

Demotion After Maternity Leave Costs Employer In Constructive Dismissal Case



In *McFarlane v King Ursa Inc.*, the Ontario Superior Court of Justice (“ONSC”) awarded a former employee more than \$300,000 in damages after finding that she was constructively dismissed when she was asked to accept a demotion and pay reduction following her return from maternity leave.

Background

The employer downsized significantly during the COVID-19 pandemic, reducing its workforce from 40–50 employees to just 10. Amid ongoing efforts to recover, the employee was promoted twice in 2021—first to Associate Partner and Vice-President of Media & Analytics, and then to Executive Vice-President. Her salary was increased from \$220,000 to \$300,000, and her phantom share allocation was increased to 5%. Despite the employee’s contributions, the company continued to face financial challenges throughout 2022 and into 2023.

In July 2022, the employee commenced maternity leave. In the months that followed, the employer twice asked her to extend her leave to help alleviate the financial burden of her compensation, and also raised the option of a severance package. In April 2023, after twice deferring her return, the employer presented the employee with a letter offering a demotion back to her prior role as Associate Partner and Vice-President of Media & Analytics, along with a reduction in salary to \$210,000. The employee declined the offer, resigned, and commenced a constructive dismissal claim.

The ONSC’s Decision

The ONSC found that the employee had been constructively dismissed and awarded her 12 months’ pay in lieu of notice, totaling \$290,615.81, along with an additional \$40,000 in moral damages. In awarding moral damages, the Court held that the employer’s decision to demote the employee lacked an economic rationale and was therefore “callous and unduly insensitive”.

The Court emphasized that the employer had previously discussed the employee’s potential return in the context of its financial challenges, including its hope that she would accept a reduced salary. Against that backdrop, the April 2023 offer

effectively placed pressure on the employee to accept diminished terms or exit the organization. The ONSC reaffirmed that if an employer cannot afford to retain an employee, the appropriate course of action is to provide notice of termination or pay in lieu.

Takeaways for Employers

As businesses continue to adapt to economic uncertainty, employers should be cautious when implementing changes to employee roles, particularly following protected leaves of absence. Key takeaways include:

1. **Ensure That Changes to Job Terms are Reasonable:** Employers generally have the right to make reasonable changes to an employee's duties for legitimate business reasons. However, whether a change is "reasonable" will be assessed on a case-by-case basis. Where multiple or significant changes are made, employers should consider whether a new employment agreement is appropriate.
2. **Clearly Communicate Any Proposed Changes:** If an employer intends to modify key terms—such as compensation, duties, location, or reporting structure—these changes should be communicated clearly and in writing.
3. **Obtain Consent:** To minimize the risk of a constructive dismissal claim, employers should obtain the employee's written agreement to any material changes to the terms of employment. Without consent, even well-intentioned changes can create legal risks.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Authors: [Williams HR Law](#)