

These are Some of the Burning Labour Law Questions I Am Hearing Most Often



Can I be forced to return to the office after two years at home? And more...

Some of my most popular columns are Q-and-A's, where I respond to the pressing labour law questions my readers have on their minds. Here are some of the questions I'm getting most often these days:

Q: What is a constructive dismissal?

A: A constructive dismissal is when the terms of your employment are dramatically changed to your detriment and you refuse to accept it. You can then generally sue as if you had been fired.

Q: What types of things are constructive dismissals?

A: Demotions, cuts in salary, potential transfers to other locations and abusive treatment are the usual constructive dismissals. But it can be anything where your terms of employment are dramatically changed to your disadvantage.

Q: I've been on layoff since March 2020. Do I have any rights?

A: A layoff is a wrongful dismissal. If you accepted it for the first two years, you had no recourse until recently. However, infectious disease emergency leave (IDEL) just ended in Ontario and those in that province are now able to insist upon returning to work and can sue for wrongful dismissal if not recalled. But they must act now rather than accept it again.

Q: My new employer wants me to get vaccinated for COVID-19 in order to work there. Can I refuse?

A: Subject to extraordinarily limited medical and religious exemptions (about .01% of the population), the employer has a right to require new employees to be vaccinated.

Q: I am being recalled to the office and my employer is requiring vaccinations in order to keep my job?

A: As long as COVID-19 presents a health risk, employers are within their rights

to require vaccination mandates in the workplace, subject to the same very rare portion of the population with genuine medical or religious exemptions.

Q: My employer wants to reduce my salary now that I am working from home, saying that I have lower expenses. Can it?

A: As long as the employer provides you the choice of returning to the office at your full salary, it can stipulate a lower one, (at whatever amount it selects), if you choose to work from home instead.

Q: Can I be forced to return to the office after two years at home?

A: Yes and if you refuse, you will have abandoned your job. However, if the work from home continues much longer, well past the time that an employer had the legal right to require a return to the office, returning you to the office then could be a constructive dismissal allowing you to sue as if you had been fired.

Q: Can I be forced to work from home?

A: If your work had traditionally been in the office, forcing you to work from home is a constructive dismissal allowing you to sue for wrongful dismissal.

Q: What is the minimum or maximum number of months severance that I am entitled to if I am fired?

A: Depending on a host of factors, including re-employability, the status of your position, length of service and age, the damages range from two to 27 months. Length of service is overrated with one court awarding a two-week service employee with 12 months' severance.

Q: How does that compare to the Employment Standards amounts?

A: It is almost always dramatically more.

Q: Do I receive only salary if I am wrongfully dismissed?

A: No, you are entitled to everything. Bonuses, benefits, commissions, LTIPs, stock options, increased pension – anything you would have received if you had remained working, you are entitled to as part of wrongful dismissal damages.

Q: Do I get more wrongful dismissal damages if I am older?

A: Age is one of the most significant factors in determining how much you get. But sometimes younger employees still will receive considerable amounts.

Q: My employer acted badly, do I receive more severance?

A: Bad-faith behaviour is punished by the court by providing the employee with additional damages on top of their usual wrongful-dismissal entitlement. The court can also award damages for mental stress and punitive damages for severely inappropriate employer behaviour.