

Employers Don't Always Need to Give a Warning Before Firing You With Cause



An employer doesn't always need to send a warning before firing an employee. The near invariable direction HR departments provide when it comes to terminating an employee for cause is that you must first provide a warning. But is that true? Not always. The following circumstances are exceptions:

1. When it is obvious that an employee will continue with their misconduct, warning or not.

In 2000, an Alberta accountant who managed internal audits at Alberta's Royal Alexandra Hospital was fired because he arranged to avoid payment of GST when purchasing his personal vehicle, conduct unrelated to his employment. The man's job required him to search for financial irregularities and exercise sound judgment in so doing. He was relied upon by the hospital's external auditors. When the employer learned of what he had done with his vehicle purchase and called him into a meeting, he defended his actions. The hospital decided that it could no longer rely upon his judgement and terminated him for cause.

The man sued for wrongful dismissal. But the judge found that there was little hope the man would come to see his actions as problematic and noted that he had opportunities to change his mind either during the interview meeting or over the two weeks before he was dismissed.

"I observed from the plaintiff's testimony that he was completely convinced there was nothing improper in his actions," the judge wrote in his decision, in which he dismissed the action. "It would have been fruitless to provide him with a further opportunity to change his position."

2. When the conduct is particularly serious.

In another Alberta decision, *Leach vs. Canadian Blood Services*, the court explicitly addressed the question of a warning, noting that the severity of the incident had a bearing on an employer's obligation to warn against repeating the incident.

"It would be an oversimplification to state that there exists an absolute duty to warn an employee as a pre-condition to summary dismissal with cause," the judge wrote.

"Whether an employee has been warned is not, in itself, determinative of the parties' rights. Rather, a warning is one of the factors taken into account. The greater the wrong, the less likely it is that an employer will be required to first put the employee on notice that such misconduct is not acceptable."

3. When it should have been obvious that the employee would be fired if the misconduct was committed.

The underlying question is whether a warning would have made a difference. If an employee, for example, denies what they had done, so clearly does not acknowledge the misconduct in the first place, or if they are unrepentant, a warning would be of no effect and cause for discharge can be established.

4. When an employer cannot take the chance that the misconduct will be repeated.

In a 2021 decision in Ontario, the executive director of the Greater Barrie Chamber of Commerce was fired as a result of a number of events which led the organization to be unable to trust her in her role, where trust was “integral.”

I am not suggesting employers take this as invitation to fire misbehaving employees for cause without warning. Cause is referred to by the courts as the “capital punishment” of an employment relationship. But when an employee’s continued employment becomes untenable and providing a warning presents an untenable risk, an employer should not rush to conclude that cause does not already exist.

Source: Lexology

Levitt Sheikh
Howard Levitt