

Can You Fire an Employee for Secretly Recording Work Conversations? – Quiz



It may not be a crime but secretly taping co-workers and managers can be just cause to terminate

Employees can turn into spies, especially when they feel like you're mistreating them and want to gather evidence to use against you later. What would you do if you discovered that one of your employees was secretly recording workplace conversations with co-workers, supervisors and managers to build a legal case against your company? The following scenario, which is based on an actual BC case, illustrates the laws governing termination of employees for engaging in these tactics.

SITUATION

Chapter 1: Despite 12 years of success in climbing the corporate ladder, a CPA and senior financial analyst from Russia feels as if management is mistreating and lying to him. His suspicions come to a head just before the company is set to issue him his first management incentive bonus. Convinced that he's about to get screwed, the analyst meets separately with HR and his supervisor to argue that rather than being discretionary, the bonus should be calculated based on a formula. After the meetings, he sends follow-up emails continuing to press his case and expressing his willingness "to resolve this disagreement in a timely manner internally, without litigation." While he might have intended it to be conciliatory, the email comes off as a threat and the company decides to terminate the analyst without cause and pay him the termination notice he's due under employment standards law.

Chapter 2: The analyst sues the company for discrimination, bullying, reprisal and wrongful dismissal. And then he drops a bombshell. I secretly recorded conversations with HR, management, supervisors and co-workers that prove my claims. Appalled, the company revises its legal defence and claims it had just cause to terminate.

QUESTION

Did the company have just cause to terminate the analyst?

1. No, because the recordings were made to document illegal conduct by the company
2. Yes, because the analyst committed a fundamental breach of workplace trust and privacy
3. No, because the company didn't learn of the conduct until after it terminated

the analyst

4. Yes, because secretly recording conversations is a criminal offence

ANSWER

1. The company has just cause because secretly recording work conversations is a violation of trust, privacy and the company's code of conduct.

EXPLANATION

The BC Supreme Court found that making the surreptitious recordings fundamentally ruptured the analyst's employment relationship. In addition:

- The analyst admitted that his colleagues would be uncomfortable with the recordings;
- The conduct violated the CPA professional code of ethics;
- He made a significant volume of recordings over a long period; and
- Letting the analyst get away with secretly recording work conversations might encourage other employees to do the same.

How could the company ever trust the guy after he did something like this, the court basically wondered [[Shalagin v. Mercer Celgar Limited Partnership](#), 2022 BCSC 112 (CanLII), January 25, 2022].

WHY WRONG ANSWERS ARE WRONG

A is wrong because while whistleblower activity is legally protected for the good of the public interest, in this case, the advisor was acting merely for his own benefit. Moreover, he had no evidence to support his concerns about the company's misconduct.

C is wrong because while courts are generally reluctant to let companies use after-acquired evidence to prove that termination was for just cause, there are exceptions. Since the recordings in this case were made secretly, the company couldn't have been reasonably expected to discover them until the analyst revealed them after termination.

D is wrong because while it's true that in Canada, unlike in the US, secretly recording a conversation isn't a crime as long as the person doing the recording is part of the conversation, such conduct can still be just cause for termination. In other words, you can terminate employees for misconduct other than crimes.

TAKEAWAY

You can protect the privacy of your own employees as well as the confidentiality of sensitive company and customer information by implementing a policy banning employees from using their personal cell phones or other recording devices to tape conversations in the workplace without authorization.