

COVID-19 Recalls Bring Risk of Constructive Dismissal into Play

written by vickyp | August 19, 2021



The good news is that employers are recalling employees from COVID-19 Siberia; the bad news is that in many cases, the terms of the recall employment are less favourable. Adverse changes include not just pay cuts but also reassignments, job responsibilities and transfers. Not surprisingly, this unilateral reworking of employment terms is proving a windfall for lawyers that make a living filing [constructive dismissal lawsuits](#) against employers.

Exactly what [changes make an employer guilty of constructive dismissal?](#) The answer to this burning question, unfortunately, is that it depends. While there are over a dozen ways to commit constructive dismissal, things like pay and benefit cuts, demotions and even toxic work atmospheres may constitute constructive dismissal in one case, but not another. (The one exception is the unofficial rule recognized by some courts that, absent special circumstances, pay cuts of 20% or more cross the line.)

HR managers are well advised to remember that it's not just the nature but the number of employment changes that determine [constructive dismissal](#). Thus, tiny cuts in compensation may tip the scales in employees' favour when they're accompanied by other unfavourable changes.

The best way to insulate yourself against [constructive dismissal liability](#) is to negotiate and implement changes as part of a written employment contract in which employees get consideration, i.e., something of value, in exchange for the concessions they make. Also keep in mind that employment doesn't count as consideration if you already employ the person.