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Constructive Dismissal and the Legal Boundaries of Flexible Work Arrangements

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Abstract

Flexibility at work has shifted from the periphery of the employment relationship to its core, and employers are trying to regain control over a form of flexibility that workers consider finalised. The legal implication of such a move is one that is often overlooked: where an employer rescinds or significantly limits a flexibility option without agreement from the worker, the subsequent resignation of the worker could be legally redefined as dismissal. In this paper, the concept of constructive dismissal is explored as the process through which the legal limits of flexibility at work are set, in the sense that it is precisely through the operation of the doctrine that workers' resignations become legally constituted dismissals. The argument unfolds via the wide definition and high evidentiary requirements of the doctrine, variation, breach and repudiation mechanisms, the uncertain legal character of flexible work as a classification and unclear dividing line between the right to impose return-to-office policies and duty of providing reasonable accommodation, and availability and disconnection as the aspect of working time regulation. Litigation risks are assessed for the main types of organizational action in this context, and a governance approach based on the clear contract, consultation, consistency, and justification is suggested. The key thesis is that the limits of acceptable management of flexibility lie not in the generosity of employer's policy but in the contract, and that employers who see hybrid and remote working as policy options rather than contract rights are building up their dismissal liability.

Keywords: Constructive Dismissal, Flexible Work, Employment Law, Workplace Rights, Employment Contract, Labour Relations, Legal Compliance.

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Introduction

The pandemic has debunked the idea of work having a specific location. Companies that once offered the option of telecommuting as an exception were forced to adopt it as a necessity, thus proving that a significant amount of knowledge work could be done without people being in the same physical space. However, what happened was not a restoration of the previous balance but rather the negotiation of who controls the time, place, and manner of the work done. Attempts by employers to regain control of work by adopting hybrid work, attendance, and return-to-work policies have been contested by employees.

This dispute has often been analyzed through a managerial lens, such as an issue of culture, productivity, or engagement, rather than a legal one, and it is a mistake to do so. This is not simply a question of whether the employer can legally order his or her workers to go somewhere, but what happens when that order goes against an understanding that has formed into part of the terms of the employment contract. By well-settled doctrine, where an employee quits work because the employer has committed a repudiatory breach or made an unilaterally imposed alteration to the terms of employment without notice or consent, the employee may be regarded not as having quit but having been fired. This is the starting point of all the laws concerning dismissal.

There have been considerable changes in the nature of the employment relationship as a result of the introduction of flexible work practices. Flexiworking, hybrid workplaces, flexible scheduling, compressed work schedules, and location-based employment have moved from being rare organizational practices to becoming essential parts of today's work environment. Flexible work practices expanded rapidly as a result of advances in technology and events in the global environment that proved that many professional activities could be done without being physically present in the office. As organizations adopt more digital platforms for collaboration and distributed work practices, workers begin to have new expectations about autonomy, work-life balance, and control over the working environment. However, the move toward flexible work practices creates complicated legal issues when employers try to change, limit, or terminate practices that employees see as conditions of their employment.

The central issue at stake here is the concept of constructive dismissal, which is a legal doctrine that seeks to provide redress in cases where an individual leaves his/her employment because of actions taken by the employer that alter the nature of the employment. Unlike direct dismissal, constructive dismissal occurs indirectly through the action or decision made by the employer that forces the employee to leave. Constructive dismissal takes the view that merely forcing an employee to leave an organization voluntarily cannot absolve an employer from liability for actions that would have led to dismissal. In the context of flexible working, constructive dismissal has become increasingly pertinent because of alterations in the nature of work location, schedule, availability, and ability to work remotely.

Flexible work practices have an ambiguous legal standing since its character depends on various factors such as the contract terms, organizational policies, workplace practice, and local employment law principles. Under certain conditions, remote or flexible work may only be a workplace discretionary practice that the employer can alter according to his/her needs. Under different conditions, the practice of flexibility or a written agreement, a collective practice, or an expectation created during the recruitment process may generate an understanding that the flexibility practice is included within the employment relationship. The difference is important since the alteration of the discretionary benefit does not have the same legal implications as the modification of the contractual term. Deciding on whether the flexibility practice is an enforceable term or a discretionary practice of management is one of the key issues of modern employment law.

The growing number of returns to office policies highlights the conflict of authority of employers and expectations of employees. The employer's justification for requiring attendance in the workplace might be justified by business reasons, the aim of collaboration, corporate culture, the need in supervision, or production. On the other hand, the major changes to previously existing arrangements might be perceived by the employee as a serious change in the conditions of employment especially if he/she rearranged his/her personal affairs, moved to another place, or was employed because of the flexible arrangement. Thus, the issue is not only the right of an employer to demand attendance at the workplace.

This creates an imbalance of power that is generally unacknowledged by the manager. A business entity that forces its employees to be present at work three days per week while the employee contract specifies that he should work from home has technically violated the terms of the agreement. Should he leave due to the manager’s violation of his contract, he will be filing for dismissal when the employer did not see it coming due to a normal application of managerial power. The more relaxed the terms of flexibility were originally, the more likely there is a misunderstanding of what the contract entails.

The three arguments made in this paper are the following. Firstly, constructive dismissal is the key legal constraint on flexible work management, in that it decides if the redefinition of work arrangements by an employer is considered as a managerial prerogative or a dismissal. Secondly, the poor understanding of the boundary is due to its flexibility in the law, since there are various conditions which may generate a constructive dismissal case, and the burden of evidence lies heavily on the employee, creating thus uncertainty rather than rules. Thirdly, the right course of action for managers is not to shun flexibility, but to define it explicitly—that is, to clearly state in advance, in writing, who is supposed to get what, based on what contractual terms and with what level of flexibility.

This paper is organized as follows. The doctrine of constructive dismissal, its broad definition, and its evidential requirements are discussed in section 2. Section 3 discusses the dynamics of variation, breach, and repudiation, including the risks of working under protest. Section 4 explores flexible work as a legal category and right-to-request approach. Section 5 explores return-to-office requirements and the distinction between management's directions and reasonable accommodation. Section 6 deals with working time, availability, and the right to disconnect. Section 7 evaluates the empirical literature on the disadvantages of flexible work. Section 8 assesses the risks of litigation and develops a framework of governance. Sections 9 and 10 discuss implications and limitations.

The Doctrine of Constructive Dismissal

Definition and Rationale

Constructive discharge turns things around in the usual course of events. Rather than being discharged by the employer, the employee quits, and it then becomes an issue as to whether the quit was due to the employer's actions. The reasoning behind this approach is that, since it has become impossible or intolerable for the employee to continue under the terms of the employment contract, allowing the employer to benefit from the employee's act of quitting would enable the wrongdoer to determine its own wrongful conduct.

It should be noted that the formulation of the doctrine is identical in the case of common law. Constructive dismissal involves the termination of the employment due to the creation by the employer of the hostile or unfavourable working environment, and because of that, the resignation of the employee is considered involuntary; thus, it is the dismissal of the employee. Consequently, it is possible to say that the employee will be able to claim constructive dismissal if the employer breaches the fundamental terms and conditions of the contract of employment, or changes the terms and conditions of the contract unilaterally without notifying or obtaining the consent of the employee (Salawu, 2025). There are two different ways of claiming the constructive dismissal. In the first case, the breach of the fundamental term should be proved, usually, some of the terms connected with the root of the contract of employment are considered fundamental – reduced salary, changed duties, loss of trust and confidence. In the second case, there is no need to prove anything – unilaterally changed terms and conditions of the contract without notice and consent are enough.

The second type is the one which is relevant to flexible working. If the employer removes the facility of working remotely, restricts the days when employees can work remotely, amends the core hours for collaboration, or even moves the team's working hours to somewhere else, the issue will not be about whether the term was essential, but rather whether such alteration was made unilaterally. A manager seeing the attendance requirement as an operational shift may well be describing a unilateral variation legally speaking.

The Breadth of the Concept

The essential feature of constructive dismissal lies in the impossibility of defining the boundaries of such a phenomenon before time. Constructive dismissal is a highly flexible term because of the great variability of situations that can lead to constructive dismissal, and therefore no precise criteria exist as to when it occurs. The situation in each case should be studied and evaluated from the point of view of certain general rules (Whitear-Nel & Rudling, 2021).

This flexibility, however, produces two opposite results, of which managers are typically aware of only one. On the one hand, the employer cannot use a checklist approach. There is no "safe harbor" in a sense that a policy set out in writing guarantees that a certain decision will not be challenged successfully. While an employer might believe that it has used a reasonable procedure, the combined result of several small actions can be viewed as a whole, making it especially dangerous in cases of gradual alterations to terms of employment. It is possible that a series of small restrictions on remote work, each being a legitimate action separately, forms the intolerable situation on the basis of which a complaint is made.

Secondly, the position of the employee in relation to this concept is much weaker than implied by the broad nature of the concept. A broad doctrinal scope does not equate to a successful legal challenge, and while case law illustrates the flexibility of the concept, it equally illustrates the difficulty of proving the case. This discrepancy is the true situation faced by both the employer and employee, one that makes constructive dismissal more an area of ambiguity than a boundary line.

The Evidentiary Burden

Proof of constructive dismissal is the duty of the claimant and is a very difficult one to prove. Cases have established the principle that a very strong proof of constructive dismissal must be shown and the courts have not easily accepted circumstances put forward by employees as constructive dismissal. In a case in appeal, the courts were very reluctant in recognizing constructive dismissal as "not for the asking" and stated that in most cases where an employee resigns, it would be difficult for him to show that he was constructively dismissed owing to the difficulty of proving constructive dismissal. This approach by the courts was termed inappropriate by the courts themselves (Whitear-Nel & Rudling, 2021).

This case demonstrates the practical implications of the above principle. In that case, the employee faced a situation where he/she suffered from loss of job security because of the measures taken by his/her employer in order to protect the business; however, the tribunal did not find this sufficient for claiming constructive dismissal (Whitear-Nel & Rudling, 2021). What follows from this is that the mere fact that the employee is dissatisfied, and there really is deterioration of working conditions, will not be enough to make a claim. There should be more: the actions of the employer should be evaluated according to the relevant doctrine.

It means for the employers that a governance strategy based on the idea that their employees will succeed in contesting these changes is faulty because most of them will not succeed. The danger, however, is very real and lies in those cases in which the evidence for any claim is the weakest—the very cases created through flexible management without contract. Those employers who rely on the fact that only few of such claims succeed to justify their unilateralism are making a logical mistake because those claims which do not succeed have no evidence at all.

Variation, Breach, and Repudiation

The Baseline Rule

The first step in analyzing flexible work management is recognizing that there should never be unilaterally altered terms and conditions of employment. In theory, neither employer nor employee can unilaterally change the terms and conditions of employment. Unilateral change without acceptance would be a breach of contract, and if the change were substantial, a repudiation of the contract (Jefferson, 2018). This is simply an assertion of who holds the power in contractual relationships, which logically flows from the basic premise that the contract is an agreement, not a direction.

In relation to flexible work, the connection is obvious. Where the employee has been hired on the basis of contractually agreed terms, including place of work, hours of work, or some combination, the employer's attempt to unilaterally alter those terms is not a legal act unless the contract allows such alteration or the employee accepts it. An act can have an effect, but that effect is not legality, and the discrepancy gives rise to dismissal claims.

Repudiation and its Limits

However, there is an additional qualifier in the form of the notion of repudiation. Repudiation itself will not result in the termination of the contract of employment (Jefferson, 2018). Instead, the party whose rights have been breached by the other party can choose whether he or she wants to accept such repudiation and treat the contract as terminated, or affirm it and continue with the existing contractual relationship.

Therefore, for the employer, the consequence of the breach of contract does not immediately become the dismissal of the employee. If the employee continues working in the changed conditions, he or she can be considered affirming the variation, and the right to consider the contract terminated is lost. As for the employee, his or her resignation will have serious consequences because the claim for repudiation depends on a prompt and clear reaction to the breach of the contract and accepting the new terms.

Practically speaking, the position taken by the employer is more difficult to defend than at first glance. An affirmation is a defense that is based not upon the intent of the employer but upon the behavior of the employee and cannot be created out of thin air. If the employer makes a change and uses the ongoing attendance of the employee as proof of

agreement, it is based on an assumption that the employee can defeat through proof that the work performed was done unwillingly or because there was no choice.

Working Under Protest

The most valuable precedent in regard to this phenomenon is represented by the case of the employee, who neither quits right away nor consents to the change. In one of the leading cases, the employer has been trying to convince an employee to give consent for the change in his job description contract, but in vain; after the consent of the other employees, he informed them about the change. The reaction of the employee consisted of the statement that he was going to work under the new varied job description "under protest," not accepting the terms, and considering it as a breach of contract and dismissal (White, 2008).

This case hinges upon the appropriate legal analysis of this middle ground situation, and the implications of such an analysis for flexible work management are considerable. The concept of working under protest represents an effort at holding on to one's legal ground while continuing to operate practically; that is, the worker retains both the job and the claim. In the context of employers, this means that the manager's assumption that workers who continue to show up are accepting the new policy is legally flawed. From the workers' side, it implies that the way in which one reacts to this change is important.

Corollary to the above statement would be that agreement would be the safest route for the employer to take, followed by having an agreement clause within the contract allowing for such action even without agreement. Otherwise, it would be a gamble on how the employee will respond.

Employer Justifications and Their Limits

However, an employer is justified in wanting a change because there might be a need for the modification of the employment contract in line with what is good for the business. The reasons for the modifications are classified into four types of reasons: financial problems, restructuring of the project, production development, and modification of the work process. Under such considerations, the employer can change the employment contract unilaterally if there are valid reasons for making the modification in accordance with the law and the controls (AbdelGhany & Raslan, 2023).

There are three things that need to be highlighted here. Firstly, the basic idea is that there is a conflict between the idea of unilateral modification and the general agreement that agreements have to be fulfilled – what the employer does is merely a well-recognized exception from this general idea and not something that is applicable across the board. Secondly, there has to be a real justification for doing so and it needs to belong to some recognized category – simply having a preference for working together will not be sufficient to fit into the definition of financial difficulty or restructuring, unless there is an actual plan for restructuring. Thirdly, the idea of a justification is linked to the idea of the protection of rights and interests of the worker.

When it comes to flexible working, the real-life lesson learned from all this is that the bargaining power of an employer lies in the quality of its record. An employer that can present itself as having a solid operational basis for its policy, consultation procedures, transitional arrangements, and equal treatment of its entire affected work force stands in a fundamentally different position than an employer who just imposed a new policy.

Flexible Work Arrangements as a Legal Category

The Right-to-Request Model

Flexible working has different legal status in various jurisdictions; however, the one thing which remains constant about the right to flexible working is that it usually does not confer the independent right to request any kind of arrangement. Rather, it is usually the case that the right to request is provided in law, in which employees have the right to request flexible working conditions, either as an individual or collective arrangement. The right to request can be conferred to employees who have young children, as in the case of Australia, Finland, Norway, and Sweden; however, the right to request can be conferred to all employees for any purpose in Belgium, France, Germany, the Netherlands, and the UK (Angelici & Profeta, 2024).

Right-to-request scheme has a well-defined legal effect that is often misconstrued by both the parties. It converts the concept of flexibility from one that is discretionary on part of management into one that is procedural in nature, without changing the ultimate discretion to decide the issue on specified grounds. The right of the employee becomes that of having his request considered, a decision made within a certain period of time, reasons to explain such decision, and

a means to challenge it. But the employee gains no right to the arrangement itself. This is why the right-to-request scheme comes in for both criticism and praise.

This is important for constructive dismissal claims because it impacts what the employee is entitled to expect. If the flexible working arrangement has been obtained through a statutory application, it would be contractually binding, and its removal would be a variation that requires agreement. If the flexible working arrangement has been obtained through managerial discretion, then its removal may be described as the removal of a discretionary benefit, not as a breach of contract. The same practical effect, in this case, loss of the ability to work from home, will lead to vastly different legal consequences depending on how the arrangement came about.

What Tribunal Evidence Shows about the Process

However, the actual practice of operation of these regimes does not look as bright as it may be expected from the legislative design of these regimes. Analyzing employment tribunals' decisions for five years on flexible working requests, one may conclude that there are three main shortcomings of this particular legislation: there may be difficulties in meeting all the requirements of a statutory request; there is difficulty in establishing and meeting the time limits; and there are difficulties in understanding some of the key terms related to the right of reviewing the employer's decision. The analysis suggests that these issues cannot be overcome by the next Employment Relations Act 2023 (Pearson, 2025).

First, compliance is itself a cause of legal risk: An employer, who is otherwise ready to provide some leeway, may not satisfy the procedure, thus losing on the process and winning on substance. Second, the problem of defining the extent of scrutiny faced by tribunals implies that an employer cannot have any certainty regarding the scrutiny of their decision-making process, which means that it is safer to have too many documents than too few. Third, the existence of these problems despite the legislative amendment suggests that the legal system is inherently resistant to fine-tuning, so an employer’s own procedure should be treated as the key tool of risk reduction.

This suggests that it is a mistake to base the governance strategy on the formal legal category of flexible work. This category has a very complicated procedural side and a very simple substance, and much depends on how an employer makes and documents their decisions. That is why the contractual analysis provided in Sections 2 and 3 is much better in this respect than the statutory framework.

Return-to-Office Mandates and the Accommodation Boundary

The Face-Time Norm and Its Erosion

The most controversial contemporary problem in flexible work management concerns the mandatory return to office, whose legal relevance is connected to discrimination law. Prior to the coronavirus crisis, the judicial system has recognized the “full-time face-time norm” according to which employees with disabilities, female employees, and members of protected groups were systematically denied access to employment in some occupations. The demands associated with this norm concerned accommodation for telecommuting, flextime, part-time employment, and other forms of flexible work (Pearson, 2025).

This process of exclusion should be clearly stated since it provides the rationale as to why mandate decisions are laden with legal consequences. If in-person attendance is assumed to be an essential function of a position without an analysis of the matter, an accommodation of working remotely is rejected not because working remotely is inconsistent with the job but because the analysis is based on the presumption which automatically excludes that option. This rule changes a factual issue whether this job can be performed remotely into a presumption and works to the detriment of those employees who require such accommodation due to their disabilities or caregiving obligations. The fact that the pandemic proved that a very wide range of positions could be performed remotely did not just change the practice; it refuted the factual presumption of the rule.

The Post-Pandemic Judicial Response

This has not yet been adopted by the courts and, according to empirical data, there is no consistent progress in the matter. A study of all 151 cases of remote working accommodation in 2023 and 2024 found that while in some minor ways the courts have shifted their strategies, most continue to err in their reasoning. According to the article, in the past, companies used to reject requests for remote working accommodation with impunity due to the overwhelming preference of the courts in favor of the employer, often on the basis of flawed evidentiary practices whereby they used to assume that a job could hardly ever be done remotely—and COVID proved the error of this assumption (Shu, 2026).

There are three important managerial considerations that arise from the foregoing analysis. The first point is that the number of such cases – 151 in two years' time – shows that this is not a minor issue in the sphere of litigation but, on the contrary, an active one. The second consideration is that analytical flaws in judicial reasoning lead to inconsistent results and, therefore, increase the risk of exposure for employers as they cannot rely on the assumption that a justified case would automatically be seen as such. Finally, the third consideration is that the fact that employers used to win does not mean that this would be the same in the future, as the premises have proven to be false.

The operational implication for mandate design is that attendance mandates must be justifiable on an individual role basis as opposed to being imposed on an organizational basis. An across-the-board attendance mandate whereby all staff members are required to be physically present in the field for a specified period of time is more vulnerable than one which has been decided upon through an examination of the tasks which require physical presence, and this is the distinction between an assumption and a finding.

Equity, Resentment, and the Cost of Compulsion

The argument for the manager against compulsion stands separate from the legal argument, and it is very convincing. An analysis of return-to-office mandate suggests that mandate for making employees come back to the office, or caps on home-working, are not only superfluous but could even be harmful; mandate will lead to resentment among employees, and cap will reduce flexibility and autonomy. What is suggested is negotiation by managers and their teams of the right combination of home and office work (Williamson et al., 2024).

This recommendation is both legally and managerial wise sound, and the justification behind this is the fact that negotiation is how agreement is reached—the thing that is lacking in a variation to become a breach. There are two additional observations that support this point. Resentment does not just concern a problem of engagement; it is the emotional state that makes one resign and gives rise to the constructive dismissal. An employee that resents the mandate is an employee who makes an assessment, and it is only upon completion of that assessment that liability for dismissal arises. Second, the realization that mandates might be redundant implies that employers take a risk of dismissal in achieving their goals through disproportionate means.

Working Time, Availability, and the Right to Disconnect

The Dematerialization of Working Time

Flexible work not only obliterates the location of work but also the temporal boundaries of work, which leads to another category of disputes regarding boundaries. With work being performed in coworking spaces, at home, and elsewhere, the dividing line between work time and non-work time becomes blurry, and this leads to the issue that the work time goes unnoticed or uncompensated since it is not location-specific nor officially documented (López et al., 2025). The technological prerequisite is quite apparent: due to the development of communication technology, mobile phones, e-mails, and social networks, the end of the work day never occurs, making the process of breaking away from work extremely difficult, and the "right to disconnect" arises as a legal remedy acknowledging employees' rights for non-disturbance outside the work schedule (Wahab & Rahman, 2025).

None of these should be used as a citation; I will use the chosen one. From the standpoint of the law, the importance of such an aspect of constructive dismissal is connected with its cumulative nature. One message that comes after the end of regular work hours cannot be a breach. A series of such events, when the employee is supposed to be available, reacts to it instantly, and suffers from its consequences can be seen as a breach of the terms of employment, as the law takes into account the cumulative nature of the actions of the employer.

Comparative Approaches to Disconnection

However, the regulatory response has been inconsistent, which, in itself, reveals something important about the boundaries where flexible work becomes fixed. The comparative analysis of the evolution and implementation of the right to disconnect in certain jurisdictions shows that while France and Italy have developed comprehensive legislation in the area, Romania and Japan still mostly use the approach of regulating time worked, and Canada is shifting towards a hybrid system of regulation combining federal and provincial elements. The conclusion drawn from the comparative study is that the implementation of the right to disconnect depends not only on the legislation but also on collective bargaining and cultural factors (Gryn et al., 2025).

Three corollaries can be drawn regarding the use of flexibility in employment. Firstly, since there are comprehensive statutory regimes in some jurisdictions, while other jurisdictions rely on working-time considerations, the multinational employer is not able to use a single global approach to availability requirements because the same practice might be legal in one jurisdiction and illegal in another. Secondly, the fact that statutory protections are not

enough shows that compliance cannot be achieved simply through drafting but should also involve negotiating with employees' representatives and taking into consideration the characteristics of each sector. Thirdly, and most importantly in the context of this paper, the identification of the right to disconnect means that availability is now seen not as an obligation but as a boundary, which the employer must not cross, thus making the continuous requests for availability an act that justifies constructive dismissal.

Hidden Costs and the Empirical Record

The empirical literature on flexible working tends to be represented as a collection of benefits; however, its more practical contribution to management and legal issues is in the demonstration of its costs. The review of the approximately eleven years' worth of empirical literature concerning the flexible working practices between 2011 and mid-2021 is devoted to the examination of the costs associated with the implementation of such practices. As a result of the increasing popularity of remote working in the digital era, the structure of the intellectual discourse on this matter is mapped and the costs of flexible working practices are revealed together with their implications for workers, managers of technology-driven platforms, organizations, and society. There are gaps in our understanding of these costs; therefore, a holistic approach including the health, legal, and spatial perspectives (Soga et al., 2022) is needed.

There are three elements in the aforementioned review that are especially relevant to the legal analysis offered here. First, the addition of a legal dimension to the proposed holistic approach to the issue stems from the recognition that the consequences of flexible work are not limited to the well-being and productivity of the worker but have an impact on the legal relationships between the parties, which is the very ground on which constructive dismissal exists. Second, the mention of a spatial dimension is relevant to the erosion of the physical presence of the workplace as a constant point of reference and is also related to the conflict that arises because of attendance policy, location of the workplace, and the employer's control over the working environment. Third, the importance of unintended consequences of any action should be considered as a warning against considering flexibility as a legally neutral element, since it can lead to the creation of some contractual obligations by the very employer that introduced flexibility into the employment relationship.

For the governance model, this means that the reversibility of a decision must be taken into consideration while making it. When an employer allows employees to work remotely informally and on a permanent basis, he or she is not retaining the discretion but establishing a practice, which can be seen as an implied term and thus reversing it will prove to be more costly than defining the terms of the agreement initially. The hidden costs that exist according to the literature are not simply managerial but legal.

Litigation Risk Mapping and Managerial Governance

Mapping Exposure

The conceptual analysis lends itself to an organized approach in assessing which flexible work arrangements create dismissal exposure. Table 1 below illustrates the major employer behavior, their legal classification and the risk associated with them.

This table is analytical and not exhaustive; its goal is to illustrate that the level of danger depends on the contractual nature of the situation and not on the size of the deviation. The smaller deviation from an explicit contractual right poses a greater danger than a bigger deviation from a non-contractual situation, since in the former case there is already a clear violation of the contract, while in the latter case the employee must show that the employer overstepped his contractual authority.

Table 1: Constructive Dismissal Exposure Across Flexible Work Decisions

Employer action	Contractual characterization	Primary exposure
Withdrawal of remote work where contract specifies remote work	Unilateral variation; breach of express term	Constructive dismissal; wrongful dismissal; contractual damages
Reduction in permitted remote days under a hybrid policy incorporated into the contract	Unilateral variation of a contractual entitlement	Constructive dismissal; breach of contract
Introduction of attendance mandate where contract is silent	Direction within the employer's residual authority, but potentially a breach of implied terms if imposed without consultation	Constructive dismissal on cumulative conduct; discrimination exposure where the norm excludes protected groups
Change to core hours or scheduling affecting caregiving arrangements	Variation of working time terms	Constructive dismissal; indirect discrimination exposure
Denial of a flexible working request without reasons or within statutory time limits	Procedural non-compliance	Statutory claim; tribunal challenge to the employer's reasoning
Denial of remote work as an accommodation for disability	Failure to consider reasonable accommodation	Disability discrimination; constructive dismissal where the employee resigns
Persistent availability expectations outside working hours	Breach of working time protections; breach of implied trust and confidence	Constructive dismissal on cumulative conduct; statutory working time claims

A Governance Framework

There are five commitments to make based on the analysis.

Write down the contractual nature of all flexibility arrangements. The one decisive factor about the different categories of exposure discussed above is whether the arrangement has legal significance. The employer should document, when the flexibility is offered, whether the flexibility is a contractual one, a discretionary one, or a temporary one; how long the flexibility lasts; and the conditions under which it can be varied or revoked. An arrangement that is not known for its legal nature at the time of dispute is an arrangement whose legal nature will be determined by the employee's description.

Keep variation rights explicit and use them in proportion. Since it is generally true that nobody can vary terms without the other party's consent, the employers who want to keep the option to change their flexible arrangements should put it into the contract in explicit language, and only make use of the right in accordance with what the clause allows them.

Consult before making a decision and record the consultation. Legitimacy of the change is based on both a valid commercial reason and guarantees of protection of the employee’s rights and interests. The former is established through the process – through documentation of a business case for the change, allowing affected employees an opportunity to respond to it, and some mitigation if there is any burden on the employee. The consultation process will also fulfill the function of producing the agreement to correct the problem.

Justify attendance requirements with regard to the nature of the position. In light of the declining relevance of the traditional full-time presence requirement in light of ongoing remote work accommodation disputes, general attendance policies ought to be supplanted by task-oriented ones that take into consideration what tasks need physical presence. When the employee’s need for flexibility stems from a protected ground, the analysis should be done separately.

Reduce pressure on availability. As constructive dismissal can be demonstrated on the basis of the cumulative impact of the employer’s conduct, and availability requirements are increasingly statutorily and collectively recognized in more jurisdictions, employers must articulate the expected response time, ban off-the-clock contacts, and document any deviation from these practices. The lack of a policy is not a neutral act; it allows for the accumulation of practices that will be interpreted later as the conditions under which the employment relationship existed.

Discussion

There are three general findings that can be made from the above analysis.

First, the flexibility associated with the doctrine of constructive dismissal is unevenly spread out, and managers misinterpret this doctrine. As far as the definition of the doctrine is quite wide, the employer thinks that everything can be questioned; and according to the stringent evidence required, an employer is sure that nothing can be questioned. Both assumptions are incorrect. What is seen in the court practice is that the outcome depends on the documentation and employee's reaction. Therefore, the risk is related to those situations where there is no formalization. It is seen that there is high risk for those companies which have low level of flexibility documentation.

Secondly, the relationship between employment law and anti-discrimination law means that an attendance requirement is a double-edged risk. First, it may violate a contract, but separately, it can function as a discriminatory criterion where face-to-face attendance is considered to be essential without evaluation. These two risks require two different responses, and one is through the process of agreement and contractual adjustment, while the other is through job-level justification and accommodation evaluation. Employers who handle the former without dealing with the latter are still vulnerable, while those who do the latter without handling the former may still have a case for dismissal brought against them.

Third, the trajectory of regulation points to flexibility and availability being questions of right, not discretion, and constructive dismissal becomes the means by which the trajectory gets traction in those jurisdictions that have not legislatively enacted it. In the absence of the right to disconnect being total, in the presence of the procedural enforcement of the right to request, and in the decline of the face-time norm, room for unilateral reconfiguration shrinks. Organizations that see flexibility as a right to be negotiated away are becoming ever more anachronistic in their approach.

Limitations

Four limitations need to be recognized. Firstly, the analysis presented in this paper is both comparative and doctrinal, not jurisdictionally comprehensive; the consideration of constructive dismissal, variation, and the right to request is based on the principles and precedents from several jurisdictions, and the particularities of each jurisdiction's requirements are likely to vary. Secondly, there is substantial heterogeneity in the empirical literature regarding the impact of flexible work; the review of the existing literature identifies some negative effects associated with the introduction of flexibility but does not provide any proof of the universality of those costs or of their dominance over the benefits for all organizations. Thirdly, the legal framework pertaining to the accommodation of remote work is still developing, and the conclusion regarding the persistence of pre-pandemic presumptions by many courts is indicative of uncertainty rather than a clear determination. Fourthly, the proposed governance model is prescriptive in nature and stems from the analysis conducted, yet no empirical confirmation of its effect on either the incidence of conflicts or the incidence of liabilities of employers has been provided.

Conclusion

Flexible work management is not simply about formulating sound policies. Instead, it involves a process of exercising legal powers, and the limits of those powers are set out by the law on dismissal. If an employer fails to offer a flexible arrangement, or offers to withdraw from an existing one without consent, a voluntary resignation can be interpreted as a dismissal, thus impacting everything from notice periods to procedures for protecting the worker and remedies. This is because of a legal principle that has a very wide definition and requires strict proof, making it more of an area of doubt than a black-and-white issue.

It has been demonstrated that exposure will depend on the contractural nature of the arrangement and not the size of the change involved. A change to an explicit contractual right is a breach per se; however, a change to a point about which the contract is silent would mean the employee must show that the employer has acted beyond his mandate. This means that for the employer the best way to mitigate risks is not to be more restrictive but clearer through an arrangement where the foundation, duration, and conditions for variation of the same are documented when it is offered. An employer offering flexibility through informal means and revoking it through informal means accumulates hidden exposure.

The problem is exacerbated by the intersection with anti-discrimination legislation. When the requirement to attend is used as a rule for the organization as opposed to an individual's position, the requirement acts as an exclusionary

criterion, and since the erosion of the face time norm renders the judicial assumptions of the past no longer valid, there is no longer any safety net. Factually based requirements are still justifiable; those founded on assumption are not.

For managers, the pragmatic agenda is thus one of formalization, consultation, consistency, and documentation. Flexibility needs to be allowed within conditions that are sufficiently precise about what it means, are appropriate to the level of the role, changeable only via the process envisioned in the contract, and examined prior to revocation. It is not the organizations that are resistant to the demands for flexibility from their employees nor those that give way to these demands without any documentation; it is rather those that are able to specify the exact nature of their agreement, its grounds, and the terms of any change in it.

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