

Changes Affecting Terms Of Employment



Most employers are aware that there are legal impediments to unilaterally changing the terms and conditions of an employee's employment, even if there is a legitimate business rationale for that change. The major legal impediment is constructive dismissal.

An employer who, for example, unilaterally and materially cuts an employee's salary will have constructively dismissed that employee. How then to address the fiscal and operational pressures placed on the business by a global economy in the face of potential liability for constructive dismissal?

In this paper, Davis LLP's Richard Press provides a basic review of the law of constructive dismissal and discusses strategies to address potential liability. This also includes an analysis of the contractual principles that underscore a repudiation of the employment agreement, and considers possible responses to repudiation by the employer of the employment agreement, including acceptance of the changed terms.

The paper then moves on to non-legal strategies that could be used to avoid, or at least minimize, the likelihood of constructive dismissal claims. This focuses on strategies that can be employed in the face of legitimate business restructuring that responds to external factors, such as market pressures or a global recession.

The paper next considers where employees refuse to agree to unilateral changes, strategies to minimize the liability of constructive dismissal. The first such strategy is employing mitigation to defray constructive dismissal liability. The second strategy is the effective use of notice to avoid constructive dismissal liability.

Finally, the paper concludes with practical tips in prosecuting and defending constructive dismissal complaints