Overtime Earned Quiz

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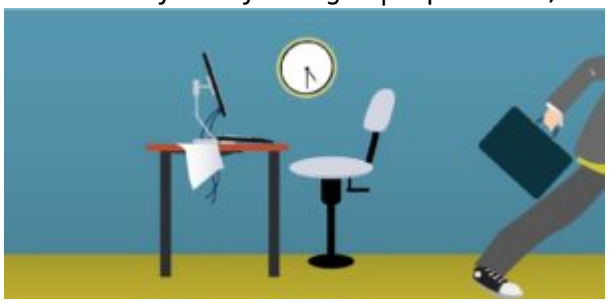

Does Extra Pay for Previous Work Cancel Overtime Earned Later?

SITUATION

Salaried employee Tara Misoo sues her employer, XYZ Manufacturing, for unpaid overtime. XYZ admits that Tara put in 19 hours of overtime by working more than 40 hours in a week during 2015. But it claims that she's not entitled to overtime because Tara was paid for a full 40-hour week even though childcare obligations forced her to report an hour late to work each day. The 5 hours of extra pay, i.e., 40 hours for a 35-hour week, she received for each week in the year more than offset the 19 hours' worth of overtime she put in during 2015, XYZ contends.

Great question! You don't have to wait forever. The basic rule: You can terminate the employee if and when:

- It becomes clear that there's no reasonable prospect of her return; or
- You can show that you've already waited long enough and that holding the position open any longer is an undue hardship.

EXPLANATION

The $64,000 question: How do you know when you've reached one of these points? Unfortunately, the law doesn't provide a clear cut answer. The situation gets decided one case at a time on the basis of the particular facts involved. Here's a summary of two typical cases to show you the factors judges and arbitrators look at to determine how long is long enough to hold open a position:

HOLDING POSITION OPEN IS UNDUE HARDSHIP

FACTS

Physical and mental ailments cause a Hydro-Québec (HQ) employee to miss 960 days in 7 1/2 years. HQ repeatedly tries to adjust her working conditions—light duty, gradual return-to-work, etc. Nothing works. So, when her most recent indefinite leave of absence surpasses 5 months with no return date on the horizon, HQ decides that enough is enough and terminates her employment. The Québec Court of Appeal finds HQ liable for disability discrimination. HQ appeals.

DECISION

The Supreme Court of Canada rules in HQ's favour.

EXPLANATION

The provincial court used the wrong standard, said the Court. Undue hardship isn't reached when accommodation becomes "impossible." Employers have a business to run. And while employers must respect the employee's rights, employees also must be able to uphold their end of the employment relationship and do the job they're paid to do. If after efforts to rework the job there's still no prospect for the employee to get back to work in the reasonably foreseeable future, the point of undue hardship is reached and the employer can cut the cord, the Court concluded.

Hydro-Québec v. Syndicat des employés de techniques prof, locale 2000, [2008] S.C.J. No. 44, July 17, 2008

HOLDING POSITION OPEN IS NOT UNDUE HARDSHIP

FACTS

In Feb. 2009, a software developer goes on leave with a disability later diagnosed as anxiety and depression. The company accommodates him by extending his leave, continuing his benefits and asking about his abilities so it can re-work his job. In Dec. 2009, the developer sends the employer a doctor's note: date of return unknown but it's going to be at least 3 more months. Undue hardship, the company decides, and notifies him that he's terminated, effective March 31, 2010. I need just one more extension, the developer replies, citing new medical evidence suggesting he might be able to return after treatment. But the employer stands by its decision to terminate.

DECISION

The BC Human Rights Tribunal finds the company liable for discrimination and awards the developer $10,000 for injury to dignity.

EXPLANATION

The point of undue hardship hadn't been reached, said the Tribunal: Unlike in the HQ case, there was medical evidence the developer could return; failure to consider that evidence was a violation of the company's duty to accommodate. In addition:

- The developer got only 3 months notification that his job was in jeopardy;
- The company didn't post a replacement position until 3 months after termination—and waited another 6 months before hiring somebody; and
- Extending the developer's leave would have cost the company only $300 per month.

Morris v. ACL Services, [2012] BCHRT 6, Jan. 13, 2012

Establishing Pre-Existing Time Limits for Leave

Although it may be too late for this particular case, one potential solution to consider going forward is setting pre-existing time limits. Just be aware that there are liability risks of pre-set limits since "accommodations" must be based on individual circumstances.