



## **Constructive Dismissal How to Change Your Employees Role and Responsibilities Without Facing a Constructive Dismissal Lawsuit**

As an employer, you retain an ability to determine and revise over time the role and the responsibilities of your employees. Unfortunately, this is often accompanied with a fear that the changes that you require for your business, will result in a costly law suit with your employee alleging that you have constructively dismissed them. Avoiding these types of law suits and retaining the ability to change the role of your employees as the needs of your business changes is vital to your success.

Understanding what constructive dismissal is will help you navigate these often difficult changes and ensure that you do not make changes that will result in a successful law suit by your employee. An employer is entitled to determine the role and responsibilities of their employee. An employer is also entitled to arbitrarily change the role and responsibilities of existing employees. The key is to do so while providing adequate notice to the employee of the impending change. There is no prohibition at law to changing the role of an employee, but changing that role without adequate notice to the employee, or the agreement of the employee, will result in a successful claim by an employee that they have been constructively dismissed, and a successful claim for damages against their employer.

Determining the appropriate period of notice that must be provided to an employee of a change in their roles and responsibilities is similar to a determination of the amount of notice required to terminate an employee where there is not just cause to do so. Factors taken into consideration include the age of the employee, the type of role filled by the employee, the length of time that the employee has been in your employ and any other factors that may make re-employment by your employee difficult. A rough rule of thumb is that one month of notice be provided for every years service.

As a lawyer representing both employees and employers, the most frequent behaviour that brings employees or past employees into my office seeking advice is a lack of respect in the manner in which an employer has chosen to either terminate their employment or impose changes in their role and responsibilities. It is rare that an employee comes to see me when they are treated in a fair, forthright manner, when the employee is made to feel that they are a respected and appreciated member of the team, regardless of the fact that business efficacy has demanded either the end to their employment or a change in the role that they are filling. It is costly for an employer when an employee seeks legal advice regarding their employment. The best way to avoid this is to treat the employee in the manner which you would hope to be treated yourself.