Annual Employment Law Update

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Overview

- Each year there are amendments to legislation and case law decisions that impact your obligations, rights and powers as an employer
- The purpose of today's webinar is to review a sampling of key legislative amendments and case law developments from 2026
- This webinar acts as a compliment to the issue specific seminars and webinars that we hold throughout the year
- This webinar touches on issues that impact all employers (unionized or not). For unionized employers, please note we hold a labour law update webinar in March each year
- This webinar should not be relied on in lieu of legal advice, and you should always consult with your employment lawyer to understand your legal rights and obligations

Agenda

Legislative Amendments

A. Bill 105 – ***Protecting Ontario's Workers and Economic Resilience Act, 2026***
B. Employment Insurance Regulations – **Temporary EI Relief Measures**

Caselaw Developments

1. Common Law Notice Periods – ***Contarchi v. Grand Cheese***
2. Workplace Violence and Harassment Investigations – ***Gassi v. The Corporation of the County of Lambton***
3. Frustration of Employment – ***Hill v. 1359768 Ontario Inc.***
4. Treatment of Stock Options – ***Wigdor v. Facebook Canada Ltd.***
5. Enforceability of Termination Clauses – ***Baker v. Van Dolder's Home Team Inc. / Li v. Wayfair Canada ULC***
6. Temporary Layoffs – ***Taylor v. Salytics Inc.***
7. Human Rights Protections for Independent Contractors – ***Sangha v. Lyft Canada Inc.***
8. Remote Work as a Disability Accommodation – ***Ontario Power Generation v. Power Workers' Union***
9. Workplace Investigations and Dismissal for Cause – ***Silva v. Royal Bank of Canada***
10. Return-to-Office Requirements and Constructive Dismissal – ***Cressey Construction Corporation v. Parolin***

A) Bill 105 – *Protecting Ontario's Workers and Economic Resilience Act, 2026*

- In recent years, the various Provincial Governments have made many amendments to Ontario's employment-related legislations, with amendments happening on nearly an annual basis
- The latest amendments come by way of Bill 105, the ***Protecting Ontario's Workers and Economic Resilience Act, 2026***
- Bill 105 proposes amendments to the ***Employment Standards Act, 2000*** ("ESA"), ***Occupational Health and Safety Act*** ("OHSA"), the ***Workplace Safety and Insurance Act*** ("WSIA") as well as the ***Labour Relations Act*** ("LRA")

A) Bill 105 – *Protecting Ontario's Workers and Economic Resilience Act, 2026*

Employment Standards Act, 2000

- The amendments to the ESA will permit the Director of Employment Standards to assign an employment standards officer to investigate complaints with respect to job posting requirements, disconnecting from work policies and electronic monitoring policies, amongst other things

A) Bill 105 – *Protecting Ontario's Workers and Economic Resilience Act, 2026*

Occupational Health and Safety Act

- The amendments to OHSA will expand the powers of the Chief Prevention Officer ("CPO")
- They will permit the CPO to collect personal information directly from workers relating to employees' exposure in the workplace to physical, chemical and biological agents
- Bill 105 will also allow the Ministry of Labour ("MOL") to recognize health and safety standards from other Canadian jurisdictions relating to both employee training as well as to equipment
- Deemed compliance with the Ontario requirements will reduce duplication of training requirements for employers operating in multiple Canadian jurisdictions

A) Bill 105 – *Protecting Ontario's Workers and Economic Resilience Act, 2026*

Workplace Safety and Insurance Act

- The WSIA will be amended to provide the Workplace Safety and Insurance Board the ability to award loss-of-earnings benefits to employees beyond age 65 if it is found that the employee was likely to have worked beyond age 65
- This amendment addresses the fact that many employees are now regularly choosing to work beyond age 65
- Also, under Bill 105 mandatory coverage under the WSIA will be extended to privately-operated residential care facilities and group homes

A) Bill 105 – *Protecting Ontario's Workers and Economic Resilience Act, 2026*

Labour Relations Act

- With respect to the LRA, the period of time that a union in the construction industry will have to bring a displacement application and to apply for certification as bargaining agent for employees are already covered under a collective agreement, will be reduced from 2 months to 1 month
- Similarly, the limit for employees who wish to bring a decertification application and to apply for a declaration that a union no longer represents the employees will also be reduced from 2 months to 1 month

B) Employment Insurance Regulations – **Temporary EI Relief Measures**

- Employment Insurance benefits provide temporary income support to eligible employees who lose their jobs and remain available for work
- Normally, termination pay, severance pay and certain other payments made when employment ends would normally delay or reduce an employee's EI benefits
- However, there have been several temporary changes
- Employees can now, until June 12, 2027, receive EI without it being impacted by their termination pay, severance pay and other qualifying separation payments
- This temporary change may be useful for employers looking to reduce labour costs or implement workforce changes
- The ability to receive EI without first exhausting a severance package may make a voluntary departure package more attractive to an eligible employee

B) Employment Insurance Regulations – **Temporary EI Relief Measures**

- Employers should not promise that an employee will receive EI — Service Canada determines entitlement
- Further, employers should be careful about whether and what they communicate to Service Canada

1) Common Law Notice Periods – *Contarchi v. Grand Cheese*

- For many years it was felt that the longest notice period which could be awarded at common law was 24 months
- Over the years, as common law notice periods in general became longer within the 24-month range, Judges also began pushing up against the 24-month notice ceiling
- Courts initially would only go beyond 24 months' notice in limited instances, where there was found to be special circumstances
- Not surprisingly, given the way the wrongful dismissal caselaw has evolved, Courts are now becoming more and more willing to exceed the 24-month threshold
- This is now being done even when there are not any special circumstances
- A recent Ontario Court of Appeal decision highlights this trend
- In this case, a Vice-President with 35 years service was constructively dismissed

1) Common Law Notice Periods – *Contarchi v. Grand Cheese*

- When determining the common law notice period, the Courts considered the employee's years of service, his age, his senior position and high level of compensation and awarded a common law notice period of 27 months
- There were not any special circumstances in this case which would have otherwise justified exceeding 24 months
- This decision highlights the fact that common law notice periods are becoming longer and that in many ways a 24-month notice ceiling is becoming a thing of the past
- This decision again also highlights the need for employers to have written employment agreements which address termination

2) Workplace Violence and Harassment Investigations – *Gassi v. The Corporation of the County of Lambton*

- OHSA provides that when an employer receives a complaint of workplace violence and harassment, the complaints are to be investigated in a way which is "appropriate in the circumstances"
- OHSA, however, provides no guidance on what this entails or amounts to being an "appropriate" investigation
- In a recent decision, the Ontario Labour Relations Board ("OLRB") provided some guidance on what will be considered "appropriate in the circumstances"
- In this case, an employee of the County of Lambton made a workplace violence and harassment complaint
- The employer investigated the complaint and concluded that there was no basis for it
- The Applicant then made a complaint to the MOL arguing that the employer had not conducted an investigation "appropriate in the circumstances"

2) Workplace Violence and Harassment Investigations – *Gassi v. The Corporation of the County of Lambton*

- When considering what makes an investigation "appropriate in the circumstances" the OLRB stressed that the person doing the investigation should be familiar with OHSA, as well as all relevant policies and procedures of the specific workplace
- The OLRB also stated that the investigation should be conducted on a timely basis
- The OLRB further stated that while not all witnesses who were identified in a complaint have to be interviewed, if the investigator decides not to interview a witness, the investigator must provide a reasonable explanation as to why identified witnesses were not interviewed
- This decision highlights the fact that the OLRB will not determine whether the investigation reached the "right" decision, only whether the process followed was appropriate

2) Workplace Violence and Harassment Investigations – *Gassi v. The Corporation of the County of Lambton*

- This decision also highlights the fact that OHSA compliance does not require that all complaints have to be referred to a third-party investigator, as the OLRB had no issue with the person who conducted the investigation being an employee of the employer
- What was important from the OLRB's perspective was not whether the investigator was internal vs external, but whether the investigator was qualified to conduct the investigation, whether the investigation was thorough, and whether the investigation was completed in a timely manner

3) Frustration of Employment – *Hill v. 1359768 Ontario Inc.*

- The law regarding an employer's ability to terminate based on frustration of contract has evolved over the years
- Initially, once an employee had been off work for approximately 18 months, even if they were off for legitimate medical reasons, an employer could terminate the person's employment based on frustration of contract
- When terminating based on frustration, at this time, the employer was not required to provide the terminated employee with any pay in lieu of notice
- The termination was considered akin to a with cause termination
- The caselaw first evolved so that while employers were still permitted to terminate based on frustration once the employee had generally been off work for about 18 months, when doing so the employer now had to provide the terminated employee with the notice of termination they were entitled to under the ESA

3) Frustration of Employment – *Hill v. 1359768 Ontario Inc.*

- Most recently, in addition to the passage of time, in order to terminate based on frustration, the employer must also be able to demonstrate that there is no reasonably expectation that the employee will be able to return to work in the immediate future
- A recent Ontario Court of Appeal decision shows the impact of the most recent development in the caselaw
- In this case, an employee had been on a Long-Term Disability ("LTD") leave for approximately 2.5 years
- While the employee was on the LTD leave, the employer reassigned the employee's duties
- When the employee was ready to return to work, the employer then offered the employee a lower paying position
- The employee quit claiming to have been constructively dismissed

3) Frustration of Employment – *Hill v. 1359768 Ontario Inc.*

- The employer defended the constructive dismissal claim on the basis that it could terminate based on frustration as the employee was unable to perform their pre-leave position at the time they returned to work
- The Ontario Court of Appeal rejected the employer's Defence, and upheld the Trial Judge's decision, holding that as the employee's restrictions were time-limited, frustration of contract did not exist
- As a result, the employee was awarded 22 months' pay in lieu of notice
- This decision demonstrates that the passage of time is no longer sufficient in and of itself to establish frustration of contract

4) Treatment of Stock Options – *Wigdor v. Facebook Canada Ltd.*

- In this Ontario Court of Appeal decision, the risks to employers in not complying with the ESA when drafting termination provisions is again highlighted
- In this case, the Plaintiff had established a business in 2011. In 2016, he sold the business to the Defendant and remained on as an employee after closing
- On the sale of the business, the Plaintiff entered into a new employment agreement with the purchaser
- As part of the Plaintiff's compensation post-closing, in addition to base salary, the Plaintiff was also awarded share units on an annual basis
- The post-closing employment agreement had language which purported to limit the Plaintiff's post-closing termination rights to the minimum entitlements pursuant to the ESA

4) Treatment of Stock Options – *Wigdor v. Facebook Canada Ltd.*

- With respect to the stock options, the most recent incentive plan provided that on any termination of employment all unvested options would be forfeited immediately upon any termination of employment and would not be extended by a notice period awarded "*unless required by applicable legislation*"
- The employer terminated the Plaintiff, provided him with his minimum notice entitlements pursuant to the ESA, and took the position that all unvested options forfeited immediately upon termination
- The Plaintiff brought a wrongful dismissal claim
- Ultimately, the Ontario Court of Appeal held that the Plaintiff was not limited to the ESA minimum but, instead, was entitled to notice of termination at common law, which was held to be 10 months

4) Treatment of Stock Options – *Wigdor v. Facebook Canada Ltd.*

- This was due to the fact that the employment agreement stipulated that in the first year of his employment the Plaintiff would only be entitled to 2 weeks' notice of termination
- Given that the Defendant was a successor employer, this provision violated the ESA
- Even more significantly, the Court of Appeal also held that the employer had to pay the Plaintiff the value of the stock options which would have vested through the 10-month common law notice period
- The employer was not able to rely upon the saving provision which existed in the option agreement as it was seen as being too generic to prevent the vesting to continue through the notice period

4) Treatment of Stock Options – *Wigdor v. Facebook Canada Ltd.*

- As a result, the Plaintiff was awarded $4,700,000.00 on account of the options which would have vested through the 10-month common law notice period
- This decision again highlights the risks of non-contractual language which does not comply with the ESA
- This decision also highlights the fact that any stock option agreements must be drafted carefully and in lockstep with the employment agreement
- Finally, this decision again highlights that having entitlements end immediately upon the end of the employment can create significant liability risks

5) Enforceability of Termination Clauses – ***Baker v. Van Dolder's Home Team Inc. / Li v. Wayfair Canada ULC***

- When an employer terminates an employee without cause, employment standards legislation sets out the minimum notice or pay in lieu of notice the employee must receive
- These are statutory entitlements, and an employer cannot contract out of providing them
- Unless an enforceable employment agreement limits the employee's entitlements, the employee will generally also have a right to reasonable notice under the common law
- Common law notice is determined by the courts, based on factors such as the employee's age, years of service, position and availability of comparable employment
- This can result in a much longer notice period, potentially reaching 24 months or more

5) Enforceability of Termination Clauses – ***Baker v. Van Dolder's Home Team Inc. / Li v. Wayfair Canada ULC***

- A properly drafted employment agreement can limit the employee to statutory minimums, substantially reducing the employer's termination obligations
- To achieve this, the agreement must clearly exclude greater common law entitlements while preserving everything the applicable employment standards legislation requires
- Over the last several years, Ontario employers have faced an increasingly difficult task in drafting enforceable termination provisions
- Courts have sometimes isolated a few words to identify a hypothetical way in which an agreement could violate Ontario's *Employment Standards Act, 2000* ("ESA")
- If the termination provisions are found unenforceable, the employer can lose the protection of the agreement and become responsible for the much longer common law notice period

5) Enforceability of Termination Clauses – ***Baker v. Van Dolder's Home Team Inc. / Li v. Wayfair Canada ULC***

- In ***Baker***, the Ontario Court of Appeal considered two appeals involving termination provisions that used the wording "at any time" or "for any reason"
- In the Baker case, the lower court found that the wording "at any time" made the termination provision unenforceable because it suggested that the employer could terminate employment even in violation of the ESA
- In the Wayfair case, the lower court found no issue with the wording because the agreement repeatedly confirmed the employee's entitlement to statutory minimums
- The Court of Appeal upheld the termination provisions in both agreements
- The Court confirmed that employment agreements must be interpreted using a practical, common-sense approach
- The focus should be on what is reasonably understood when reading the agreement as a whole
- Read as a whole, the agreements preserved ESA entitlements and did not permit the employers to terminate employment in violation of the ESA

5) Enforceability of Termination Clauses – ***Baker v. Van Dolder's Home Team Inc. / Li v. Wayfair Canada ULC***

- The key takeaway for employers is that a properly drafted employment agreement remains one of the most valuable tools for limiting termination obligations
- *Baker* confirms that courts should read employment agreements as a whole rather than search for technical reasons to invalidate them
- Employers should not take this decision as meaning that termination provisions no longer need careful drafting
- A provision that actually gives an employee less than their statutory minimums can still leave the employer responsible for common law notice
- The key is to preserve statutory minimums while clearly limiting greater common law entitlements

6) Temporary Layoffs – ***Taylor v. Salytics Inc.***

- When business slows down, an employer may want to temporarily lay off employees until work becomes available again
- During a temporary layoff, the employer reduces or stops providing work and pay, with the expectation that the employee will return
- Employment standards legislation sets out the conditions and time limits for a layoff to be considered temporary
- If those requirements are not met, the layoff can become a termination and trigger termination entitlements
- Employers also need to consider whether their employment agreements allow them to impose a temporary layoff

6) Temporary Layoffs – ***Taylor v. Salytics Inc.***

- In Ontario, simply complying with the temporary layoff requirements under the *Employment Standards Act, 2000* ("ESA") does not necessarily protect an employer from a constructive dismissal claim
- A constructive dismissal occurs when an employer makes a significant change to the employment relationship without the right to do so, allowing the employee to treat their employment as terminated
- Unless the employer has a contractual right to temporarily lay off the employee, stopping their work and pay can amount to constructive dismissal
- A properly drafted employment agreement can expressly permit temporary layoffs and help protect the employer against this liability

6) Temporary Layoffs – ***Taylor v. Salytics Inc.***

- In the matter of ***Taylor v. Salytics Inc.***, the employer experienced financial difficulties and temporarily laid off the employee while continuing his benefits
- The employee's agreement expressly permitted temporary layoffs in accordance with the ESA
- The agreement also contained an unenforceable termination provision
- The employee argued that this made the temporary layoff provision unenforceable as well, leaving him entitled to compensation for constructive dismissal
- The Ontario Court of Appeal rejected this argument
- The Court confirmed that a temporary layoff provision is different from a termination provision
- The fact that both appeared under the same "Termination" heading did not change what the temporary layoff provision actually did
- The temporary layoff provision remained enforceable, and the employee's claim was dismissed

6) Temporary Layoffs – ***Taylor v. Salytics Inc.***

- As the key takeaways for employers:
  - Employers should not assume that they can temporarily lay off employees simply because employment standards legislation provides for temporary layoffs
  - Employment agreements should expressly address the employer's right to impose a temporary layoff
  - The agreement and the layoff itself must comply with the applicable employment standards requirements
  - An unenforceable termination provision does not necessarily invalidate a properly drafted temporary layoff provision
- This decision again highlights the value of having employment agreements that address how the employer may need to manage its workforce

7) Human Rights Protections for Independent Contractors – ***Sangha v. Lyft Canada Inc.***

- Many businesses consider retaining contractors instead of employees, in part to reduce their obligations and requirements
- Whether a worker is an employee or a contractor is based on an analysis of various relevant factors
- The fact that the parties have agreed that it is a contractor relationship is helpful, but it does not determine the issue
- The Canada Revenue Agency, the applicable Ministry of Labour or a court can still find that it is an employment relationship
- An employee is generally hired to work for the company under its direction and control
- A contractor is generally retained to provide specific services and is in business for themselves
- The distinction depends on how the relationship actually operates, including who controls the work, whether the individual can decline work and whether they can work for other businesses
- While businesses generally owe fewer obligations to contractors than employees, some obligations remain in place
- This includes potential obligations under human rights legislation, even where the individual is properly classified as an independent contractor

7) Human Rights Protections for Independent Contractors – ***Sangha v. Lyft Canada Inc.***

- In the matter of ***Sangha v. Lyft Canada Inc.***, a Lyft driver alleged that his account was deactivated after a customer complained about him wearing a kirpan as an expression of his Sikh faith
- The driver brought a claim alleging religious discrimination under Ontario's *Human Rights Code*
- Lyft took the position that the driver was an independent contractor rather than its employee
- The Human Rights Tribunal of Ontario initially dismissed the claim, finding that the relationship did not fall within the areas protected by the Code

7) Human Rights Protections for Independent Contractors – ***Sangha v. Lyft Canada Inc.***

- On reconsideration, the Tribunal found that its original analysis had stopped too soon
- Finding that the driver was not an employee in the traditional sense did not determine whether he had human rights protection
- The Tribunal confirmed that the actual relationship must be examined, including the business's control over the individual and the individual's dependence on the business
- The Tribunal set aside its earlier decisions and allowed the claim to proceed
- It did not decide that Lyft had discriminated against the driver or that Lyft drivers are employees for all purposes

7) Human Rights Protections for Independent Contractors – ***Sangha v. Lyft Canada Inc.***

- In review, businesses should not assume that human rights obligations apply only to employees on their payroll
- An independent contractor agreement does not automatically protect a business from a human rights claim
- Complaints of discrimination and requests for accommodation should not be dismissed simply because the individual is a contractor
- This decision highlights the need to consider human rights obligations when managing contractors and deciding whether to end their services

8) Work as a Disability Accommodation – ***Ontario Power Generation v. Power Workers' Union***

- Human rights legislation provides protections in regard to grounds such as disability, family status and religion
- As an employer, you may be required to accommodate an employee's needs relating to a protected ground, up to the point of undue hardship
- Where accommodation is required for medical reasons, this may include modified duties, modified hours, remote work or a temporary job reassignment
- You are obligated to first try to modify the employee's regular position so that they can remain in that position
- If the employee cannot be accommodated in their regular position, you must consider whether they can be accommodated in another available position
- If an employee can be accommodated without undue hardship, the accommodation should be provided instead of placing the employee on a leave

8) Work as a Disability Accommodation – ***Ontario Power Generation v. Power Workers' Union***

- In handling a request, you must review the supporting medical information and determine what accommodation is required so that the employee can perform their job
- Where the medical information is insufficient, you should request further information, which may include having the employee's physician complete a medical questionnaire
- The goal is to understand the employee's restrictions and consider the different options available for accommodation
- An employee is entitled to reasonable accommodation, but not necessarily their preferred accommodation
- As such, a request to work remotely requires an assessment of the employee's medical needs, the work they perform and whether those needs can reasonably be addressed in another way

8) Work as a Disability Accommodation – ***Ontario Power Generation v. Power Workers' Union***

- In the matter of *Ontario Power Generation v. Power Workers' Union*, an employee had medical conditions that included sleep disorders, anxiety and depression
- The employee sought to continue working from home four days per week as an accommodation
- The employer took the position that the employee could return to the office and that it had already provided sufficient accommodation, including flexible hours
- The union challenged the employer's refusal to continue the requested hybrid arrangement
- The medical evidence supported working primarily from home and explained how full-time office attendance would affect the employee's ability to work reliably
- The arbitrator found that the employer was required to provide a hybrid work arrangement
- The employee was not entitled to decide for himself which day he would attend the office
- The employer could set the in-office day so that it could plan for his attendance

8) Work as a Disability Accommodation – ***Ontario Power Generation v. Power Workers' Union***

- Employers must be mindful that a requirement to return to the office does not remove an employer's accommodation obligations
- Employers must review the employee's individual circumstances and the medical information supporting the request
- Where the information is unclear, employers should obtain clarification rather than simply approve or reject the requested arrangement
- Employers should consider whether remote work or another arrangement would allow the employee to perform their job while addressing their medical restrictions
- This decision highlights that remote work may be required as an accommodation, while still allowing the employer to establish reasonable scheduling requirements

9) Workplace Investigations and Dismissal for Cause – ***Silva v. Royal Bank of Canada***

- An employee can make repeated mistakes, breach policies or act dishonestly, and the employer may still be unable to dismiss them without termination entitlements
- Generally, a dismissed employee has statutory minimum entitlements and, unless an enforceable agreement limits them, common law notice entitlements
- Just cause involves misconduct so serious that the employment relationship cannot reasonably continue
- Establishing just cause removes the employee's entitlement to common law notice
- In Ontario, removing statutory termination entitlements requires the higher standard of wilful misconduct
- This involves deliberate misconduct, rather than carelessness or poor judgment

9) Workplace Investigations and Dismissal for Cause – ***Silva v. Royal Bank of Canada***

- A sufficiently serious incident may justify dismissal, while less serious incidents may require progressive discipline
- Employers must establish what happened through a thorough investigation and give the employee an opportunity to explain their conduct
- Whether the employer previously accepted the conduct, issued warnings and considered the employee's response will matter
- Alleging cause without sufficient evidence or a proper process can expose the employer to additional liability

9) Workplace Investigations and Dismissal for Cause – ***Silva v. Royal Bank of Canada***

- In *Silva v. Royal Bank of Canada*, RBC terminated a successful financial planner for cause following an investigation into alleged misconduct
- The allegations included forwarding work emails to her personal account, processing client transactions before obtaining signed documents and backdating documents
- The Court found that the investigation was biased and failed to properly consider the employee's explanations
- Relevant clients were not contacted, even though they could have confirmed that the transactions were authorized
- The Court also found that the employee's practice of having clients re-sign missing documents using the original date had been accepted by the employer
- RBC had not established cause for dismissal
- A regulatory notice reporting that the employee had been dismissed for cause prevented her from obtaining further work in the financial industry
- The employee was awarded 16 months' notice and approximately $1.92 million for loss of earning capacity
- The Court also awarded aggravated damages for the harm caused by the employer's conduct and punitive damages to punish that conduct
- The Court ordered that the regulatory notice be corrected

9) Workplace Investigations and Dismissal for Cause – ***Silva v. Royal Bank of Canada***

- In review, there are several key takeaways for employers:
  - A workplace investigation should be approached with an open mind and a genuine effort to determine what happened
  - Employees should have a meaningful opportunity to explain their conduct, and relevant evidence should be obtained and considered
  - Employers should be cautious about alleging cause for conduct they have previously accepted or permitted
  - Allegations communicated to regulators or others can have serious consequences for the employee's ability to obtain future work
  - This decision highlights that an unsupported dismissal for cause can expose an employer to substantially more than the cost of notice

10) Return-to-Office Requirements and Constructive Dismissal – ***Cressey Construction Corporation v. Parolin***

- In the current economy, many employers are finding that they need to implement workforce changes and reduce labour costs
- This can include changing compensation arrangements, reducing hours of work or changing employees' positions and responsibilities
- Employers may also wish to change where employees work, including requiring employees who work remotely to return to the office
- These changes can trigger a constructive dismissal claim, meaning the employee takes the position that they have effectively been fired
- An employee can claim constructive dismissal where the employer makes a substantial change to a fundamental term of their employment agreement without the right to do so
- This can include changes to the employee's position, compensation, hours or work location
- A constructive dismissal can also arise where the employer's conduct makes the workplace intolerable
- The courts generally consider whether a reasonable person in the employee's position would conclude that the employment relationship had been fundamentally altered
- If the employee has been constructively dismissed, they become entitled to their termination entitlements
- Depending on the employment agreement, this can include common law notice amounting to over two years' compensation

10) Return-to-Office Requirements and Constructive Dismissal – ***Cressey Construction Corporation v. Parolin***

- In *Cressey Construction Corporation v. Parolin*, the employee had worked for the employer for approximately 18 years and held the position of Director of Marketing
- She had flexible working arrangements to address childcare obligations and had worked remotely for approximately three years
- The employer had confirmed that she could continue working from home as long as her work was getting done
- During a meeting about a requested salary increase, the employer directed her to return to the office full-time
- The employee took the position that she had been constructively dismissed

10) Return-to-Office Requirements and Constructive Dismissal – ***Cressey Construction Corporation v. Parolin***

- The lower court agreed with the employee and awarded her 19 months' compensation
- The employer appealed, and the British Columbia Court of Appeal upheld the decision
- The Court confirmed that working remotely had become a term of the employee's employment agreement, even though it was not set out in writing
- The employer had no contractual right to require an immediate full-time return to the office, and the employee had not agreed to the change
- The return-to-office requirement, imposed without reasonable notice, was itself sufficient to establish constructive dismissal

10) Return-to-Office Requirements and Constructive Dismissal – ***Cressey Construction Corporation v. Parolin***

- In review, this decision confirms that the terms of the employment relationship, including work location and remote-work arrangements, should be clearly documented in writing
- If remote work is intended to be temporary or subject to change, the agreement or policy should expressly address this
- Employers should not assume that an arrangement remains temporary simply because it started during the pandemic
- Before making substantial changes to employment terms, employers should review their agreements and determine whether employee consent or reasonable working notice is required
- The amount of notice required should be assessed before announcing the change
- This decision highlights that a return-to-office requirement can trigger termination obligations even where the employer intends for the employee to continue working

Managing your HR Issues

Wilson Vukelich LLP can help ensure that your employment and labour law matters are handled effectively and efficiently, and in a manner that is reflective of new legal developments and obligations. If you have any questions or require further information, please contact:

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