

When Is Lying Just Cause for Termination?



Some lies are so serious that no employee who utters them can ever be trusted again; others warrant nothing more serious than a frown or slap on the wrist. Of course, the vast majority of employee lies fall somewhere between the 2 extremes. Unfortunately, these lies are the most difficult to deal with. This story will show you how.

What the Law Says

The employment relationship is rooted in trust. So when employees lie to their employers, it inevitably does damage to the relationship. Accordingly, some have argued that *any* lie should automatically be just cause for termination. But in a famous 2001 case, the Supreme Court of Canada rejected that approach.

The case began when an accountant took leave from a BC telecom company because of high blood pressure. For a year, the company tried to return him to work but the accountant claimed he wasn't medically fit. So the company decided to cut the cord and fire him. During the trial, the company's lawyers discovered a note from the accountant's doctor indicating that he might be able to return if he took beta blockers. The company claimed that the accountant deliberately concealed the note and that it had just cause to fire him for dishonesty. The BC Court of Appeal ruled that a jury should decide if the accountant had lied. If so, the termination would be for just cause and the accountant wouldn't get notice.

The Supreme Court of Canada overruled the BC court. Mere dishonesty isn't enough, said the Court. Courts also need to consider the "nature and degree" of the dishonesty based on the circumstances. Work is too "integral" to lives and identities to allow it to be taken away by a single dishonest act, the Court reasoned. There must be "proportionality" "between the severity of the misconduct" and the discipline imposed.

To constitute just cause, the Court continued, dishonesty must cause a "breakdown" in the employment relationship. The Court listed 3 ways this could happen. The dishonesty could:

- Break a fundamental term of the employment contract;
- Destroy the employer's faith and trust in the employee; or
- Be fundamentally or directly inconsistent with the employee's duties.

[*McKinley v. BC Tel*, [2001] 2 S.C.R. 161, June 28, 2001].

When Do Lies = Just Cause?

As a rule of thumb, the more of these questions you can answer YES, the better the chances that you have just cause:

1. Did the Employee Lie? YES [] NO []

The first thing you need to recognize is that lies can be not just the things your employees say but the things they don't say. Accordingly, in the *McKinley* case itself, the Court said a jury would have to decide if the accountant had lied by not telling the company about the doctor's note clearing him to work if he took beta blockers. Other courts have found just cause because employees failed to come forward and share key information with their employers.

Example: A business manager of 20 years knew that \$1,800 had been stolen from the company's coffers but decided not to come forward to protect the colleagues she suspected had taken the money. The BC court ruled that she had an obligation to say something to the company and upheld her firing for just cause [*Houlihan v. McEvoy*, [2002] B.C.J. No. 8, Jan. 4, 2002].

Dishonesty can also include deceit that falls short of an out and out lie:

Example: During an internal investigation, a branch manager who was sleeping with a subordinate denied knowing of any "third parties" the subordinate was romantically involved with. The court said that although the question didn't specifically ask if the *branch manager* had had an affair with the subordinate, his answer was "deliberately misleading" and qualified as a lie justifying dismissal without notice [*Carroll v. Emco Corp*, 2007 BCCA 186, March 19, 2007].

2. Was the Dishonesty a Pattern of Lies? YES [] NO []

Lies are more harmful to the employment relationship when they constitute a pattern of conduct. Employees who lie repeatedly are less trustworthy than those who tell single or isolated lies.

Example: An employee who at first falsely denied improperly accessing the private records of a co-worker, confessed to his supervisor and expressed remorse for what he did. So he was allowed to keep his job [*Petit v. Insurance Corporation of British Columbia*, 1995 CanLII 177 (BC S.C.), July 6, 2005].

Proving just cause is generally harder when the employee caught acting dishonestly has a track record of long and faithful service. Stated differently, it takes a much more serious brand of dishonesty to undo a long reputation for honesty.

Example: Fudging dates and other items on 3 expense reports involving less than \$500 in reimbursements was careless and, arguably dishonest, but it wasn't grounds for dismissing a senior with an otherwise long and distinguished career [*Leitner v. Wyeth Canada*, [2010] O.J. No. 351, Jan. 21, 2010].

3. Did Employees Falsely Deny Wrongdoing? YES [] NO []

Acts of dishonesty are damaging enough. But false denials after the fact compound the offence and generally push the employment relationship to the breaking point.

Example: Okay for Wal-Mart to fire a manager for lying about his involvement in doctoring of payroll records [*Poirier v. Wal-Mart Canada Corp.*, 2006 BCSC 1138 (CanLII), July 24, 2006]. By the same token, another employee who told the truth and claimed irregularity was result of misunderstanding of company overtime rules was allowed to keep her job [*Day v. Wal-Mart*, [2000] N.S.J. No. 354, Nov. 9, 2000].

4. Did the Lie Do Serious Harm? YES [] NO []

Although many lies are generally worse than single ones, a single lie can constitute just cause if it deals with a serious enough matter. Accordingly, one act of dishonesty was enough to cost the BC business manager who didn't report the missing money to her company her job in the *Houlihan* case cited above.

The flip side, though, is that smaller lies must be tolerated. "Dishonesty is never trivial," according to one recent court, "but human beings are not perfect." One of the things courts consider in assessing whether a lie is trivial or significant is whether it did serious damage to the company. Thus, fudging a few expense reports worth less than \$500 wasn't just cause to fire the senior employee with the long and distinguished service record in the *Leitner* case cited above.

Lies are also more tolerable when the employee gains no benefit in telling them.

5. Does the Employee Occupy a Position of Trust? YES [] NO []

Dishonesty is more serious when it's authored by supervisors, senior managers, accountants and business managers who handle company funds and other employees in positions of trust.

Example: Committing financial wrongdoings and lying about it later was just cause when committed by a supervisor who was himself unsupervised and thus somebody the company had to know it could trust [*Dowling v. Ontario*, 2004 CanLII 43692 (ON C.A.), Nov. 26, 2004].

Example: Lying about aggressive and derogatory treatment of employees was "serious" because employee was "one of the top managers in the plant" and had to be trustworthy [*Fewer v. Michelin North America (Canada) Inc.*, 2000 CanLII 3486 (NS S.C.), Jan. 11, 2000].

6. Does the Lie Conflict with Employee's Job Duties? YES [] NO []

Lies are serious enough to cause a breakdown in the employment relationship when they involve matters that directly relate to the employee's job responsibilities. Thus, for example, falsely denying involvement in a traffic accident would probably not be just cause to fire a receptionist but would be just cause to fire a bus or truck driver. Such acts of dishonesty are a double whammy under *McKinley*: They violate a fundamental term of the employment contract, i.e., the employee's obligation to carry out the job honestly and in good faith; and they shatter the employer's faith in the employee's to continue doing the job going forward.

Example: Manipulating payroll accounts and lying about it later is just cause for firing a payroll manager because it goes right to the heart of the employee's duties [*Poirier v. Wal-Mart Canada Corp.*].

Conclusion

So *can* you fire an employee for lying? The answer depends on whether you can still trust that employee to do her job faithfully and effectively. Of course, in the eyes of some, nobody who lies can or should be trusted. Although defensible as a statement of morals, that position is not the rule of law. Lying is grounds for discipline. And in many cases, it's just cause for dismissal. But in Canada, people don't lose their legal rights to notice just because they tell a lie; they lose their rights when they tell a lie that causes so much damage to the employment relationship that it can never be repaired. Hopefully, this article will enable you to judge whether the lies told by your own employees cross that line.