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# CONSTRUCTIVE DISMISSAL POST COVID-19 – PITFALLS FOR EMPLOYERS TO AVOID

Ronald S. Minken

[rminken@minken.com](mailto:rminken@minken.com)

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Markham Toronto Vaughan Niagara  
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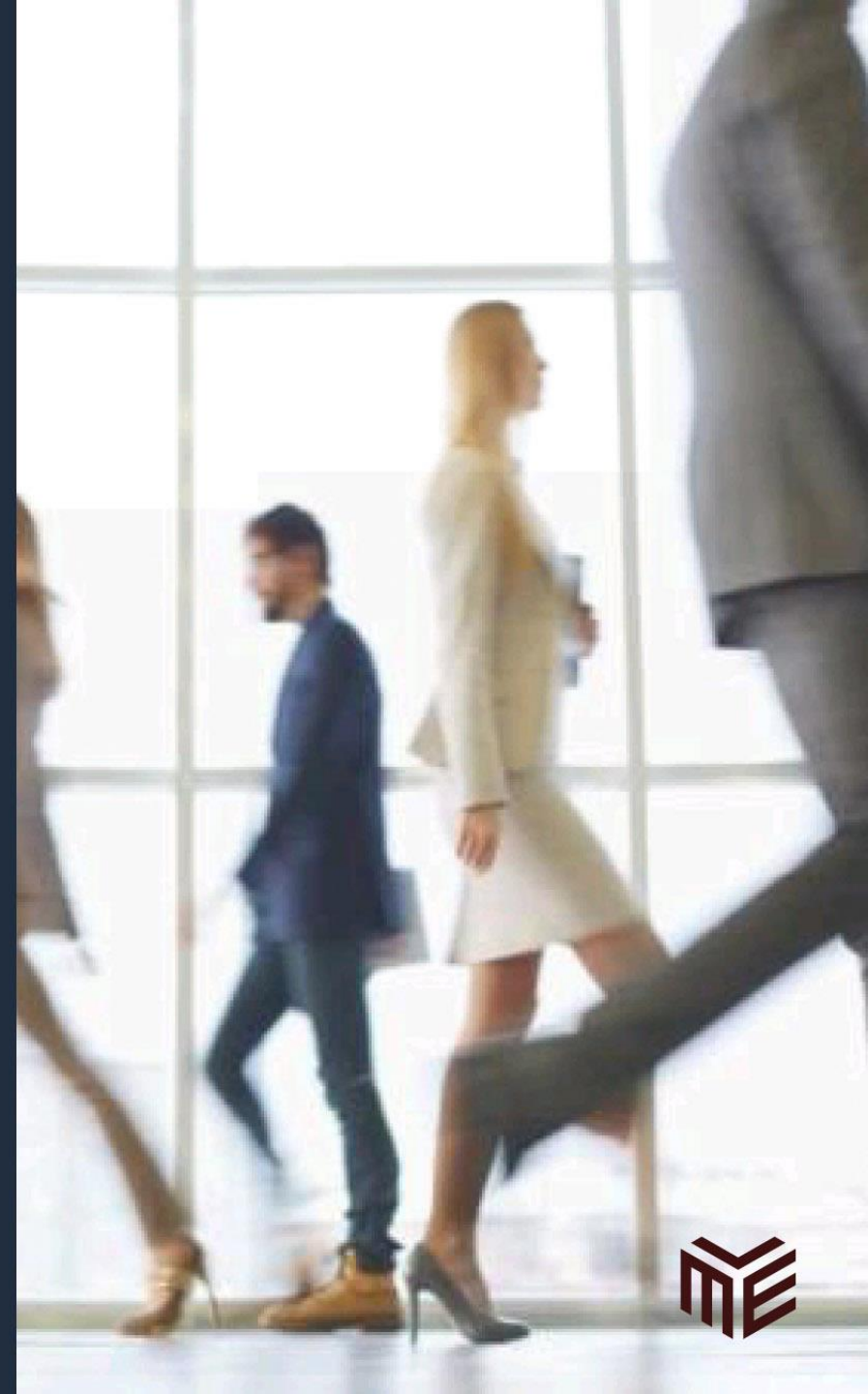
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# Ron Minken, B.A. (Honours), LL.B.

[rminken@minken.com](mailto:rminken@minken.com)



Ron Minken is the Founder and Managing Principal of Minken Employment Lawyers, established in 1990, known as a leader in the field of Employment Law and related litigation. He has practiced Employment Law and related litigation for over 34 years, published extensively and is a sought after speaker having spoken in conferences across Canada and the UK. Minken Employment Lawyers have been consistently selected as one of the Top Employment Law and Labour firms in Canada and have won other awards, and are well-known to helping businesses, law firms, and HR professionals, throughout the country with workplace legal issues.

Minken Employment Lawyers educate businesses by publishing Employer Guides and video blogs, which are available on their website and social media. They also publish a monthly newsletter which focuses on recent case law and legislation.





# **CONSTRUCTIVE DISMISSAL POST COVID-19**



# What is Constructive Dismissal?

## Two criteria:

1. Unilateral and fundamental change

AND

2. Change is not condoned by employee





# What Are Some Examples of Constructive Dismissal?

- Change in:
  - Pay
  - Location
  - Responsibilities / Duties
  - Hours
- Harassment or abuse
- Breach of section 25 of *OHSA*
- Failure to accommodate



# How much of a reduction is significant and fundamental?

- **15 – 20% of a change in duties / pay / hours**



# What if an Employee Continues Working after the Change is Made?

1. Has there been an objection?
2. Has there been an implicit acceptance?
3. How long has the employee continued to work for you?





# How has COVID-19 changed the law of constructive dismissal?

- Infectious Disease Emergency Leave (“IDEL”)
- Temporary Lay-Offs
- New Policies
- Unpaid Leaves of Absence / Suspensions
- Remote Work





# HOW TO AVOID PITFALLS - CONSTRUCTIVE DISMISSAL



# What Should Employers Immediately Do?

- Update Employment Agreements
  - Temporary Lay-Off
  - Location
  - Hours of Work
  - Compensation
  - Duties / Responsibilities
  - Policies / Procedures



# What Should Employers Immediately Do?

- Implement Policies
  - Reasonable
  - Enough notice
  - Not against public policy



# What to do *Before* Making Changes?

- 1. Obtain Legal Advice
- 2. Provide Notice
- 3. Obtain Agreement from Employee
- 4. Avoid Suspensions / Unpaid Leaves





# How to avoid allegations of constructive dismissal due to harassment and unsafe workplace?

- Understand and comply with obligations pursuant to the *Occupational Health and Safety Act*
  - Section 32 – Violence and Harassment
  - Section 25(2)(h) – “take every precaution reasonable in the circumstances for the protection of a worker”



# THANK YOU

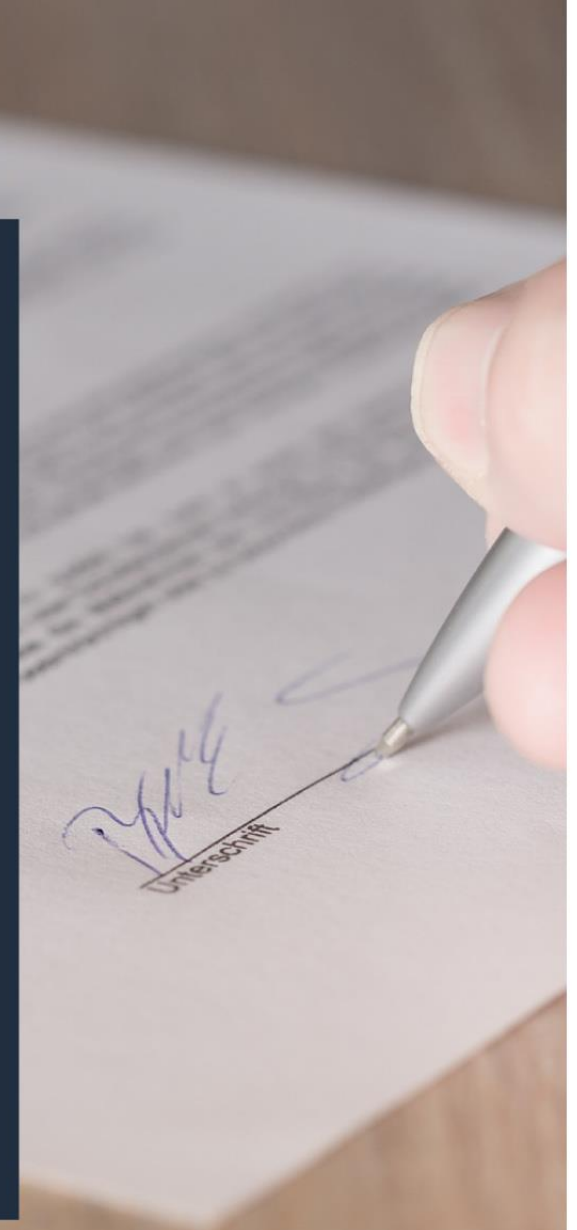
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