

# Test Your HR IQ: Unapproved Vacation



## **SITUATION**

Fred and Ethel work for the same high end clothing store. Both have accrued 2 weeks' paid vacation for 2014.

Ethel notifies the store that she plans to take her 2-week vacation in October. The store manager approves so Ethel buys the plane tickets and books a hotel. However, the manager dislikes Ethel and decides to assert his authority. A week before her vacation is to begin, the manager tells Ethel that he has changed his mind and needs Ethel to work. Ethel refuses to cancel her plans and goes through with her vacation as scheduled.

Fred books his 2-week vacation for December. He knows that store policy bans employees from taking annual vacations during the busy December season. The store manager tells Fred he has to work in December. When Fred refuses to back off, the manager sends him a letter warning him that he'll be fired if he goes on vacation in December. But Fred is undeterred and takes his December vacation.

Fred and Ethel are both fired.

## **QUESTION**

**Which employee, if any, can the store fire for taking an unapproved vacation?**

- A. Just Fred
- B. Just Ethel
- C. Both Fred and Ethel
- D. Neither Fred nor Ethel

[learn\_more caption="ANSWER"]

**A. Based on this situation, the store would probably have reasonable cause to fire Fred but not Ethel.**

## **EXPLANATION**

Although employees are entitled to take the annual vacation they accrue, they also have to secure their employer's agreement to the timing of the vacation. Defying an

order not to take a vacation may be a form of insubordination justifying termination. In judging whether taking an unapproved vacation is egregious enough to constitute just cause for termination, courts look at whether the employer's refusal to grant the vacation was reasonable and made in good faith. The Fred and Ethel scenarios, which are based on actual court cases, show how courts apply these factors.

### **WHY FRED CAN BE FIRED**

In Fred's scenario, a Saskatchewan court ruled that the employer had acted reasonably:

- The ban on December vacations was justified and based on the store's need to have all hands on deck during the holiday crush;
- Fred knew about the ban on December vacations;
- The manager clearly warned Fred that he'd be fired if he took the vacation.

**Result:** The store had just cause to fire Fred for taking an unapproved vacation, [*Gonzalo v. Moores the Suit People Inc.*, [2006] S.J. No. 381, June 6, 2006].

### **WHY ETHEL CAN'T BE FIRED**

In Ethel's scenario, an Ontario court ruled that the store had acted unreasonably:

- Ethel had asked for and received permission to take the vacation in advance;
- Relying on that approval, she laid out her own money to book her flight and hotel;
- The manager's refusal was motivated by personal rather than legitimate business considerations.

**Result:** The store did not have just cause to fire Ethel for taking an unapproved vacation, [*Watson v. Summar Foods Ltd.*, [2006] CanLII 38233 (ON S.C.), Nov. 14, 2006].

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