Can You Fire Employees for Telling a Lie?



QUESTION

If I catch an employee in an out-and-out lie, do I have grounds to terminate them for just cause?

– Name withheld

ANSWER

As it is to any question that asks “can I fire an employee for doing X,” the answer is: It depends.

EXPLANATION

To an employee, lying is a cardinal sin because it undermines the employer’s trust. Since trust is at the heart of the employment relationship, some have argued that *any* lie should be just cause to terminate without notice. But in a famous 2001 case, the Supreme Court of Canada rejected that approach.

The case began when an accountant took leave from a BC telecom company because of high blood pressure. For a year, the company tried to return him to work but the accountant claimed he wasn’t medically fit. So the company decided to cut the cord and fire him. During the trial, the company’s lawyers discovered a note from the accountant’s doctor indicating that he might be able to return if he took beta blockers. The company claimed that the accountant deliberately concealed the note and that it had just cause to fire him for dishonesty. The BC Court of Appeal ruled that a jury should decide if the accountant had lied. If so, the termination would be for just cause and the accountant wouldn’t get notice.

The Supreme Court of Canada overruled the BC court. Mere dishonesty isn’t enough, said the Court. Courts also have to consider the “nature and degree” of the dishonesty based on the circumstances. Work is too “integral” to lives and identities to allow it to be revoked by a single dishonest act, the Court reasoned. There must be “proportionality” “between the severity of the misconduct” and the discipline imposed.

To constitute just cause, the Court continued, dishonesty must cause a “breakdown” in the employment relationship. The Court listed 3 ways this could happen. The dishonesty could:

- Break a fundamental term of the employment contract;
- Destroy the employer's faith and trust in the employee; or,
- Be fundamentally or directly inconsistent with the employee's duties.

[*McKinley v. BC Tel*, [2001] 2 S.C.R. 161, June 28, 2001].

6 Factors to Consider in Determining if Lying Is Just Cause

McKinley remains the standard that courts use to judge whether an employee has just cause to terminate an employee for lying. There are 6 principles to keep in mind when applying the standard at your own workplace and making a legally sound decision about whether you have just cause to fire an employee for lying.

1. The Employee Must Actually Lie

That's not as obvious a point as it might sound. The first thing you need to recognize is that lies can be not just the things your employees say but the things they don't say. Accordingly, in the *McKinley* case itself, the Court said a jury would have to decide if the accountant had lied by not telling the company about the doctor's note clearing him to work if he took beta blockers. Other courts have found just cause because employees failed to come forward and share key information with their employers.

2. Lying Is Much Worse When It Happens More than Once

All things being equal, lies are much more harmful to the employment relationship when they constitute a pattern of conduct. Simply stated, employees who lie repeatedly are less trustworthy than those who tell single or isolated lies. One of the corollaries to this rule is that proving just cause is generally harder when the employee caught acting dishonestly has a track record of long and faithful service. In other words, it takes a much more serious brand of dishonesty to undo a long reputation for honesty.

3. False Denials Are Often as Bad as, If Not Worse, than the Offence Denied

Acts of dishonesty are damaging enough. But false denials after the fact compound the offence and generally push the employment relationship to the breaking point. By the same token, accepting responsibility and showing remorse for wrongdoing alleviates the harm of the offence—as long as the remorse is sincere.

4. A Lie Is More Serious When It Harms Your Company

While it might work as a moral ethic, taking a principled, zero tolerance stand against lying won't work as an enforceable HR policy. You also need to consider the consequences of lies. A single lie can be enough to cost an employee a job if it harms the company badly enough. The flip side, though, is that smaller lies must be tolerated. "Dishonesty is never trivial," according to one recent court, "but human beings are not perfect." One of the things courts consider in assessing whether a lie is trivial or significant is whether it did serious damage to the company. Thus, fudging a few expense reports worth less than $500 wasn't just cause to fire a senior employee with a long and distinguished service record [*Leitner v. Wyeth Canada,* [2010] O.J. No. 351, Jan. 21, 2010].

5. Lying Is Less Tolerable When It Comes from Employees in a Position of

Trust

Consider the source of the lie. Dishonesty is more serious when it's authored by supervisors, senior managers, accountants and business managers who handle company funds and other employees in positions of trust.

Example: Lying about aggressive and derogatory treatment of employees was "serious" because the employee was "one of the top managers in the plant" and had to be trustworthy [*Fewer v. Michelin North America (Canada) Inc.*, 2000 CanLII 3486 (NS S.C.), Jan. 11, 2000].

6. A Lie Is Worse When It Conflicts with Employee's Job Duties

Lies are serious enough to cause a breakdown in the employment relationship when they involve matters that directly relate to the employee's job responsibilities. Thus, for example, falsely denying involvement in a traffic accident would probably not be just cause to fire a receptionist but would be just cause to fire a bus or truck driver. Such acts of dishonesty are a double whammy under *McKinley*: They violate a fundamental term of the employment contract, i.e., the employee's obligation to carry out the job honestly and in good faith; *and* they shatter the employer's faith in the employee to continue performing the job going forward.

Example: Manipulating payroll accounts and lying about it later is just cause for firing a payroll manager because it is fundamental to the employee's duties [*Poirier v. Wal-Mart Canada Corp.*, 2006 BCSC 1138 (CanLII), July 24, 2006].

Conclusion

So *can* you fire an employee for lying? The answer depends on whether you can still trust that employee to do her job faithfully and effectively. Of course, in the eyes of some, nobody who lies can or should be trusted. Although defensible as a statement of morals, that position is not the rule of law. Lying is grounds for discipline. And in many cases, it's just cause for dismissal. But in Canada, people don't lose their legal rights to notice just because they tell a lie; they lose their rights when they tell a lie that causes irreparable damage to the employment relationship. Use this article to judge whether the lies told by your own employees cross that line.

	About the Expert Glenn Demby is an attorney and award winning journalist specializing in many aspects of Canadian law. Glenn has a track record of developing plain English products that tell business professionals who aren't lawyers how to comply with the parts of the law that affect their day-to-day operations.