

# Ontario Case Opens Door For Harassment Victims To Sue Employers For Money Damages

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Workers comp is often described as a “historic tradeoff.” Employees get automatic coverage for work injuries without having to show who was at fault; in return they give up the right to sue their employer for money damages. But a scary new Ontario case suggests the tradeoff doesn’t apply to lawsuits for harassment-based [constructive dismissal](#).

It began when a hospitality worker quit because she was being bullied and harassed. She sued the employer contending that allowing the toxic work environment was constructive dismissal. The Workplace Safety and Insurance Appeals Tribunal (WSIAT) ruled that the tradeoff barred the suit and that the worker’s recourse was to seek workers comp damages for mental stress.

In an unusual and unexpected move, the Ontario Superior Court reversed the WSIAT. The tradeoff bars negligence and other tort lawsuits, the court reasoned; constructive dismissal isn’t a tort but an employment contract claim. **Result:** The employee could sue for [constructive dismissal](#) [*Morningstar v. WSIAT*, 2021 ONSC 5576 (CanLII), August 18, 2021].

The scary thing about *Morningstar*, at least for Ontario employers, is that it opens a potentially significant loophole in the workers comp bar enabling [employees who get harassed](#) to sue their employers for money damages. Comfort comes from the belief of many experts that the ruling is wrong and will be overturned if it goes to appeal. Stay tuned.