Everything That HR Managers Need to Know About Transitioning Employment Agreements in Canada

As companies evolve – downsizing one department, redeploying another, experimenting with fractional roles or flexible schedules – employment agreements are often rewritten, amended, or replaced. On paper, these changes look routine. In practice, they can open the door to some of the most complex risks HR managers will ever face.

Changing an employment agreement isn't just administrative. It touches on contract law, employment standards, and human rights. And it can redefine the entire employment relationship – sometimes unintentionally.

For Canadian HR managers, understanding the legal and human dimensions of employment transitions is critical. Whether you're moving an employee into a part-time or fractional role, redeploying them to another department, or addressing an employee's "change of mind" about a new assignment, there are five recurring issues that trip up even the most careful employers.

Let's explore them through real cases, common pitfalls, and lessons learned.

1. **When a "New Agreement" Isn't Really New: The Enforceability Problem**

Few words strike more anxiety into HR professionals than "constructive dismissal."

It's the legal phrase that turns what seems like a minor administrative change into a costly mistake. The danger lies in misunderstanding what makes a new or amended employment agreement binding under Canadian law.

In theory, if an employer and employee agree to change terms – say, moving from full-time to fractional hours – both parties can simply sign a new agreement. But Canadian courts don't see it that way. They look at the context: was the employee already bound by a previous contract? Was there something of value offered in exchange for agreeing to new terms?

In legal language, that "something of value" is called consideration, and without it, your new agreement could be worthless. The Ontario Court of Appeal made this clear in *Hobbs v. TDI Canada Ltd.* and again in *Braiden v. La-Z-Boy Canada Ltd.*: if an employer

asks an existing employee to sign new terms — even if those terms seem beneficial — there must be fresh consideration for the contract to be enforceable.

That means you can't simply present the new contract as a condition of continued employment. If the employee receives no tangible benefit (such as a raise, bonus, promotion, or paid time off), the new contract is legally vulnerable.

Consider a recent case from British Columbia: a long-serving manager was offered a new contract when the company restructured, reducing his title and pay but promising "long-term stability." He signed, but later sued after being let go. The court ruled the new agreement invalid — there was no fresh consideration, and the changes had actually disadvantaged him. The employer was ordered to pay damages based on the original contract.

For HR managers, the lesson is simple but critical: when changing terms, treat it like a brand-new employment relationship. Offer something of real value, document consent clearly, and ensure the employee understands the implications. Otherwise, you may find your "updated" contract unenforceable — and your organization on the hook for wrongful dismissal damages.

2. **Redeployment or Constructive Dismissal? Walking the Tightrope of Change**

When business needs shift, redeployment can seem like a win-win: you retain valuable staff, and employees keep their jobs. But if the new role changes too much — in title, pay, duties, or prestige — it might not be redeployment at all. It might be a constructive dismissal.

Canadian courts define constructive dismissal as any substantial, unilateral change to a fundamental term of employment without the employee's consent. That could include a demotion, relocation, or change in working hours — even if the employer had good business reasons.

One of the most talked-about cases in recent years involved a Toronto employee who had been allowed to work remotely from Europe during the pandemic. When the company later insisted she return to in-person work in Canada, she refused, arguing that her remote status had become an implied term of employment. The Ontario Superior Court agreed, ruling that the demand to return to the office was a repudiation of the contract. She was awarded full severance as though she had been terminated.

This case has become a warning for HR professionals everywhere: even well-intentioned operational changes can cross the line if they alter the "core" of the employment deal.

So how do you redeploy staff safely?

Start by identifying what counts as a fundamental term: compensation, work location, title, hours, responsibilities, and reporting structure. If any of those are changing substantially, get written, informed consent.

Next, consider how you communicate the change. If the tone or process feels coercive — for example, "sign this or you'll be let go" — it can undermine the legitimacy of consent. HR should ensure employees are given time, clarity, and ideally legal advice before signing.

Redeployment can be a powerful retention tool, especially during restructuring, but

it must be handled with the same care as a termination. In many cases, it’s safer to end the old employment contract (with notice or severance) and offer a new one, rather than risk a constructive dismissal claim later.

3. The Fractional Work Revolution: Flexibility Meets Legal Uncertainty

Fractional work — where professionals provide part-time or project-based services for multiple employers — is booming across Canada. It’s especially popular among senior leaders, technical specialists, and knowledge workers who want autonomy without full retirement.

For employers, fractional arrangements can reduce payroll costs and preserve institutional knowledge. For HR, however, they blur the boundary between employment and independent contracting — and create new risks if not structured properly.

Take the case of an Alberta engineering firm that converted several full-time employees into “fractional consultants” to cut costs. The company allowed them to work for other firms but kept them on retainer contracts that looked suspiciously like employment agreements: fixed hours, company email addresses, and exclusive project assignments. When one of those consultants was let go, he filed a claim for wrongful dismissal — and won. The court ruled that despite the new title, he was still effectively an employee. The company had rebranded employment as contracting, without changing the underlying relationship.

This distinction matters because Canadian law looks at substance over form. Even if both sides call it a “consulting arrangement,” if the person remains under your control, works regular hours, and represents your company publicly, they’re likely still an employee — with all the corresponding rights to notice, severance, and benefits.

Fractional work within existing employment relationships creates a second layer of complexity. For instance, if a long-term employee moves from full-time to two days per week, does their seniority continue to accrue? Do their benefits scale proportionally, or are they reset? If the employee later returns to full-time, does that create a “break” in service for termination or pension purposes? These questions are not abstract — they affect real entitlements and liabilities.

HR should approach fractional transitions as re-contracting events, not mere scheduling changes. Clarify how the new arrangement affects salary, vacation, benefits, and years of service. Document how future changes will be handled. And always ensure the new contract includes an explicit termination clause that complies with the applicable provincial employment standards.

Without that clarity, fractional arrangements can lead to decades-long legal entanglements over what “continuous service” actually means.

4. When Employees Change Their Minds: Consent, Reversals, and the Limits of Flexibility

Sometimes the hardest part of contract transitions isn’t legal — it’s emotional.

Employees may initially agree to new terms — a redeployment, reduced hours, or hybrid schedule — only to regret it weeks later. They might realize the role doesn’t fit, the pay reduction hurts more than expected, or the new duties don’t align with their

skills.

For HR, this “change of mind” scenario is increasingly common, especially in the wake of economic uncertainty and shifting personal priorities. But it raises delicate questions: Can the employee revert to their old position? Are they bound by the new agreement? And what happens if the employer refuses?

In law, once both parties have agreed to new terms and consideration has been exchanged, the agreement is binding. But employers who treat a reversal request as insubordination risk alienating valuable staff — or worse, facing claims of unfair treatment if the change was made under pressure.

A 2023 Ontario case offers insight. A senior analyst accepted a lateral transfer after her division was downsized. Six weeks later, she told HR she wanted her old job back, citing “buyer’s remorse.” The employer refused, stating the old role no longer existed. The employee resigned and later claimed constructive dismissal, arguing she was pressured into the transfer. The court disagreed, finding that she had voluntarily accepted the change and that the employer acted in good faith. But the case cost both sides months of legal fees — and the company’s reputation took a hit after internal emails showed managers joking about her “flip-flop.”

The lesson for HR is to manage reversals with empathy and precision. Ensure the original decision was genuinely voluntary, that employees were given time to consider their options, and that the new agreement clearly states it replaces all prior terms. If an employee asks to revert, treat the request seriously: assess whether reversion is feasible, and if not, communicate why. Document every step.

A transparent, respectful process may not prevent disappointment, but it can prevent litigation.

5. **Location, Law, and the Jurisdiction Trap: Redeploying Across Provinces or Borders**

In an age of remote work, redeployment often crosses provincial — or even national — boundaries. An employee who once worked in Vancouver might now live in Halifax or even Florida. If you change their role or contract, which jurisdiction’s laws apply?

This question isn’t academic. Employment standards, human rights protections, and contract law vary across Canada. A redeployment or contract amendment that complies in Alberta might violate labour laws in Québec or Ontario.

Consider a case from 2022 where a Calgary company allowed an employee to relocate to Ontario permanently. The company kept paying her under Alberta’s employment standards, assuming the original contract governed. When she was later terminated, she filed a complaint under Ontario’s Employment Standards Act, claiming insufficient notice and vacation pay. The Ontario Ministry of Labour sided with her: because she performed her work primarily in Ontario, that province’s laws applied.

Now imagine layering on hybrid work and fractional roles — one employee working from multiple provinces, or splitting time between home and office. Suddenly, HR is dealing with overlapping rules for overtime, leave entitlements, and workplace safety coverage.

Jurisdictional issues can also affect privacy and data security. If employee information is stored on servers in another province or country, HR must ensure compliance with both PIPEDA and any provincial privacy legislation, such as Québec’s

Law 25.

Before finalizing any redeployment or remote transition, HR should map out three things: where the work is physically performed, where the employee resides, and which employment standards legislation applies. It's often wise to include a "governing law and jurisdiction" clause in contracts — but remember, that clause doesn't override statutory rights. Courts and regulators will look at the reality of work, not the wording alone.

The Human Side of Contract Transitions

Beneath the legal complexities lies a deeper truth: contract transitions are human transitions. They often happen during stressful periods — corporate restructurings, cost reductions, or personal life changes. Employees bring fear, uncertainty, and pride into these conversations. HR's role is to balance empathy with precision.

Consider a redeployment scenario in a manufacturing firm in Manitoba. When automation reduced the need for assembly-line roles, HR offered affected employees retraining and reassignment into logistics positions at equal pay. A handful refused, citing discomfort with new technology. Rather than forcing the transition, HR created a "try period," allowing employees to experience the new role for 90 days before deciding. Most ended up staying. Those who didn't were provided severance with dignity and transparency.

That approach — blending legal prudence with human respect — prevented potential constructive dismissal claims and maintained morale during a difficult time.

The best HR managers know that contracts don't just protect the company; they reflect the organization's values. How you handle transitions signals what kind of employer you are.

Putting It All Together: What HR Should Do Next

Canadian workplaces are entering a new phase of flexibility — one defined not by remote work policies but by fluidity of roles, schedules, and expectations. The boundaries between employee, consultant, redeployed worker, and fractional contributor are dissolving.

HR's challenge is to keep those boundaries legally sound and ethically transparent.

That means rethinking how employment contracts are written and managed. Agreements should be living documents that evolve with the business — but they must evolve lawfully.

Here are the guiding principles emerging from recent case law and best practice:

- **Transparency beats speed.** Don't rush changes. Take time to communicate, consult, and document.
- **Consent must be informed and voluntary.** A signature isn't enough if the process felt pressured.
- **Every major change needs consideration.** If you want the new contract to stick, give something tangible in return.
- **Redeployment is not a shortcut.** If the role changes fundamentally, treat it as a termination and rehire.
- **Jurisdiction matters more than ever.** Know where your employees work, live, and fall under statutory protections.

But above all, remember that employment contracts are not just legal tools — they're trust agreements. Each transition, each amendment, is an opportunity to reinforce fairness and respect.

As one HR executive in Calgary put it during a roundtable discussion last year, "Contracts don't define our culture — but how we handle them absolutely does."

Final Thought

Employment agreements used to be stable documents that gathered dust in filing cabinets. Now, they're living frameworks that must adapt to hybrid work, multi-jurisdictional teams, and shifting career models.

For Canadian HR managers, this evolution is both challenge and opportunity. It requires a deep understanding of employment law, but also of people — their motivations, fears, and need for security.

When done right, transitioning an employment agreement isn't just a legal exercise. It's a moment to strengthen the relationship between employer and employee. It's a chance to say: "We value you, and we're committed to doing this fairly."

And in today's fluid workplace, that message might be the most powerful retention tool of all.