

# Return to office a balancing act for employers – Employment and Labour Law Insights June 2022 (webinar)

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How do business needs and broader economic forces impact an organization's constructive dismissal risks, and how can they mitigate these risks in the face of market downturns? Osler partners Allan Wells, Sven Poysa and Damian Rigolo and associates Summer Danakas and Carrington A. Hickey discussed these and other timely questions in the June session of the Employment and Labour Law Insights webinar series.

A common challenge during the pandemic has been how to handle the shift of many previously on-site workplaces to remote settings. In many cases, working from home was a temporary measure in response to an extraordinary public-health crisis. After two years of such arrangements, however, mandating a return to in-person work may invite questions of whether that constitutes a change to a fundamental term of employment.

Employers should therefore manage their return-to-office transition carefully, balancing their strict legal requirements and rights with what works best for their business. Keeping in mind the potential effects on employee morale and recruitment efforts, they should draft a considered remote or hybrid work policy and give impacted employees a reasonable period of time to transition back to the office. These policies could also outline safety standards for home workspaces, as highlighted in a recent headline-grabbing Québec decision.

As in circumstances like changing economic realities that lead to reductions in force, clear communication is key. Proper drafting of employment agreements can preserve employer flexibility in determining organizational structure and the allocation of responsibilities, and advance notice of change can help reduce the risk of constructive dismissal claims.

The group also examined the recent Ontario Court of Appeal case of *Render v. ThyssenKrupp Elevator (Canada) Limited*. Here, the Court upheld a termination for cause after an incident of workplace sexual harassment, but found the appellant employee entitled to statutory pay in lieu of notice of termination. This decision raises serious questions about the kind of conduct necessary to establish "wilful misconduct" within the context of the *Employment Standards Act, 2000*.

[Watch the full webinar.](#)