

Administrative Suspension Of Employees



The suspension of an employee is a very serious measure that can have a drastic effect on the employment relationship. As such, it should be undertaken only after careful consideration by the employer.

An administrative suspension is one which the employer imposes for business or administrative reasons. By contrast, disciplinary suspensions usually arise in the context of alleged or actual misconduct on the part of the employee. Given that the latter puts the employee's conduct directly in issue, it is governed by different criteria. The purpose of this article is to summarize the considerations relevant to administrative suspensions.

When are suspensions authorized?

The key concern for an employer in suspending an employee is whether the suspension is compatible with the continuation of the employment relationship. Thus, if the employment contract gives the employer the right to suspend the employee for administrative reasons; the employer can do so, in accordance with the particular terms and conditions of the contract.

However, in a vast number of cases an employer may not have the benefit of a written employment agreement; or if one exists, it may not expressly address the question of administrative suspensions. In those cases, an employer may only suspend an employee if the employer has an *implied* authority to do so. In a recent case, *Potter v. New Brunswick Legal Services Commission*¹, the Supreme Court of Canada provided a summary of the elements that would be required in order for a suspension to be authorized:

1. The employer must have the authority to withhold work from the employee.

In suspending an employee, the employer effectively refuses to provide him or her with work. Although employers do not generally have a duty to provide work (with certain well-established exceptions, including employees who work on commission); the Supreme Court has clearly said that this does not mean that an employer can withhold work from the employee by way of an administrative suspension without justification or in bad faith. While it may be tempting to assume that suspending an employee with pay does not deprive him or her from any benefit, the law places considerable emphasis on the "sense of identity, self-worth and emotional well-being" people derive from performing work. Therefore, the employer must have a well-grounded and

good-faith justification for suspending an employee and thereby effectively refusing to provide him or her with work.

2.The employer must have a justification for imposing the suspension.

Employers must ensure that the suspension is both reasonable and justified in the specific circumstances. For example, an indefinite suspension would likely be found to have been unreasonable where the employer's purposes and legitimate interests would have been equally well-served by a suspension of a fixed duration. Similarly, an administrative suspension without pay will likely be seen as unreasonable.

Above all, the employer must act in good faith when imposing a suspension and have legitimate business reasons for doing so, such as shortage of work. As numerous cases, including *Potter* have made clear, suspensions motivated by dissatisfaction with an employee's performance or calculated to obtain leverage where the employer intends to terminate the employee are not justified.

When deciding whether a particular suspension is reasonable and justified, the courts may look to a myriad of factors and considerations including: the duration of the suspension and whether or not it was a suspension with pay, among others.

Consequences of unauthorized suspensions

An administrative suspension that is not authorized either expressly by the employment agreement or implicitly on the basis of the factors, as discussed, would constitute a breach of the employment contract on the part of the employer. If this breach is serious enough, in light of the circumstances of the case, to lead a reasonable person to conclude that the employer does not intend to be bound by the employment agreement, courts will likely find that the suspended employee was, in fact, constructively dismissed. This is a serious consequence for any employer, as a constructively dismissed employee is entitled to damages *in lieu* of reasonable notice of termination.

Summary

The serious consequences of an improper or unjustified suspension highlight the importance of ensuring that suspensions are handled with great care. If called upon to decide whether a particular suspension was authorized or justified, the courts will look at a host of factors and their analysis will be highly fact-specific. Moreover, the onus for establishing the appropriateness of the suspension rests on the employer.

Therefore, it is essential that employers try to address the issue of administrative suspensions ahead of time, in the context of a well-organized and thought-out written employment contract. Where no such agreement exists or where the agreement is silent with respect to suspensions; employers must carefully consider the nature of and reasons for the suspension and seek legal advice in order to avoid the perils of an unauthorized suspension.

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