



Below is an Article Written for our Clients by Rodney Employment Law, one of our Business Partners, Regarding Dismissal of Employees during Covid-19

Constructive Dismissal and Covid-19
By Humera Rehman, Associate – Rodney Employment Law

“Constructive Dismissal” is a legal concept we often hear about but may not fully understand. The concept of Constructive Dismissal has become particularly apparent during the COVID-19 Pandemic and many employers are still trying to wrap their heads around it.

The Courts define a Constructive Dismissal as situations where an employer decides to **unilaterally** make **substantial** changes to the **essential** terms of an employee's contract of employment that the employee does not agree to and decides to leave his or her job. In these situations, the employee has not resigned, but has been dismissed.

Once an employee is found to have been constructively dismissed, they are then entitled to the same severance package as they would had they been formally terminated.

This is an important concept during the COVID-19 pandemic for a few reasons. Prior to the pandemic, employers could technically impose a temporary layoff on staff under two conditions:

1. The employee was bound to an employment agreement that contained an express term allowing the employer to temporarily lay off the employee; or
2. Layoffs were an expected and recurring practice for the employee, such as with seasonal employment.

If these two options did not apply, employees were able to claim that an imposed layoff was a substantial change and a violation of their employment agreement, that they had been constructively dismissed under the common law or under Ontario's *Employment Standards Act, 2000* (“ESA”), and that they were consequently owed severance packages.

With many employers forced to lay off staff due to the pandemic, the Government of Ontario introduced O. Reg. 228/20: *Infectious Disease Emergency Leave* (“IDEL”) to provide a measure of protection to employers who could otherwise have several claims for constructive dismissal against them and be liable for several severance packages during a time when they themselves are struggling to stay afloat.

Under the IDEL provisions, the reduction or elimination of hours/wages during the length of the COVID-19 period (currently slated to run from March 1, 2020 to January 2, 2021) will not constitute a layoff or a constructive dismissal under the ESA. As such, employees laid off during the COVID-19 period are unable to bring claims for constructive dismissal under the ESA.

Although the regulation provides statutory protection to employers who have been forced to impose reductions in wages or hours as a result of COVID-19 and prevents such claims from being filed with the Ministry of Labour, it may not necessarily eliminate the risk of a common law constructive dismissal claim. Laid off employees may still claim constructive dismissal under the common law. It remains to be seen how courts will address these constructive dismissal claims, particularly in light of the IDEL provisions.

It is important to note that the IDEL provisions as well as the layoff provisions under the ESA only apply to temporary layoffs. If the reduction or elimination of hours is **permanent** in nature, then the IDEL regulation does not apply and the employer is not protected against claims of constructive dismissals under the ESA or the common law.

The bottom line is that constructive dismissals and layoff situations are complex matters. If you are navigating your business or clients through a layoff situation or dealing with a constructive dismissal claim, it is important to get advice from an employment lawyer.

If you would like more information regarding employment issues please contact your Advisor and Propel CPA and we can put you in touch with Rodney Employment Law who can assist you.

**For advice about your particular situation
Please contact your Propel Advisor.**

**Learn more!
For more information, please contact your Propel Advisor.**

Propel CPA

866-422-9646