Editor’s HR Compliance Briefing: Can You Fire Employees for Committing a Crime?



Picture this: A valued employee tells you she’s been charged with a crime that’s not work-related. You put her on administrative leave so she can fight the charge. The case goes to trial and the employee is convicted and sentenced to 2 years in prison during which she’ll be unable to perform her job duties.

Question: Do you have just cause to terminate her employment?

I didn’t just make this scenario up. It comes from an actual Alberta case reported about 2 weeks ago involving a utilities company Public Services Representative (PSR). The union argued that instead of firing the PSR, the company should have put her on leave and held the job open until she got out of jail, citing a bunch of fairly compelling mitigating factors:

- The PSR had worked at the company for 29 years.
- Her employment record was spotless.
- The crime was unrelated to her job.
- She expressed remorse.
- She was completely honest and upfront with the company about the situation.

While acknowledging the truth of all these things, the company claimed that a 2-year absence would frustrate her contract.

Who Do You Think Won?

The Alberta Labour Relations Board ruled that the PSR’s lack of availability for 2 years constituted just cause to terminate and tossed the union’s grievance [*Civic Service Union 52 v EPCOR Utilities Inc*., 2025 ALRB 8 (CanLII), January 15, 2025].

There are 7 important things HR directors can take away from the *EPCOR* case in case they ever find themselves in a situation like this.

1. Terminate for Convictions, Not Arrests

The first takeaway is that you need to resist the temptation to fire an employee immediately upon learning that they’ve been charged with a crime. “Charged” is the operative word here. Being accused isn’t the same thing as being convicted. Under our justice system, a person is deemed innocent unless and until criminal guilt is proven

beyond a reasonable doubt. Accordingly, courts consistently rule that a mere arrest isn't just cause to terminate, even for a serious crime. I give the company in *EPCOR* credit for not rushing to premature judgment but instead waiting for the PSR's fate to be decided before making the decision to terminate.

2. Conviction May Be but Isn't Necessarily Just Cause to Terminate

Conviction by itself isn't necessarily grounds for termination. Just cause exists only when there's what courts call a "nexus" between the crime and the employer's business interests. The reason the company in *EPCOR* won wasn't because the PSR was convicted but because she wouldn't be able to work for 2 years as a result. **Bottom Line:** Be sure the nexus between conviction and business interests exists before handing out a pink slip to a convicted employee. The next 4 takeaways are the factors you must consider in making that determination.

3. Consider the Seriousness of the Crime

Conviction for violent crimes such as homicide and sexual assault generally constitute just cause for termination because they jeopardize security and undermine the employer's ability to protect others in the workplace. Property crimes such as theft or burglary may also pose a direct threat to a company, especially if the employee's job involves handling money or access to the employer's property. But there are also other things to consider.

4. Assess Conviction's Impact on the Employment Relationship

It's critical to consider the nature of the crime and its relationship to the employee's position. Thus, conviction for tax fraud would likely justify terminating an accountant but might not justify terminating a manual labourer who doesn't handle company funds.

5. Assess Conviction's Impact on the Employee's Capacity to Do the Job

This factor was decisive in *EPCOR* because the PSR's incarceration made it impossible for her to do the job for 2 years. But all incarcerations aren't the same and there are no automatic rules. Thus, termination may be problematic if the employee can actually do the job from prison. You might also have to hold open the position if the employee will only be in jail for a short time.

6. Decide If You Can Still Trust the Convicted Employee

Just cause arises when employees do something that permanently and irrevocably undermine the trust of their employers. Criminal conviction may but doesn't automatically rise to that level. Thus, courts may consider the relationship redeemable if the conviction is an isolated event with no impact on the company or its business. How the employee handles the situation is also important. All things being equal, employees have a stronger case to keep their jobs when they express sincere remorse and are completely honest with the employer. By the same token, lying about or seeking to evade responsibility for the offence bolsters the case for terminating the employee.

7. Implement an Off-Duty Conduct Policy

Final word of advice: Although it wasn't the issue in *EPCOR*, the right of employers to regulate the conduct of employees while they're off-duty and away from work often plays a pivotal role in cases involving termination for criminal behaviour. Thus, creating and implementing a legally sound off-duty conduct policy at your workplace

that can help you justify termination of employees convicted of crimes, including those that aren't work-related but still interfere with their ability to perform their job duties.

What's Your (Legal) Problem?

My mission as Editor-in-Chief of HR Insider is to help you deal with legal problems that impact your operations. As a lawyer that explains the law in plain English, I'm in the position to offer you practical help with compliance matters. I can do that job much more effectively if I know exactly what those problems are. So, if you've got an HR legal problem and could use a briefing like the one above, contact me at glennd@bongarde.com or submit your question via our Ask The Expert portal.