

Mission Impossible: Covid-19 and Frustration of Contract

“This is a frustrating time for small businesses. Many employers are trying to figure out how to cut costs and keep their businesses afloat during the on-going Covid-19 crisis. Employers are wondering how to manage their payroll when facing decreased revenue – some employers are in the undesirable position of having to reduce employees’ hours or, in some cases, end employment contracts. Given the unprecedented and unforeseeable long term effects of Covid-19 on business revenue, some employers may be wondering about ‘frustration’ of employment contracts,” writes Zoë Roberts in Minken’s ***Covid-19 Center***.

“‘Frustration’ of a contract occurs when, through no fault of either party, the contract becomes impossible to fulfill. This might be, for example, because of a natural disaster – if a fire completely destroys a concert hall, the venue cannot fulfill a contract to have a band perform there. In other words, if an unforeseen event renders it impossible for the contract to be performed as initially agreed, the contract is ‘frustrated’ and both parties are released from their contractual obligations.”

“This concept is important in employment law because, generally, employees are not entitled to notice of termination or termination pay under the *Employment Standards Act, 2000* if the employee’s ‘contract of employment has become impossible to perform or has been frustrated by a fortuitous or unforeseeable event or circumstance’.”

Read the article.