Can I Fire An Employee For Breaking Our Policy?



Many employers establish policies that they expect their employees to follow, but a policy is not likely to be followed if there are no consequences for an employee who chooses not to do so. If an employer wants to use the stick of discipline and possible termination of employment for cause for a breach of policy, the employer should take note of the following guidance.

In order to establish just cause for the breach of a policy (in a non-union context), an employer must be able to prove that:

- the employee breached the policy;
- the employer distributed the policy to the employee;
- the employee was aware of the policy;
- the policy is unambiguous;
- the employer consistently enforced the policy;
- the employee knew that they might be dismissed (or otherwise disciplined) if they did not follow the policy (an employer must be clear and should use words to the effect of, “A breach of this policy may result in discipline up to and including termination of your employment for just cause.”);
- the policy is reasonable; and
- a breach of the policy is serious enough to justify dismissal.

In my experience, many employers do not pay enough attention to these particular requirements: (i) distributing the policy to employees, (ii) making the employees aware of the policy, and (iii) consistent enforcement of the policy.

It is not sufficient to simply post a hard copy of a policy on the lunch room bulletin board or an electronic version on the company intranet or even to pass out or email policies to an employee when they are hired or when a new or changed policy is brought into force. Rather, a prudent employer will ensure that each employee who is subject to the policy will, as part of their initial training and orientation, review the policy and confirm, in writing, that they have read and understood it. Better yet, both the employee and a supervisor will confirm, in writing, that the policy was reviewed with the employee and training was given on the policy. That same review and training should be confirmed periodically throughout the employee’s career and particularly whenever a policy is changed or updated (and the employee will specifically acknowledge receiving and being trained on the specific version that has been changed or updated). The acknowledgement of receipt of the policy and training

should be kept in the employee's personnel file with specific reference to the version of the policy that the employee has reviewed and on which they have received training.

An employer must also be careful not to let favoritism or biases creep into the way they mete out discipline for an infraction of the policy. While it is always important to consider all the circumstances of the breach and any mitigating factors, if similarly situated employees are treated differentially, a court or tribunal is unlikely to uphold a termination for cause for one employee when another employee guilty of similar misconduct received a lesser sanction or none at all. For this reason, a prudent employer will keep a record of the discipline given to various employees for policy breaches so that they can maintain consistency with prior discipline when similar circumstances arise.

Source: Lawson Lundell LLP

Written by: Rob Sider