“Did He Just Quit?”: The Rules on Resignations



Usually, an employee’s resignation is clear and is not normally subject to interpretation. It can be as simple as “I’ve decided to stay home for the next few years to take care of my family”, or “my spouse has been transferred to Houston, and we’ll be leaving in 2 months”, or simply “this job isn’t working for me”. In situations such as these, the conversation won’t likely leave room for ambiguity, and the resignation will be accepted.

However, sometimes a resignation is not nearly so clear. Some examples which leave room for interpretation include:

1. In a heated dispute with her manager, Christine forcefully asserts “I can’t work under these conditions!” before stamping out of the office, getting in her car and driving home. The next morning she is still upset and does not go in to work. The following day, after having cooled down, Christine returns to the office only to be told that she no longer holds her position, having resigned two days earlier.
2. Charles has worked for the same company for 3 years and has admittedly made some mistakes. After another small blunder, he is called into his manager’s office who informs him that he will be dismissed, but that if he wishes to save face, the company will accept Charles’ resignation. Reluctantly, Charles decides to resign.
3. Eric has been on short-term disability leave for two months, but has been cleared by his doctor and his disability provider to return to work. On the date Eric is scheduled to return, he doesn’t appear at work. Two weeks go by, and despite his manager’s phone calls, emails and a registered letter asking him to be in touch with her, Eric fails to respond or attend at work.

In each of these cases, the employer may reasonably feel that the employee has resigned. However, where the employee’s actions are subject to interpretation, it is best to review the accepted rules on resignations.

A Resignation Must Be “Clear and Unequivocal”

To be effective, a resignation must be “clear and unequivocal” and requires both the employee’s intention to resign and the employee’s words and actions, objectively viewed, to support a finding of resignation. In looking at the first example given above, Christine’s actions may be criticized by her employer, but it also appears

that she did not have the intention to resign. Stating that “I can’t work under these conditions” may in some circumstances suggest that she is resigning, but it is certainly not clear and unequivocal. The surrounding circumstances would also have to be taken into consideration in determining whether a reasonable person, viewing the matter objectively, would have understood the employee to have resigned.

A Resignation Must Be Voluntary

A resignation cannot be obtained through pressure, coercion or duress. Many employees have the belief that the optics of a resignation are better than those of a termination, and if given the option, would rather resign. While this may or may not be true, from a contractual perspective, it makes little difference. If an employer demands that an employee resign, or presents the choice of either resigning or being fired, the resignation would not be valid as it is not being offered voluntarily. In the second example presented above, Charles would have likely been considered terminated, even if he offered his resignation.

Abandonment

Similar to resignation is the principle of job abandonment. In Canada, it’s of course an *implied term of every employment contract* that an employee will attend at work and perform the duties that are expected of them. This duty is only waived if the employee is excused from work by the employer, is *entitled to leave under law* (for example, bereavement leave, parental leave), or is unable to report to work (for example, due to injury or illness).

Abandonment occurs when the employee breaks this implied term without an appropriate explanation. In the third example provided above, Eric has been cleared to return to work following the end of his disability, but fails or refuses to do so. Assuming there are no other facts explaining his absence, it certainly seems that Eric has no intention of being bound by his employment.

The test for abandonment is similar to the test for resignation: the facts, when viewed objectively by a reasonable person, must unequivocally demonstrate that the employee no longer has the intention of being bound by the employment contract. In Eric’s case, the employer would be entitled to accept this repudiation and consider the contract as being at an end.

Conclusions

In most cases, resignations are clear, unequivocal and voluntary. The employee clearly expresses that he or she is moving on, and the employer accepts. When there are issues or ambiguities in a resignation, it is often associated with a breakdown in communication or conflict between the employee and the employer.

In circumstances where ambiguity exists, employers should be extra diligent in trying to decipher the employee’s intentions. At its core, the question will be whether a reasonable person, objectively considering the relevant circumstances, would determine that the employee unequivocally resigned.

Finally, employers need to be sensitive to circumstances where an employee is resigning in an environment of conflict. If an employee has the perception that the employer has created an intolerable working environment or has unilaterally and fundamentally breached the employment contract, he or she may ultimately decide to pursue a *claim of constructive dismissal*.

[author]David M. Brown,
Doak Shirreff LLP

dbrown@doakshirreff.com[/author]