



RUDNER LAW

EMPLOYMENT / HR LAW & MEDIATION

The team at Rudner Law has been working around the clock to help new and existing clients understand the workplace implications of the COVID-19 virus. We have also continued our tradition of educating the public by taking part in countless webinars and providing our insight to the media. At the end of the day, we know that everyone's health is the number one priority, but we also want to make sure that people do not compromise their legal rights. We know that many of our clients are struggling. Whatever decisions they make, we want them to be informed decisions.

We have prepared an [FAQ](#), a [list of resources](#), and a number of other documents to help you through this unprecedented time¹. Since things are changing so rapidly, the information in those documents may be out of date and we encourage people to check our [running blog on COVID-19 workplace issues](#).

Be Careful about Layoffs and Wage Cuts

Businesses are in an impossible situation. Many have been ordered to cease operations altogether, and most others have seen a dramatic decrease in revenue. The *status quo* cannot continue, as their businesses will not continue to be viable unless they can dramatically reduce their costs. As a result, they often turn to layoffs.

Unfortunately, the common misconception that employers automatically have the right to lay people off means that many businesses have already done so, entirely unaware of the legalities. Their belief is bolstered by the numerous media headlines about large-scale layoffs. What they don't recognize is that in most of those cases, the large companies imposing layoffs are unionized and therefore governed by a collective agreement which explicitly provides the right to do so. Many other large businesses have standard form employment contracts that do the same.

Over the past week or so, I have very publicly stated that in my view, many of the layoffs that are taking place are not permitted by contract and are therefore constructive dismissals. I am very concerned that businesses may face claims in the future; after all, people have two years to do so. Although most people are willing to accept temporary layoffs right now in light of the

¹If you need ideas for ways to make the time pass more quickly, count the number of times people use the word "unprecedented" when describing these circumstances.

unprecedented circumstances we are in, their mindset may change as time goes by and their money runs out.

Some have suggested that it is not right to assess constructive dismissal through a pre COVID-19 lens. That is a compelling position, and I have tremendous sympathy for the businesses that, realistically, have no choice. The law was certainly not created to handle situations like this, but at this point, the law of constructive dismissal has not changed.

It is quite possible that a court will, when asked to interpret the current set of circumstances, decide that the law of constructive dismissal cannot be applied in its current state to the entirely new situation we face. Or it is possible that a government body will intervene. However, neither of those things have happened yet.

How our courts will treat this unprecedented situation in the future remains to be seen. At this point, many businesses have no choice but to lay their employees off. My concern is that most do so without a proper understanding of the law. My goal is to help them make informed decisions, rather than assuming that they have the right to impose layoffs and unknowingly exposing themselves to liability. They may still decide to lay people off, but as in any circumstance, the decision should be made based on an understanding of the legal situation so there are no surprises in the short or long term.

Another reason contracts can help

When we work with clients, we routinely recommend including a temporary layoff provision. In many cases, we are met with reluctance and an insistence that the company **never** lays people off. We usually suggest that it would be good to keep the clause in the contract, “just in case”. Never did we imagine a case like this, but our clients are glad that we gave them the advice that we did. They do not have to worry about constructive dismissal claims, because they have the right to impose temporary layoffs.

Understand the Options and Support Available

Every level of government has made efforts to help. Among other things, the Federal Government has altered the rules regarding Employment Insurance, expanded job-sharing, and introduced new programs such as the Canada Emergency Response Benefit (CERB).

Perhaps in order to address the fact that most businesses do not have the right to lay people off, Prime Minister Trudeau recently announced that the **Temporary Wage Subsidy** program has been drastically increased from 10% to 75%. This could be a tremendous source of assistance to small and mid-sized businesses.

On March 30, 2020, the government confirmed further details about the program, including:

- Businesses of any size that have seen sharp and sudden drops in revenues due to COVID-19 will be eligible
- It will be available to employers that can show their revenues have fallen by at least 30 per cent due to COVID-19
- It will be capped at \$847 per week

- It will be backdated to March 15, 2020
- The number of workers in the organization is irrelevant

Of course, we still need more details, such as how the drop in revenue is to be measured, but this is a very encouraging initiative..

Provincial governments have also amended existing Leaves of Absence and introduced new ones. In addition, they have offered various forms of financial support.

It is impossible to review all of the government initiatives here. Many are mentioned on our [running blog](#). You can, of course, visit government websites for all the information.

Stay Informed

We have never seen a situation like this before - yes, it is “unprecedented”. The impact on our society as a whole cannot be overstated. Similarly, the impact on the economy, on businesses, and on people’s financial situations has been devastating. Our governments are working to help everyone weather this storm.

It is critical that everyone stay up to date on the resources and assistance available, and we will do our best to continue posting relevant information on our [running blog](#).

Stay Safe

Your health is the most important thing. The financial security of your business and your family is a close second. Do not act based upon assumptions. Make sure you understand your rights and obligations, so that you do not expose your business to unnecessary and unanticipated liability and you do not accept changes to your employment because you don’t think you have a choice.

Stay in Touch

Feel free to [reach out to us](#). If we can help, we’d be happy to.