

Difficult Employees

Special Report

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TABLE OF CONTENTS

3	INTRODUCTION
8	5 STEPS FOR HELPING CO-WORKERS RESOLVE WORKPLACE DISPUTES
12	CAN I FIRE AN EMPLOYEE FOR BREAKING OUR POLICY?
14	ARE YOU PREPARED FOR AN INCIDENT OF WORKPLACE VIOLENCE IN YOUR WORKPLACE?
20	CAN YOU FIRE AN EMPLOYEE FOR SECRETLY RECORDING WORK CONVERSATIONS? – QUIZ
23	EMPLOYEE DISPUTES NOT HELPED BY FEEBLE LEADERSHIP
27	ADDITIONAL MATERIALS



Introduction

An employee who is angry, volatile or a potential threat does not belong in the workplace, but it can be difficult and in some cases potentially dangerous to fire that employee without first taking important steps to ensure you manage the situation appropriately.

If an employee has a history of substance abuse or mental health issues terminating employment can lead to legal problems for the organization but failing to protect other employees from a violent or disturbed co-worker can also lead to

problems. Finding a balance between the rights of an individual employee to be accommodated and protecting the safety of other employees does not mean letting an employee put your organization or employees at risk, finding a balance means finding a way to identify a potential risk and intervene early before things escalate.

Be Prepared to Identify Difficult Employees

An employee who is difficult to get along with can be toxic to your



organization. Unfortunately, this can mean that people, including managers and supervisors, may avoid addressing the problem. This can let a situation build overtime to a point where intervening seems more abrupt to the difficult employee and where the situation is more difficult to scale back and manage.

One of the most important steps an organization can take to address a difficult employee problem is to arm supervisors and managers with the knowledge of how to identify employees with mental health and/or substance abuse issues, the importance of

documenting their observations and evidence to support their concerns, and the skills to act effectively. The better prepared the manager is with knowledge and notes the better able you are to step into the intervention process early before a difficult employee becomes a disgruntled employee.

Train All Employees In Dealing With Difficult Employees

Awareness of how to spot and react to an employee with mental health issues is a benefit to all employees. Provide employees with Mental Health First Aid

training so they are better prepared to help the organization spot an employee with mental health issues and avoid making comments or taking actions that can escalate a situation. It won't be the role of your employees to intervene, but they can help by noticing, bringing concerns to the attention of supervisors, and knowing how to react and step back as needed.

Have an Intervention Process In Place

In order to intervene a manager or supervisor needs to be armed with the policies and procedures that support

their actions and the skills to step in and begin the process. Useful policies and procedures should include steps to first work with an employee to identify any needs for accommodation and focus on offering to help an employee, even if that employee is difficult.

Once you are aware of the potential problem the first Intervention steps should include:

- **Plan it don't wing it:** enter the meeting with ideas about resources to help the employee and ideas for workplace behaviors the employee can change to

improve workplace relationships. Do not start with these ideas or even fully offer them, but do think about them ahead of time.

- **Invite don't summon:** An employee who may be struggling with mental health concerns or who is volatile may also have a tendency towards paranoia and a victimization complex, when requesting a meeting invite the employee to meet with you to discuss the productivity of the team and the employee's role in the productivity of the team.

- **Inquire don't accuse:** Regardless of the issue, if the issue is one of work performance or inappropriate behavior, when it is time to speak to the employee begin by asking how things are going or how the employee is feeling or has been doing. Do not begin by asking about specific performance or behavior issues, let the employee talk without accusation.

- **Listen don't correct:** An employee with a mental health issue, who is under stress or has a personality disorder may not have the same perspective on a situation as everyone else. It is important

that you provide the employee an opportunity to offer his/her perspective, even if it does not sound right, listening can go a long way to managing the initial stages of the situation.

- **Ask don't tell:** Ask the employee what types of changes would be beneficial to improve his/her performance, productivity, or experience in the workplace. If the employee opens the door to discussing issues of stress, substance abuse, and depression - offer to work with the employee to find resources to help him/her reduce the stresses being experienced.

- **Discuss don't dictate:** As you talk with the employee about his/her ideas offer suggestions as to what changes the employee can contribute to the workplace to help improve productivity. Provide the employee with suggestions and a plan that give the employee an opportunity to cooperate within the workplace. Part of the plan can include offering the employee a mentor or coach to help the employee 'succeed' in the future.

These first conversations can set tone

for building a trusting relationship that can help a difficult employee feel heard and supported. This might not solve the problem, but it may keep the problem manageable and give you time to work through the situation safely over time.



5 Steps For Helping Co-workers Resolve Workplace Disputes

Workplace conflict that is serious such as harassment and bullying should be addressed through formal mechanisms that take into consideration the seriousness of the actions. However, conflicts that are less serious in nature, such as co-workers who cannot be civil to one another, who cannot agree on a professional course of action for a work project, who gossip about one another including posting negative comments (but not harassment or threats) on social networks and more can still cause disruption in the workplace. When disputes seem less serious in nature

it can be a mistake to sweep them under the rug and hope they resolve themselves.

Recently Psychometrics Canada surveyed HR professionals on the topic of workplace conflicts. Their responses included indicating that poor leadership (73% of respondents) was a contributing factor in workplace conflicts (egos and personality clashes, dishonesty, stress, and clashing values all made the top 5 of the survey). In the article HR professionals cited management's inability to deal with toxic people, lack of



clarity around workplace expectations and failure to model good workplace behavior were key reasons for poor management of workplace conflict.

5 steps for helping co-workers resolve workplace disputes

Sometimes despite the best leadership and efforts from an organization, conflicts do arise between employees. Once a conflict between co-workers has emerged it can have a disruptive

influence at work. The sooner you take steps to manage the situation the better.

Once you learn about a co-worker dispute or conflict it is worthwhile keeping your ears and eyes open before the problem grows.

1. Do some digging: A supervisor, manager or HR can take an informal approach that includes meeting with and listening to each individual employee share a perspective on the situation. Based on the information gathered a determination can be

made as to the substance of the conflict and if there is enough credibility on both sides of the story to warrant intervention with one or both parties.

Although there may be two or more sides to every story it is also true that sometimes one person is the instigator of a problem. That does not mean you only address one person because often the second person can use guidance on better ways to manage the situation.

It is feasible that this digging reveals the presence of a simple misunderstanding that can be resolved by sharing information in a brief meeting and the result is a quick resolution. This digging can also reveal the existence of another problem such as a personal problem that may need to be addressed separately from the conflict.

2. Offer perspective: If it appears there is a conflict that may not dissipate find a way to create a brief opportunity for coworkers to meet and share their perceptions of the situation face-to-face with a neutral observer present. Ideally this person could be an experienced employee

with conflict resolution training or a member of the HR team. This is not a meeting to debate the dispute or necessarily resolve it. The goal is to have the parties share a space and hear one another.

When might this not be appropriate? if there is a concern over personal or mental/emotional safety or a significant power imbalance between the co-workers there may need to be intervening steps.

It is feasible that during this conversation that the dispute is resolved quickly and amicably but even if this occurs a follow-up process is recommended (see step 5).

3. Opportunity for Reflection:

Providing each party with time to reflect on the perspective of the other person should be the next course of action. This can involve a brief break of an hour or a few days. Following the meeting the observer can speak with each party individually to review the conversation and provide some guidance on the perspective of the other party. Ask each person to reflect back, verbally or in writing,

what they heard from the other person. Let them know that one of the goals is to share their reflection and perspective back to the other person not to debate the details of the situation.

4. Focus on the Future: Reflection may yield information that allows the co-workers an opportunity to move on. However, sometimes a tangible action from the organization and/or one or both parties is called for. If it is determined that the actions of one or both parties were inappropriate apologies, counselling, increased supervision or even disciplinary action may become part of a resolution. This may require additional meetings and agreements for future behaviors. Open lines of communication that does not disclose personal details or breach confidentiality is required going forward. Both employees need to feel valued and heard and this is more likely when they feel informed and supported.

5. Follow-up: Sometimes a minor dispute and a quick resolution

really is the end of a matter. Often, however, there were mitigating factors such as an individual's personal situation or differences between people (personality, culture) that were contributing factors. Monitoring the situation over the next 3-6 months can include checking in with both parties informally (or formally in the case of a disciplinary situation or where other issues such as stress, health and so on were contributing factors) once per month as a way to demonstrate an ongoing commitment to both parties. The initiating issue need to be the focus of the follow-up conversations, instead the health, satisfaction, well-being of your employees should always be on the agenda.

On an ongoing basis finding opportunities for employees to see from the perspective of others is a useful way of building a supportive and successful workplace culture. Providing opportunities for co-workers to engage in non-work related activities, talk informally through shared meals or activities, learn more about other people is a great way to avoid future conflicts.

Can I Fire An Employee For Breaking Our Policy?

Many employers establish policies that they expect their employees to follow, but a policy is not likely to be followed if there are no consequences for an employee who chooses not to do so. If an employer wants to use the stick of discipline and possible termination of employment for cause for a breach of policy, the employer should take note of the following guidance.

In order to establish just cause for the breach of a policy (in a non-union context), an employer must be able to prove that:

- the employee breached the policy;
- the employer distributed the policy to the employee;
- the employee was aware of the policy;
- the policy is unambiguous;
- the employer consistently enforced the policy;
- the employee knew that they might be dismissed (or otherwise disciplined) if they did not follow the policy (an employer must be clear and should use words to the effect of, "A breach of this policy may result in discipline up to and including termination of your employment for just cause.");
- the policy is reasonable; and
- a breach of the policy is serious enough to justify dismissal.

Many employers do not pay enough attention to these particular requirements: (i) distributing the policy to employees, (ii) making the employees aware of the policy, and (iii) consistent enforcement of the policy.

It is not sufficient to simply post a hard copy of a policy on the lunchroom bulletin board or an electronic version on the company intranet or even to pass out or email policies to an employee when they are hired or when a new or changed policy is brought into force. Rather, a prudent employer will ensure that each employee who is subject to the policy will, as part of their initial training and orientation, review the policy and confirm, in writing, that they have read and understood it. Better yet, both the employee and a supervisor will confirm, in writing, that the policy was reviewed with the employee and training was given on the policy. That same review and training should be confirmed periodically throughout the employee's

career and particularly whenever a policy is changed or updated (and the employee will specifically acknowledge receiving and being trained on the specific version that has been changed or updated). The acknowledgement of receipt of the policy and training should be kept in the employee's personnel file with specific reference to the version of the policy that the employee has reviewed and on which they have received training.

An employer must also be careful not to let favoritism or biases creep into the way they mete out discipline for an infraction of the policy. While it is always important to consider all the circumstances of the breach and any mitigating factors, if similarly situated employees are treated differently, a court or tribunal is unlikely to uphold a termination for cause for one employee when another employee guilty of similar misconduct received a lesser sanction or none at all. For this reason, a prudent employer will keep a record of the discipline given to various employees for policy breaches so that they can maintain consistency with prior discipline when similar circumstances arise.

Source: Lawson Lundell LLP
Written by: [Rob Sider](#)

“ ***...if similarly situated employees are treated differently, a court or tribunal is unlikely to uphold a termination...*** ”



Are You Prepared For An Incident Of Workplace Violence In Your Workplace?

Many of us were stunned to witness Will Smith slapping Chris Rock live on stage at the 2022 Oscars award show. Fallout from that incident is still continuing to mount for Mr. Smith, although he has publicly apologized and announced his resignation from the Academy of Motion Pictures Arts and Sciences. While this article will not be transitioning to cover arts and entertainment anytime soon, we do think this incident provides an interesting backdrop to discuss issues of workplace violence. As an employer, what would you do if your employee, Will, suddenly, in the middle of a workday, struck his co-worker, Chris?

Step One – Triaging the Situation

For many people, their immediate gut reaction to a situation like this would be to fire Will on the spot. While there is no question that violence of any kind in the workplace is unacceptable,

firing an employee should never be the first step, no matter how egregious the behavior.

In this case, the first step should be to ensure that all staff members are safe. That may include calling the police and/or summoning medical assistance if there is an ongoing threat of violence or risk of serious injury. In this context, contacting the authorities is likely not necessary, but Will should still be asked to leave the premises immediately. It is important to understand that sending Will home is not a disciplinary action, but an interim measure to prevent any further incidents. He should be advised that he is being sent home on a paid administrative leave while you investigate the situation and determine next steps. You should not allow Will to simply return to his desk and work out the remainder of the day, as this could place other staff members at risk.

You will also want to assess whether Chris is seriously injured. If Chris does require medical attention, you should ensure he is escorted to the hospital by a staff member and make a note of any reporting obligations you may have, such as to the Workplace Safety and Insurance Board or the Ministry of Labour. In this case, Chris appears to be relatively unharmed. You might offer Chris the option of going home for the remainder of the day and encourage him to let you know if he needs anything. If you have a benefits plan that includes an Employee Assistance Program, you would likely remind him that this is available to him as well.

You may also want to consider the impact of this incident on the workforce as a whole. Make it known to your staff that the incident is being addressed and advise them of what resources are available to them to address any impact this incident had on them.

“ ***...firing an employee should never be the first step, no matter how egregious the behavior.*** ”

Step Two – Determining Next Steps

Now that the dust has settled, it is time to assess next steps. First, you will want to review your [Workplace Violence Policy](#). Ideally, this policy will outline for you the procedure to follow in the event of an incident of workplace violence. Even if the steps are vague (for example, 1. Ensure safety, 2. Investigate, 3. Discipline as appropriate), they will still help you to determine where you go from here.

Second, you will want to call your employment lawyer and let them know what has happened. While this sounds self-serving, serious incidents of misconduct that could lead to cause dismissal, like workplace violence, need to be carefully navigated. It will ultimately be less expensive to bring your lawyer in early in this process than waiting until a serious problem arises down the road.

It is a good thing you found your



Workplace Violence Policy, as this is likely one of the first things your lawyer will ask you for! Your lawyer will likely also suggest that you prepare a letter to Will confirming that he has been placed on a paid leave of absence while you investigate the incident, and may also recommend that you send a letter to Chris letting him know that the incident will be investigated and addressed.

Step Three – Investigating

You will likely also discuss what type of investigation is necessary in the circumstances, including whether an external third party investigator is needed. An investigation does not always have to be a formal process and should be appropriate for the circumstances. In this case there is no question what happened – there are not only many witnesses, but the assault was captured on video. Your investigation may simply include documenting the incident and concluding that, based on the evidence, workplace violence did occur. Even where this conclusion is obvious, you still want to speak with Will to get his side of the story. You should always give an employee a chance to respond whenever

there is an incident of misconduct. Their response may be relevant to your fact-finding investigation and/or when assessing the appropriate disciplinary response.

Step Four – Taking Action

Now that you have concluded that workplace violence did occur, you need to decide whether disciplinary or other action is appropriate in the circumstances and, if so, what level of action is necessary.

You may again be tempted to jump immediately to just cause termination at this point. However, it is crucial to

“**Technically, any sharing of trivial or unsubstantiated information can be considered gossip.**”

remember that just cause is considered the “capital punishment” of employment law. The standard for establishing just cause is very high, and there are no “guaranteed offences” that automatically warrant cause termination. Instead, whether or not just cause exists must be assessed within the unique context of each case.

There is no question that Will's conduct was absolutely unacceptable, and sufficiently serious that it could lead to the complete breakdown of the employment relationship. However, you will also want to consider other factors. Was Will a 30 year employee with no prior disciplinary history or a new hire with two previous incidents on his record? When given the chance to explain what happened, did he try to downplay the severity and shift blame onto others, or did he apologize and promise that it would never happen again? You might also consider whether Chris was provoking Will before the incident occurred, or if there was a history of issues between the two employees.

Ultimately, you may still determine that,

regardless of any mitigating factors, you simply cannot trust Will any longer, and termination for cause is warranted. Or you may determine there are too many mitigating factors to warrant termination for cause but still impose some other form of discipline, such as a final written warning. Finally, you may choose to still terminate his employment, but on a without cause basis and with a separation package.

Once that has been dealt with, you should reassess the risk of violence in the workplace, update your policies if necessary, and/or provide refresher training to all staff in the hopes of avoiding an incident like this in the future.

Conclusion

The incident at the Oscars could, and unfortunately does, happen in workplaces. Employers can best protect themselves by working with their employment lawyer to develop thorough health and safety policies, including Workplace Harassment and Violence, and updating them regularly. In

addition, staff who are properly trained to understand and identify workplace violence are more likely to report a potential incident before actual violence occurs. In the worst-case scenario, if workplace violence does occur, an employer with a well drafted policy will be prepared to take action.

Source: [Rudner Law](#)

Written By: [Brittany Taylor](#)



Can You Fire an Employee for Secretly Recording Work Conversations? – Quiz

It may not be a crime but secretly taping co-workers and managers can be just cause to terminate.

Employees can turn into spies, especially when they feel like you're mistreating them and want to gather evidence to use against you later. What would you do if you discovered that one of your employees was secretly recording workplace conversations with co-workers, supervisors and managers to build a legal case against your company? The following scenario, which is based on an actual BC case, illustrates the laws governing termination of employees for engaging in these tactics.

SITUATION

Chapter 1: Despite 12 years of success in climbing the corporate ladder, a CPA and senior financial analyst from Russia feels as if management is mistreating and lying to him. His suspicions come to a head just before the company is set to issue him his first management incentive bonus. Convinced that he's about to get screwed, the analyst meets separately with HR and his supervisor to argue that rather than being discretionary, the bonus should be calculated based on a formula. After the meetings, he sends follow-up emails continuing to press his case and

expressing his willingness "to resolve this disagreement in a timely manner internally, without litigation." While he might have intended it to be conciliatory, the email comes off as a threat and the company decides to terminate the analyst without cause and pay him the termination notice he's due under employment standards law.

Chapter 2: The analyst sues the company for discrimination, bullying, reprisal and wrongful dismissal. And then he drops a bombshell. I secretly recorded conversations with HR, management, supervisors and co-workers that prove my claims. Appalled, the company revises its legal defense and claims it had just cause to terminate.

QUESTION

Did the company have just cause to terminate the analyst?

- A) No, because the recordings were made to document illegal conduct by the company
- B) Yes, because the analyst

committed a fundamental breach of workplace trust and privacy

C) No, because the company didn't learn of the conduct until after it terminated the analyst

D) Yes, because secretly recording conversations is a criminal offence

ANSWER

B) The company has just cause because secretly recording work conversations is a violation of trust, privacy and the company's code of conduct.

EXPLANATION

The BC Supreme Court found that making the surreptitious recordings fundamentally ruptured the analyst's employment relationship. In addition:

- The analyst admitted that his colleagues would be uncomfortable with the recordings;
- The conduct violated the CPA professional code of ethics;

- He made a significant volume of recordings over a long period; and
- Letting the analyst get away with secretly recording work conversations might encourage other employees to do the same.

How could the company ever trust the guy after he did something like this, the court basically wondered [[Shalagin v. Mercer Celgar Limited Partnership](#), 2022 BCSC 112 (CanLII), January 25, 2022].

WHY WRONG ANSWERS ARE WRONG

A is wrong because while whistleblower activity is legally protected for the good of the public interest, in this case, the advisor was acting merely for his own benefit. Moreover, he had no evidence to support his concerns about the company's misconduct.

C is wrong because while courts are generally reluctant to let companies use after-acquired evidence to prove that termination was for just cause, there are exceptions. Since the recordings in this case were made secretly, the company couldn't have been reasonably expected

to discover them until the analyst revealed them after termination.

D is wrong because while it's true that in Canada, unlike in the US, secretly recording a conversation isn't a crime as long as the person doing the recording is part of the conversation, such conduct can still be just cause for termination. In other words, you can terminate employees for misconduct other than crimes.

TAKEAWAY

You can protect the privacy of your own employees as well as the confidentiality of sensitive company and customer information by implementing a policy banning employees from using their personal cell phones or other recording devices to tape conversations in the workplace without authorization.

Employee Disputes Not Helped by Feeble Leadership

Lets face it, just like you cannot choose your family you cannot always choose your co-workers. Within workplaces filled with different personalities, different perceptions and different working styles conflicts and disputes are bound to arise. When these conflicts are serious such as harassment, theft, bullying and other unacceptable activities your organization may have formal ways to investigate and resolve these conflicts including disciplinary actions. However, what happens when conflict between employees falls short of serious and leans more towards the trivial?

Psychometric Canada surveyed Canadian HR professionals and asked what were the most common causes of workplace conflict they address. In an article titled 'Warring egos, Toxic Individuals and Feeble Leadership' they shared the most frequently cited sources

of workplace conflict:

- Warring egos and personality clashes (86%)
- Poor leadership (73%)
- Lack of honesty (67%)
- Stress (64%)
- Clashing Values (59%)



Within workplaces filled with different personalities, different perceptions and different working styles conflicts and disputes are bound to arise.

Understanding Employee Conflict

It is important to understand why people have conflict because this perspective can allow managers and HR to more effectively intervene. Frequent conflict among co-workers results from misunderstandings and miscommunication often fueled by personal issues such as stress, personality issues, health and mental health and other factors include generational and cultural differences.

When you have an employee involved in a dispute or conflict with a co-worker it is worth considering if there are underlying stress that can be addressed as part of managing the situation.

Reduce the Risk: Four of the best ways to reduce the risk of employee conflict include

1. Improved Insights and

Understanding: Provide employees with opportunities to understand their own and their colleague's perspective, style and personality better including information about cultural, generational

and personality differences. Personality or emotional intelligence assessments, beliefs and values surveys and more can be used to provide employees with insights into their own styles, perspective and preferences. Exposure to other people's perspectives, through stories, conversations, videos and more can help increase empathy and the ability to understand from a different perspective. Provide opportunities for employees to share experiences and down time to talk and learn about one another. One of the best ways to avoid conflict is to help a person see from the perspective of another.

2. Training and Information: With understanding you are better able to help employees develop skills for relationship and self-management. Provide employees with opportunities to practice recognizing and then reacting differently to conflict by providing ongoing competency development opportunities in self-management, composure, conflict management and communication style differences. Combining increased understanding with specific training will benefit

the organization in a myriad of ways including reducing conflict between employees.

3. Reduce the Stress: Stay on top of times when employees may be experiencing additional stress and find ways to offer stress reduction opportunities. These can include positive team building exercises (not called such but with team building in mind) such as volunteer and project work or other opportunities for co-workers to work together for a common purpose that does not involve their regular work tasks. Offer access to stress reduction support including exercise such as Yoga and access to supports for counselling including financial and personal counselling on an ongoing basis and not only in response to a problem. One of the biggest causes of workplace conflict is individual stress that makes people more prone to mistakes and more sensitive to conflict with others.

4. Better leadership: These HR professionals mentioned in the Psychometric Canada article were asked how effectively managers in the

“ *...managers would benefit from gaining perspective and an understanding of their own behavior and blind spots.* ”

workplace were at dealing with conflict; only 18% felt management did an effective job and 63% indicated management was somewhat effective. When asked what HR thought management should do to deal with workplace conflict they responded that managers could manage toxic individuals more firmly (75%), provide more clarity about their expectations (77%) and model appropriate behavior (84%).

Too often management suggests that employees should 'grow-up' and resolve personal or professional workplace

disputes like 'adults' – which often means to just get over the issues. Yet because other issues are frequently involved employees are not in a position to just resolve a conflict without some support or guidance. The items the HR professionals listed, including better managing of toxic employees, being clear with their behavioral expectations and modelling appropriate behavior should be generally mean that managers would benefit from gaining perspective and an understanding of their own behavior and blind spots. Not

always an easy task, but if you are going to provide employees with opportunities across the first three components begin by inviting managers to engage in those opportunities first.

The best way to manage conflict is to reduce the opportunity for it to begin in the first place by offering employees skills to manage themselves and their interactions with others.



Additional materials

Workplace Harassment Investigation Checklist

OHS laws require employers to do a full, fair and thorough investigation of workplace harassment complaints. Some jurisdictions, including the federal, require the investigator to possess professional qualifications and recognized certifications. Such requirements are also typical in collective agreements with union employees. But regardless of who performs the investigation, it's highly advisable to develop specific instructions on how it should proceed and what it should cover. Here's a harassment complaint investigation checklist that you can adapt for your own use.

[Download it here](#)

Peer Recognition and Appreciation Policy

The following template provides guidance for developing and documenting a Peer-to-Peer employee recognition and appreciation program and policy.

[Download it here](#)

Workplace Violence Prevention Policy

Workplace violence has become a recognized hazard that all employers must be aware of. At a minimum, you need a policy banning workplace violence, explaining what workplace violence means and setting out specific controls to prevent violence hazards. The template below illustrates what elements such a policy must include.

[Download it here](#)



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