Best Practices for Employee Relocations & Transfers



With skilled and experienced employees in short supply, relocating employees to different parts of the country may be a business imperative. However, relocation is also fraught with risk, particularly when employees being transferred would prefer to stay in their current location. First and foremost, you risk losing a valuable employee. But it's more than that. Here's a briefing on the risks and some best practices for managing them.

Best Practice 1. Create a Written Relocation & Transfer Policy

Establishing and implementing a written policy for employee relocation and transfer goes a long way in not only ensuring a smoother relocation process but also defusing potential liability issues. Such a policy should address:

- Who's eligible for relocation.
- The relocation procedures to be followed.
- The responsibilities of the different stakeholders during the relocation process, including the employee being transferred.
- The moving, housing, and other allowances and financial benefits the company will provide to employees it relocates.

Best Practice 2. Ensure Employee's Contract Provides for Relocation & Transfer

Companies need to be on high alert for the risk of constructive dismissal, which occurs when fundamental and unfavourable changes to job conditions repudiate the original contract and force an employee to leave. Relocation may constitute constructive dismissal when it violates the terms of the employee's contract. The good news is that you can guard against this risk by including language in the contract that expressly provides for transferring the employee to a different location, provided that the actual transfer is in line with those contractual terms.

Relocation Is Constructive Dismissal: A BC court ruled that a company committed constructive dismissal by forcing an equity trader to relocate from Vancouver to San Francisco when her contract didn't contain an express or implied term allowing for transfer and she joined the firm with the expectation that she wouldn't be transferred [*Wilson v. UBS Securities Canada Inc. et al.,* 2005 BCSC 563 (CanLII)].

Relocation Is Not Constructive Dismissal: An Ontario court ruled that it wasn't constructive dismissal to transfer an avionics manager from Ottawa to St. Clet, Québec when the contract expressly stated that "due to the nature of our industry, relocation may be necessary if the circumstances warrant" [*Smith v. Viking Helicopter*, 1989 CanLII 4368 (ON CA)].

Best Practice 3. Notify Employees that Relocation & Transfer Are a Possibility

Be open and transparent with your employees about the possibility of relocation. Constructive dismissal risk increases when a relocation catches the employee completely off guard, especially if the company said or did something to lead the employee to believe that they'd never have to leave their current location.

Example: The same court that sided with the employer in the *Viking Helicopter* case ruled that it was constructive dismissal to transfer a customer service rep from Belleville to a distant branch office in Colborne after previous management had reassured her that she could keep working in Belleville. The acquiring company led the rep to believe that her "employment would be on the same terms as her previous employment, including working in Belleville." Had she known about the transfer, the court reasoned, "she could have refused the offer of employment and received severance from her previous employer", reassuring her right to work in the original office was implied in the contract [*Marshall v. Newman, Oliver & McCarten Insurance Brokers Ltd.*, 2004 CanLII 15915 (ON CA)].

Best Practice 4. Put Terms of Relocation Position into a Letter Agreement

Create a letter agreement that spells out the employment terms of the relocation position, especially when the relocation is accompanied by changes in salary, benefits, title, responsibility, etc. In addition to providing transparency, a signed agreement is evidence that the employee accepted the relocation that you can use to defend against a constructive dismissal claim.

Best Practice 5. Ensure Relocation Position Offers At Least Equivalent Employment Terms

Relocation is more likely to cross the constructive dismissal line when it involves cuts in pay, benefits, rank, responsibilities, and/or opportunity for advancement. Conversely, relocation is easier to justify when the post-transfer terms of employment are at least equivalent to those of the original position.

Relocation Is Constructive Dismissal: An Ontario court held that it was constructive dismissal to transfer an HR director from Mississauga head office to a satellite Vancouver office where he'd have to work harder with a smaller staff, submit to direct head office control and perform new "undefined" duties [*Reynolds v. Innopac Inc.*, 1998 CanLII 3558 (ON CA)].

Relocation Is Not Constructive Dismissal: An Alberta court held that it was not constructive dismissal to transfer a branch manager from Red Deer to Sedgwick, more than 2 hours away from his home and family when he'd remain a branch manager entitled to the same terms and benefits in the new location [*Brown v. Pronghorn Controls Ltd.*, 2011 ABCA 328 (CanLII)].

Best Practice 6. Ensure Transfer Employment Meets Relocation Province ESA Laws

If an employee's current contract was written to comply with provincial employment standards laws, you'll need to adjust it to meet the requirements of the province to which the employee is relocating. Thus, for example, when transferring an employee from Toronto to Vancouver, you'll have to redo the contractual overtime provisions that are based on Ontario ESA rules to meet the overtime requirements of the BC ESA. Ditto for minimum wage, vacation, hours of work, leaves of absence, and many other employment provisions that are subject to ESA minimum requirements. Such changes must be in place before the employee relocates to the new province.

Best Practice 7. Ensure Transfer Employment Meets Relocation Province OHS Laws

As with employment standards, employee rights and protections under OHS laws vary by province. Key differences involve who pays for personal protective equipment and whether the employer's duty to protect covers employees who work from home. In addition, some provinces require employers to provide special orientation training and/or other safety notices to new workers when they start working for the company. As a result, you must ensure that post-relocation employment meets the OHS requirements of the province to which you transfer the employee.

Best Practice 8. Secure Necessary Workers' Comp Coverage for Transfer Employee

One risk of relocating employees to other provinces that often gets overlooked are the workers' comp coverage consequences. Most jurisdictions require employers to estimate their initial payroll and employment levels at the start of the year and revise those estimates within 3 months of the next year. But registration may be an issue in jurisdictions where coverage must be in place from day one of a new worker's employment. So, reach out to the workers' comp board to find out about the rules of your province.

Best Practice 9. Consider the Tax Implications of Employee Relocation & Transfer

Consider the tax implications of offering moving allowances to relocating employees. Under federal income tax rules, employers may give employees a non-accountable moving allowance of up to $650. Amounts above $650 must be reported as income and are subject to tax. Employees who receive the moving allowance must certify in writing that they incurred the amount of expenses covered by the refund up to $650. By contrast, employers in Québec can give employees a non-accountable moving allowance up to a maximum of 2 weeks' of salary or wages on the starting date of employment and employees who receive the allowance don't have to provide certification.

Best Practice 10. Consider Treating Out of Province Workers as Independent Contractors

One way to get around the tax and other legal issues of relocation is to structure the arrangement with the individual who transfers to a different province as an independent contractor rather than an employment relationship. Recognize that simply calling an employee an "independent contractor" isn't enough, and that the classification is based not on a person's title but the substance of the economic relationship.