

Current Workplace Issues

Changing Employment Terms and Conditions

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A decision from the British Columbia Court of Appeal is a reminder that employers must take care when imposing altered terms and conditions of employment on persons already in their employ. Not only may such unilateral changes give rise to claims for constructive dismissal, but they may also be unenforceable altogether for lack of consideration.

In *Watson v. Moore Corporation*, the plaintiff began working for the corporation in 1968. In 1987 and again in 1989, her employer obtained her signature on documents according to which she could be dismissed without cause on payment of the minimum required by the B.C. Employment Standards

Act, plus one week's salary for every two years of completed service. In 1993, she was dismissed with twenty weeks' pay in accordance with the terms in the documents.

When she sued for wrongful dismissal, the trial judge held that she was bound by the documents she had signed. However, in a split decision, the Court of Appeal allowed her appeal on the basis that the documents were void as contracts for want of consideration, and awarded the plaintiff eighteen months' salary in lieu of reasonable notice.

A contract consists of an exchange of promises and/or acts as a result of which each side receives something from the other. This is known as "consideration", and it is an essential element of all contracts, including contracts of employment. The issue in this case was whether, in the absence of evidence that the corporation had required the plaintiff to sign the documents as a condition of continued employment, the plaintiff's mere continuation in her employment amounted to "consideration" so that the documents would be legally enforceable as contracts. In other words, was the plaintiff actually receiving something particular from her employer for signing? Would her refusal have led to an early termination of her employment?

Without those elements, the Court of Appeal decided that the employment documents she had signed were void. Despite earlier authority to the contrary, consideration for the plaintiff's employment contracts could not be found just in the normal continuation of her existing employment. The corporation's forbearance from dismissing the plaintiff until 1993 was not enough to satisfy the test for consideration, since the employer had not demonstrated at the time it presented the documents to the plaintiff its intention to dismiss her if she had refused to sign. The Court refused to accept what it called "self-serving reconstructions" of what the employer said it would have done at an earlier time, especially when that was now essential to its success at trial.

The result is that employers must take care to make clear to persons in their employ the consequences of refusing to sign documents which alter the terms and conditions of employment if they expect to enforce such contracts at a later time. Unfortunately for the cordiality of employer-employee relationships, this may include stating, preferably in writing, at the time the signature is required, that failure to sign could affect the continuation of the employee's job and result in disciplinary action up through termination.

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