Want To Quit Your Job? Five Things You Should Know About Your Legal Obligations



Plenty has been written about legal obligations and mistaken beliefs when it comes to employees being fired. But, while it is seldom discussed, there is almost as much law affecting an employee's decision to quit, whether it's because they read the writing on the wall or just got a better offer.

Wrongful resignation

Employees who resign with the proverbial two weeks notice can be sued. Just as employers must either provide employees with advance notice of dismissal or pay severance, employees have a reciprocal obligation. They must give employers sufficient notice of their departure date to permit them to recruit, train and put in place a comparably skilled replacement. If they do not, they can be sued for whatever damages the employer suffers i.e. lost productivity, sales and the costs of recruitment and replacement. Although most employers, whether oblivious to their legal rights or indifferent, don't bother suing, some do. Such cases most often arise when an employee resigns without notice and sues for constructive dismissal. My advice in these circumstances, is to respond with a strong wrongful resignation counterclaim.

Quitting before the guillotine descends

Some employees resign to avoid the ignominy of an apparently inevitable discharge. Doing this will disqualify the employee from Employment Insurance and even if their assumption is correct, they further deprive themselves of their severance entitlement. Because less than 1% of dismissals are for cause, severance would be owed to them if only they had waited. As for that feared stigma, most Canadian employees by now have been or will be, reorganized, downsized or otherwise let go at some point in their career.

Resiling from resignation

Sometimes, employees resign in the heat of the moment. The court does not hold them to their word, permitting them to return to the workplace. It will not avail the employer to greet such resignations with a sigh of relief and an immediate written acceptance. Employees have a couple of days cooling off in which to withdraw their resignation. If the employer, insisting the employee has resigned, refuses to let them return to work, the "resignation" converts into a wrongful dismissal.

Resigning as result of changes to terms of employment

As I have often discussed, if an employee is faced with a deleterious fundamental breach to their terms of employment, which either reduces their remuneration or leaves them embarrassed, they have the right to resign and sue, just as if they had been fired. As noted above, if they are wrong, they risk an action for wrongful resignation.

Resign or be fired

If an employee resigns in response to that Hobbesian choice, they have not legally resigned at all. After all, they did not voluntarily leave the workplace. They have been wrongfully dismissed and have the accordant rights.

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Article by Howard Levitt