

## Member's Quarterly

Fall 2022 Edition

### Feature

# The Transition from Remote to the In Person Workplace - *The "one size fits all" approach may not work*

**M**any employers across Canada are in the process of contemplating ending temporary remote work arrangements with their employees and directing them to begin reporting back to work "in person". Some remote work arrangements that were in place due to the COVID-19 pandemic have become quite lengthy. This may have led to employees developing certain expectations in respect of, and making significant alterations to, their day-to-day lives.

To this end, it is understandable that employees may need to make changes to their current personal affairs in response to a return to the workplace directive, and that doing so may take some time in certain situations. Moreover, it is also no secret that many employees simply enjoy working from home. In this regard, if the return to work plan can be approached in a way that mitigates against employees feeling negative about, or even resenting, the impending return, this would be beneficial to the workplace, and by extension, the employer. These key "considerations" are intended to assist employers with staying out of possible legal trouble as well as avoiding employee-pushback to a return to work mandate.

## 1. Consider Providing Advance Courtesy Notice

If possible, employers should provide employees with as much advance courtesy notice as is reasonably practical in the circumstances that they will be required to begin physically reporting for work again.

You will note we've described such notice a "courtesy" notice and not "working" notice. Courtesy notice is exactly that - a courtesy and not legally required. In contrast, an employer is required to give an employee sufficient working notice when changing a term of the employee's employment without their consent to the change. Generally speaking, unless an employer previously represented to an employee that their terms of employment have been altered to allow for remote work regardless of the pandemic circumstances, then sufficient working notice need not be provided to direct an employee to return to the workplace. Accordingly, the courtesy notice should clearly remind employees that:

- They were hired on the mutual understanding that their work is to be performed at the workplace, rather than remotely;
- Remote work was only necessitated in response to public health directives and/or occupational health and safety concerns and the level of risk the pandemic presented at a given time; and
- For these reasons, remote work has always been considered a temporary arrangement.

## 2. Consider a Temporary Hybrid Work Transition Period

Rather than pulling the plug on remote work entirely, if circumstances permit, employers could offer their employees a temporary transition period whereby employees could commence the return to the workplace process by working at the workplace part-time and remotely for the balance of their work. However, when offering this, employers should make it clear that employees should not interpret this offer of temporary hybrid work as being permanent, or creating entitlements, in any way. Instead, employers should communicate that this offer is being made with a view to being flexible while employees make any adjustments to



**Colin Fetter**  
LL. B.  
*Partner,*  
*Brownlee LLP*



**Kyle Allen**  
J.D.  
*Associate,*  
*Brownlee LLP*

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their daily living as the return to the workplace process continues to unfold. Employers may also want to develop and outline objective eligibility criteria and/or a formal approval process in respect of the hybrid work transition period.

### 3. Consider Human Rights

The return to work directive could engage an employee's human rights protections; more specifically, possibly the following protected grounds:

- Family status, for persons who are required to provide care to family members; or
- Physical disability, in the event that an employee's return to the workplace would, at that time, present an unreasonable health and safety risk to them specifically, due to their extenuating medical circumstances rendering them highly vulnerable to COVID-19.

If so, employers must be mindful that a "one size fits all" approach to returning to the workplace may not be appropriate for these select employees. If not, an employer's duty to accommodate will require the employer to modify its return to the workplace plans for those specific employees in any way reasonably possible that would address the given human rights situation and not cause undue hardship to the employer.

*Colin Fetter is a Partner and Practice Group Leader in Employment and Labour Law with Brownlee LLP in Edmonton. He can be reached via email at [cfetter@brownleelaw.com](mailto:cfetter@brownleelaw.com).*

*Kyle Allen is an Associate in Employment and Labour Law with Brownlee LLP in Edmonton. He can be reached via email at [kallen@brownleelaw.com](mailto:kallen@brownleelaw.com).*