

Member's Quarterly

Winter 2026 Edition

Feature

LOCATION, LOCATION, LOCATION

How far will employees go to mitigate?

Introduction

Employers with multiple locations may sometimes face the difficult task of deciding whether to relocate employees to a different location. Employers should be careful to ensure that relocating employees does not result in a breach of a fundamental term of the employee's employment. Further, when closing one location and offering employees employment at a new location, employers should consider whether it is reasonable for each employee to accept employment at the new location. What is reasonable may vary depending on the circumstances.

The Facts

In *Oostlander v Cervus Equipment Corporation*, 2023 ABCA 13, Mr. Oostlander had worked for Cervus Equipment Corporation ("Cervus") for 36 years as a heavy-duty mechanic, working at Cervus' location in Bassano, Alberta. Cervus made a business decision to centralize its operations in Brooks, Alberta, approximately 50 kilometers away from Bassano. Mr. Oostlander's employment at the Bassano location was ultimately terminated, and Cervus offered him a job in Brooks. Mr. Oostlander rejected the offer and sued Cervus for wrongful dismissal.

After litigation had commenced, Cervus made a second offer regarding the job in Brooks. This time, Cervus offered a one-time payment of \$8,000 to address the increase in gas and vehicle wear that would result from Mr. Oostlander commuting from Bassano to Brooks each day. This offer was also rejected by Mr. Oostlander.

The Decision

The question before the Court was whether it was reasonable for Mr. Oostlander to reject Cervus' offer to work at the Brooks location. The parties conceded that the job offered to Mr. Oostlander in Brooks was nearly identical to the job he held in Bassano, with the same compensation, many of the same coworkers and the same reporting structure. However, to work in Brooks, Mr. Oostlander would have been required to commute 100 kilometers per day on the TransCanada highway or relocate to Brooks.

Mr. Oostlander lived approximately four minutes away from Cervus' location in Bassano but would be required to drive nearly two hours per day to the Brooks location. The trial judge concluded that the \$8,000 offered by Cervus to address Mr. Oostlander's increased costs related to his commute to Brooks would not cover Mr. Oostlander's actual increased costs. The trial found that it was not reasonable for Mr. Oostlander to commute to Brooks as a means of mitigating his damages.

Similarly, the trial judge found that it was not reasonable for Mr. Oostlander to relocate to Brooks. At the time of termination of Mr. Oostlander's employment, he was 60 years old and had lived in Bassano for



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more than 30 years. Mr. Oostlander's wife also worked in Bassano and would be faced with the same commuting issue if the couple relocated to Brooks. Given the circumstances, the trial judge found it was reasonable for Mr. Oostlander to refuse to relocate to Brooks.

The Court of Appeal upheld the trial judge's decision that it was reasonable for Mr. Oostlander to reject Cervus' offer of re-employment in Brooks.

Key Takeaways for Employers

Whether seeking to relocate employees, consolidate work locations or monitoring mitigation efforts, it is important for employers to consider the following:

- **The circumstances of each employee:** Mitigation is not one size fits all, and what is reasonable will depend on the specific circumstances of each employee. For example, it may be more unreasonable to ask an employee who commutes to work using public transit to relocate to a rural location than it is to request the same of an employee who drives to work each day. It is important to consider the realities of each employee and consider whether the relocation or mitigation is reasonable.
- **Enforceable termination clauses:** To avoid being at the mercy of an employee's mitigation efforts to reduce reasonable notice damages, employers should consider agreeing to specific termination notice entitlements in the employment agreement rather than leaving it to common law.
- **Constructive dismissal:** When considering whether relocation of an employee is appropriate, consider whether the relocation could constitute a breach of a fundamental term of employment. If relocation is not reasonably contemplated in the employment agreement, a unilateral change to the work location by the employer could result in a claim of constructive dismissal.
- **Legal Advice:** When considering relocating employees, employers should strongly consider discussing with legal counsel to reduce the risks of constructive dismissal or wrongful termination.

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