

“Teleworking”: Now And Forever?



“I’d like to make a job offer to this candidate. The work will be performed remotely, from home. Can I change this condition at a later date?”

In a decision rendered on 16 March 2023, the Administrative Labour Tribunal confirmed that employers have management rights that allows them to require their employees to return to work in person¹. In this case, there was no formal agreement between the employee and the employer regarding teleworking.

Despite the fact that government restrictions have long been lifted, a number of employers have continued to offer their employees the possibility of carrying out their work remotely. According to the case law cited above, in the absence of a specific agreement in this regard, the employer retains the right to require its employees to return to the office.

However, we believe that the unilateral modification of working conditions, such as the possibility of performing work remotely, entails risks of constructive dismissal allegations and complaints. Implicit or verbal agreements may constitute essential working conditions for an employee. As such, any ambiguity may end up being unfavourable to the employer.

Teleworking has become an attractive workforce retention tool. However, a company’s operational needs can change over time. That is why it is important to allow a certain amount of flexibility within the terms and conditions surrounding an employee’s permission to carry out his or her work remotely.

A simple solution for limiting risks and preserving management rights with regard to an employee’s work location is to include a teleworking clause in employment contracts or offers of employment.

The key elements of the “Telework clause”:

- The location where the employee performs his or her work can be changed unilaterally by the employer;
- The possibility of performing work remotely is a privilege, not a right;
- The possibility of performing work remotely is not an essential condition of the employment contract;

These elements may also be included in a telework policy applicable to all employees, which may include employees’ obligations in terms of health and safety at work,

directives concerning the protection of confidential data and information, the monitoring and supervision measures used by the employer, and the allocation of costs relating to telework equipment, etc.

In the absence of a specific clause or policy to this effect and in order to limit any risks, we recommend providing a reasonable notice to employees who have been teleworking for some time before changing their working conditions.

Footnote

1. *Drake v. Équipement Trans Continental ltée*, 2023 QCTAT 1218, par. 27;

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.

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