What constitutes job abandonment?



Question: Is there a standard rule of thumb regarding what length of unexcused absence from work constitutes job abandonment?

Answer: In order for an employer to be justified in terminating an employee for abandonment, there must be an unequivocal indication of an employee's intention to abandon a position. As the courts have made clear, an assessment of whether just cause to dismiss someone exists must be undertaken using a contextual approach. What may be just cause in one case will not be in another. Similarly, there is no "rule of thumb" with respect to the length of an unexcused absence from work that will constitute abandonment or justify termination.

Courts and arbitrators take a case-by-case approach, reviewing each instance of absenteeism in context of the circumstances. Therefore, depending on the circumstances, an employee may be justifiably terminated for a single unexcused absence, while another may be safe from termination even after multiple unexcused absences.

In Aeichele v. Jim Pattison Industries Ltd., the court found an employee's absence from work on the day of an important sale was sufficient to justify termination, given the employer had made it clear the employee was not to be absent on that day. It must be noted, in that case, the employee's willful disobedience was a key factor in the court's analysis of whether the employer had just cause.

By contrast, in *Fitzgibbons v. Westpres Publications Ltd.*, the leading case on job abandonment, the court held that an employee's failure to communicate with her employer directly during her medically justified leave of absence did not justify termination. The employee had been on sick leave for months and was in California with friends. The only contact with her employer was through her lawyer. She was dismissed before she could return. Fitzgibbons and subsequent cases show the court will take health issues and other reasonable explanations into consideration when determining if an employee's behaviour amounts to abandonment.

In most cases, employers would be wise to document the situation, maintain regular contact and issue warnings as appropriate. Like most other circumstances, it is often short-sighted and ill-advised to act precipitously or based upon frustration, even where the situation is such that the employer is understandably frustrated by the "phantom employee" who is on the payroll but never at work.
— See more at:
http://www.employmentlawtoday.com/articleview/15274-what-constitutes-job-abandonment#

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