to damages being assessed on a substantially different basis than in a normal wrongful dismissal action. Courts consider the employee to have been hired for a job, but never started, and assess what is reasonable notice based on the normal factors.

The bad news is in many of these cases, the employee will have resigned from a previous employer, may have made substantial changes to her personal circumstances — such as selling a house and moving — or rearranged other aspects of her life for which she is now disadvantaged. Courts look to all of these circumstances in assessing reasonable notice.

An employer can expect to be exposed to at least the amount of reasonable notice it would have been required to give had it actually employed the person, albeit for a very short time. It might also be exposed to out-of-pocket expenses the individual may have incurred by accepting the job offer. In rare cases, an employer might be exposed to punitive damages if a court concludes it acted in bad faith in making the offer and then withdrawing it.

Thomas Stefaniak is head of the labour relations and employment law group at [Torkin Manes in Toronto](http://TorkinManes.com), advising employers with respect to new legislative developments and workplace disputes. He can be reached at (416) 777-5430 or tstefaniak@torkinmanes.com.

TIPS FOR EMPLOYERS

Withdrawing a job offer

When intervening events between an offer of employment and the date of commencement of employment make it problematic to allow an individual to start her employment, employers should consider the following:

In offering the job, it is almost always preferable to make the offer via a written employment contract. This is particularly important in the case of senior managers or executives. If an employer can demonstrate that, even if it had employed the individual rather than repudiating the contract before she started working, the individual would have been subject to an agreed upon notice period, a court might be inclined to limit the damages to whatever the agreed upon notice period would likely have been.

Without any admission of liability, an employer may be well-advised to immediately assist the employee with respect to finding alternative employment as quickly as possible. Whether or not the employment agreement has been repudiated, an employee or potential employee is still under an obligation to mitigate her damages. This would include immediately contacting her former employer to see if she can return to that job. An employer may also wish to offer job-relocation assistance as this expenditure could amount to significant cost savings should litigation be commenced.

Properly structuring a response by an employer in the case of a repudiation of a contract requires precise and quick action by the employer, so the employer’s legal position can best be protected and advanced. An employer’s failure to properly respond can lead to significant damages being awarded to an employee as well as potentially significant legal costs for an employer.