



NINE TO FIVE

Am I entitled to compensation for my office moving and my commute increasing?

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THE QUESTION

The company I work for is moving its head office. That will increase my commute time to 80 minutes from 20, plus additional costs to pay for public transit. The ability to walk to work was a factor in choosing this job. Am I entitled to any compensation for the office relocation? I can still get there in 20 minutes if I take a taxi every day. Can I make my company offset my transit costs so my commute time is equal?

THE FIRST ANSWER

Busayo A. Faderin, employment lawyer, Koskie Minsky LLP, Toronto

Entitlement to compensation for the office relocation would either extend from an agreement with the company or come as a result of a breach by the company. The source of the agreement may be through either a written or verbal contract regarding work relocation.

A breach by the company would be as a result of constructive dismissal. A constructive dismissal occurs when substantial changes are made unilaterally by your employer without your agreement. The question of whether this relocation requirement would be a constructive dismissal is determinative on whether it would be considered a major change to the original terms of the employment contract. If so, you can likely treat the move as a constructive dismissal and seek wrongful dismissal compensation.

In some cases, courts have found that relocation was an implied term if it was common for employees based on their positions to be geographically transferred. If it is an explicit or implied term of your employment contract that your employer can impose a relocation, it would not be a breach by the company and you would not be entitled to compensation.

It's a good idea to start by reviewing your employment agreement for any details regarding relocation. If the contract is silent about your company's right to require you to relocate, consider whether your company was aware that the distance of the head office from your home was a key consideration in your decision to take the job.

From a practical perspective, while you can negotiate with your company to pay you compensation for your transit costs, it's not possible to force the company to do so. Even if they're not required to compensate you by law, the company may be willing to find a solution that works for both of you to maintain the relationship.

Constructive dismissal is quite a technical area of law to navigate so it's worth getting individualized advice from an employment lawyer that can consider all the facts and provide appropriate guidance specific to your circumstances.

THE SECOND ANSWER

Sophie Purnell, founding lawyer, Purnell Employment Law, Calgary

If an employer chooses to make a major change to one of the core terms of your employment without providing prior notice or "pay in lieu" of notice, this may constitute what we call a constructive dismissal under the law. When an employee is constructively dismissed, this essentially means they are left with no alternative but to resign and pursue a claim for severance against their former employer.

If the employee's travel or commute time and the associated cost of such travel time increases significantly because of the office's relocation, this may be viewed as a fundamental change to an employment term by the courts.

If the requirement to follow any employer-mandated relocations is not a written term in your employment contract, your employer is legally required to provide you with proper notice of that relocation or to provide you with "pay in lieu" of that notice. If your employer refuses to do so, this may constitute a constructive dismissal under the law, and you may be entitled to severance.

There is no established legal requirement that an employer offset the costs of a longer commute in the event of a relocation, but this may be something you could negotiate with your employer before you consider claiming constructive dismissal.

In some cases, an employer may already have a relocation policy in place that sets out the employer's obligations in the event of a relocation, including potential compensation for increased commuting or travel time.

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