Workplace Investigations In Alberta – When & How To Conduct



Employers in Alberta are not legally required to conduct investigations of allegations of misconduct against employees. If the conduct(s) of an employee constitutes a serious violation of any workplace policy or general obligations of good behavior, an employer has a legal right to fire an employee for cause. However, there are good reasons why an employer might want to conduct a full investigation in any case.

The threshold for termination for cause is very high. An employer has a legal duty to help the employee succeed in their role within the company. The employer has a duty to give the employee opportunities to remedy any performance issues or behavioral issues that could lead to termination of employment. The employer's conduct towards the employee in response to any alleged misconduct of the employee will come under the microscope of the courts if the fired employee chooses to file a claim.

An employer may in fact have sufficient reasons to fire an employee for cause but if cause for termination cannot be sufficiently proved, then the employer's defence to a claim for wrongful dismissal is most likely to fail. Courts will generally side with employees in such cases.

This is where an investigation can be most helpful to an employer who has legitimate reasons for firing an employee for cause. A comprehensive investigation or enquiry process can prove whether the employer acted reasonably and fairly in the investigation process. The following steps can help with conducting an effective investigation:

MAKE SURE THAT THE INVESTIGATOR IS NEUTRAL

Third party investigators can often be considered biased as their fees are being paid by the employer. They can also be expensive. Employers can consider establishing a neutral investigation team comprising representatives of both the management and the employees to ensure neutrality.

GIVE THE ACCUSED EMPLOYEE THE OPPORTUNITY TO ANSWER THE ALLEGATIONS

An investigation may be unfair if the decision makers do not consider the response of the accused to the accusations. This can cause procedural unfairness to the accused employee. A comprehensive investigation that considers both the evidence of the

accuser and the accused is significantly more defendable.

MAKE SURE THE EVIDENCE IS CONCRETE

In order to defend an allegation of wrongful dismissal, evidence is everything. For example, abusive or rash behavior, theft or other alleged criminal behavior may be proved by CCTV footage. Allegations of damage to property can be proved by photographs. Witness testimony of employees in support of the allegations can also be useful. However, note that those employees giving testimonies may have to be cross-examined at trial.

ENSURE THAT THE ALLEGATIONS ARE SUFFICIENTLY SERIOUS

Termination for cause can only be justified where the actions of the accused employee led to a total breakdown of the employment relationship. It must be shown that the employee's supervisor was no longer able to supervise the employee effectively. To prove that the allegations must be very serious. Minor infractions of company policies or even one-off incidents of misbehavior may not be sufficient to justify termination without reasonable notice or severance.

CONSIDER A LOWER SANCTION BEFORE CHOOSING THE NUCLEAR OPTION

Even if the evidence clearly indicates that the allegations against the accused employee are true, consider if a warning, or suspension or demotion can help resolve the dispute. If they are not sufficient, the investigation report should clearly justify why firing the employee is the only available choice. For example, the conduct of an employee that has completely alienated other employees and caused a total breakdown of relationship between the accused employee and the other employees can often justify just cause termination.

While employers don't have to investigate complaints against an accused employer, the extra due diligence can seriously help with defending any claim by the employee for wrongful dismissal. An employee may allege that the employer had an ulterior motive for terminating the employee. For example, it can be alleged that the termination was an act of retaliation by a senior manager, or that the company is just trying to downsize and keep costs at a minimum.

A comprehensive investigation report can help an employer defend against such allegations when they are not true. It can help an employer maintain control over the way the workplace operates and how its employees conduct themselves, with much lower risks of litigation from disgruntled employees.

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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