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Just Cause: When is Just Cause for Poor Performance Allowed?
by Leanne Standryk

Just cause for dismissal arising from an employee's poor performance may be considered as a near impossible task. Arguably, it is the most difficult ground for summary dismissal an employer can seek to establish. The Supreme Court of Canada has confirmed that the employment relationship is one of the most significant relationships in an individual's life; one in which the individual is most often seen as the vulnerable party. Accordingly, Courts are reluctant to allow employers to terminate the relationship without any notice or pay in lieu thereof. As a result, an onerous burden is placed upon employers to prove just cause for a summary dismissal.

Courts have adopted an approach with very specific requirements. An employer must show:

- a) Clear communication of the standard of performance required of the employee;
- b) A failure of the employee to meet the established level of performance;
- c) Appropriate instruction and training with respect to the standard of performance and supervision to assist the employee in reaching the established performance expectation;
- d) A reasonable time was provided to the employee to meet the established expectation;
- e) A clear warning to the employee that the failure to meet the established expectation will lead to the termination of his/her employment.

It is not sufficient to advise employees of these specifics verbally. The communication must be in writing. A prudent employer will work with the employee to assist them in meeting the performance expectation. This should involve periodic meetings.

The time period within which the employer expects to see improvement must be reasonable. This is determined on a case-by-case basis. Employers are advised to communicate a clear time frame to the employee.

It is not sufficient to advise the employee that a failure to meet established expectations may result in further discipline. The communication must specify that the employee's failure to meet the established performance expectations will result in the termination of his/her employment.

There is no doubt that conducting a summary dismissal poses significant risk and summary dismissals based on poor performance are viewed by many as even riskier. By following the guidance provided by the Courts as outlined above, this risk is significantly reduced. However, employers can always deal with the potential risk by abandoning the "cause" argument and simply provide notice of termination or pay in lieu thereof.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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