Reprisal And Employment Termination In Alberta



Employees in Alberta have an inherent right to speak up against or report workplace issue, such as harassment, discrimination, health and safety violation. An employee may also legitimately provide critical feedback of decisions or actions of their manager without being insubordinate. However, managers may not always appreciate their junior employees questioning their management or actions. In certain cases, they may take disciplinary actions against the employee entirely to silence the employee or punish them for speaking up. This is reprisal in Alberta.

It is not uncommon for managers to target the complainant employee and manufacture fictional performance issues, attitudinal problems, and raise other complaints such as insubordination. Often, they are motivated with a view to punishing the employee for complaining by demoting the employee, or in some cases, by firing the employee for cause.

Reprisal can be subtle or obvious, depending on the situation and the employer. Sometimes, reprisal can be disguised as a legitimate business decision, such as a reorganization, a layoff, or a performance improvement plan. However, reprisal can be inferred from the following factors:

1. The timing of the negative action or threat, such as shortly after the employee reported a workplace issue or exercised their rights
2. The employer’s motive or intention, such as to punish, deter, or silence the employee
3. The impact or consequence of the negative action or threat, such as causing financial, emotional, or professional harm to the employee
4. The evidence or proof of the negative action or threat, such as written or verbal communication, witness testimony, or documentation

In Alberta, employees are protected by employment standards legislation and common law principles. When an employer manufactures a fictional cause to terminate an employee in reprisal for making a complaint, the employee may have grounds for pursuing a claim for wrongful dismissal, including severance, payment in lieu of notice, and even aggravated damages for bad faith treatment.

If an employer cites low performance or incompetence as the reason for termination, the law requires that the employer must show:

1. the level of job performance that the employer required and that the level required was communicated to the employee;
2. the employer gave suitable instruction to enable the employee to meet the standard;
3. the employee did not meet or was incapable of meeting the standard, for reasons that were within the employee's control; and
4. there had been a warning to the employee that failure to meet the standard would result in his dismissal.

In cases involving alleged attitudinal issues or insolence, the employer must demonstrate that the actions of the employee led to a complete breakdown of the employment relationship. The employer must also show that the employer suffered a material financial loss, a loss of reputation or its business interests were seriously prejudiced. In the absence of such proof, a court may infer ulterior motives on the part of the employer.

Absent proof of these factors, a court may be inclined to find that the termination was not for the cause given to the employee, but for some ulterior motive or other agenda of the employer. On top of that, if the employee has proof to show that the employee had made certain complaints and the termination followed soon afterwards, such facts would be indicative of reprisal. For such actions, a court is likely to penalize the employer with aggravated and punitive damages. The reputational loss caused to the employer would also be profound.

Given the potential complexity of reprisal cases, employees must take proactive steps to retain evidence that can support their claims. There are different ways for employees to preserve evidence against the employer if they suspect being wrongfully terminated. Some of the common methods are:

1. Gather evidence: Collect and keep any documents, records, or communications that support their claim of wrongful termination, such as performance reviews, company policies, termination letters, emails, texts, or voice messages.
2. Speak with past coworkers: contact former colleagues who witnessed or experienced the same or similar issues as them, and ask them to provide statements or testimony in their favour. Keep in touch with their past coworkers and update them on their case.
3. Detail your termination: Keep a log of the details of their termination, such as the date, time, location, reason, and persons involved, as soon as possible after the event. Maintain notes of any incidents or events that led up to their termination, such as complaints, warnings, or disciplinary actions.

Reprisal in Alberta is a serious violation of your rights as an employee, and you should not tolerate it. By knowing what reprisal is, how to recognize it, and what to do if you experience it, you can protect yourself and your career from employer retaliation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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