

RETURN-TO-OFFICE MANDATE TRIGGERS CONSTRUCTIVE DISMISSAL (... THIS TIME)

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In *Nickles v 628810 Alberta Ltd.* [1] (“*Nickles*”), the Court of King’s Bench of Alberta found that an employer’s return-to-office mandate constituted grounds for constructive dismissal of an employee with a longstanding work-from-home arrangement.

Background

The employee in *Nickles* primarily worked from home as an office manager from 1986 to 2023. During this 37-year period, she attended the office when needed, but mostly at her own discretion. There was no dispute that her role was a work from home position.

However, following an ownership change, the employer introduced a so-called return-to-office mandate requiring the employee to work in the office on a full-time basis. The employer gave the employee less than three months of notice to comply with this mandate. The employee argued that this was not a “return” to the office, but rather a significant change to her longstanding remote role.

After the employee sought counsel and asserted that she had been constructively dismissed, the employer offered her a hybrid work arrangement of 2.5 days per week in the office, which could later revert to full-time in-office attendance (depending on “how it went”). But the employee declined this offer and commenced an action for wrongful dismissal.

The Decision

The applications judge considered two main issues by way of summary judgement:

1. Was the employee constructively dismissed?
2. If the employee was constructively dismissed, was she obligated to mitigate her damages by accepting the hybrid work arrangement?

Constructive Dismissal

Constructive dismissal occurs where an employer has not expressly terminated an employee’s employment,

but a termination can be interpreted (or “constructed”) from the employer’s conduct. A constructive dismissal claim can be established by either (1) the employer’s breach of an essential term of the employment contract or (2) a course of conduct by the employer that establishes that it no longer intends to be bound by the employment contract.

Given that the employee’s work-from-home-arrangement had been in place for all 37 years of her employment, the applications judge found that this arrangement was an essential term of her employment contract. Therefore, the employer’s attempt to alter this term on less than three months’ notice amounted to a constructive dismissal.

Importantly, the applications judge opined that the employee’s longstanding remote work arrangement was distinguishable from the remote and hybrid work arrangements that grew out of the COVID-19 pandemic. In the words of the applications judge:

“This was not a return-to-work arrangement of the type that was common after the COVID pandemic. The COVID return to work template does not fit this paradigm. This was an arrangement where the work was always from home.”

In other words, the applications judge’s findings were specific to this particular employee’s employment contract.

Mitigation

The applications judge also held that the employee was not required to accept the employer’s hybrid work proposal in order to mitigate her damages, as the offer involved the same fundamental change that had led to her constructive dismissal.

According to the applications judge, it would be unreasonable for the employer to indirectly get what it wanted under the guise of mitigating damages:

“The employer insisted that the new term be part of the contract (working fixed hours in the office), and the employee resisted. To foist that term upon the employee instead by way of a mitigation obligation would be to ignore the options available to the employee that arise from the fundamental change. The employer would indirectly get what it wanted notwithstanding the constructive dismissal.”

Takeaways for Employer

Return-to-office mandates continue to gain steam in 2025. However, to date, it remains largely unclear whether these mandates raise significant constructive dismissal risks for employers.

The *Nickles* decision sheds some light on how Canadian courts may treat the issue in extreme cases; namely, those involving employees with longstanding (pre-COVID) work-from-home arrangements. With that said, the applications judge's comments about the "COVID return to work template" may be cause for some optimism amongst employers with workforces that shifted to a remote or hybrid model because of the pandemic.

As this area of the law is still developing, employers seeking to implement a return-to-work mandate would be wise to do so with careful regard to the facts of each case, and in close consultation with counsel.

[1] *Nickles v 628810 Alberta Ltd.*, [2025 ABKB 212](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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