Is Working from Home a Fundamental Term of Employment?

Do you have employees working from home? Have you ever contemplated ending this arrangement? If so, it may not be as simple as you think!

At the end of 2017, the Ontario Superior Court confirmed that taking away an employee's ability to work from home was a significant factor in determining whether she had been constructively dismissed.

In 1995, after fulfilling a six month contract with MicroAge, Rosemary Hagholm was offered full-time employment. Ms. Hagholm accepted full-time employment only after agreeing with the Vice President that she would work from home three days a week. Ms. Hagholm lived in Waterloo, Ontario, which was approximately 110 kilometers from the Company's office in Vaughan, Ontario. The Vice President agreed to the telecommuting arrangement and Ms. Hagholm worked three days a week from home for the next twenty-two years.

In 2015 MicroAge was sold to Coreio Inc. and over a period of five weeks, beginning in January 2017, Ms. Hagholm's new employer demoted her, put her on a performance improvement plan, reduced her bonus payment by two-thirds and removed her working from home arrangement. Ms. Hagholm was expected to work from the Vaughan office five days a week starting March 1st. Ms. Hagholm did not raise any concerns with the change (she was still living in Waterloo) and resigned effective March 1st alleging that she has been constructively dismissed.

The change to the work from home arrangement after twenty-two years was, according to the Judge, the biggest factor regarding her claim of constructive dismissal. Coreio tried to argue that because the arrangement was not in a written contract, it was a preference of Ms. Hagholm's and not a contractual term. The court disagreed and said that although there was nothing in writing there was an oral agreement between Ms. Hagholm and the former Vice President that she relied on when she accepted full-time employment with MicroAge. As a result this oral agreement became an essential term of her employment.

Ms. Hagholm was awarded 20.5 months' notice and $11,261 as compensation for the underpayment of her bonus.

Takeaways

This is a good reminder to all employers/purchasers that in the context of an acquisition, the fact that an employment agreement may not speak to working remotely does not mean there were no oral agreements made or obvious practices in place. In other words, it's not enough to evaluate terms and conditions of employment based on the written employment agreements alone. It is important your due diligence process include a review of existing practices as well.

It's also noteworthy that the employee, after receiving the letter requiring her to attend at the office five days a week, said nothing. She simply waited for the effective date of March 1st, resigned, and her counsel sent a demand letter. Remember - silence does not equal acceptance!

As always, please feel free to contact e2r® to speak with an Advisor if you have any questions regarding constructive dismissal and making fundamental changes to employment.