

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

ALL PLAY AND NO WORK MAKES JACK UNEMPLOYED

Employers are often confronted with employees using their sick days in dubious circumstances: the Tuesday following a long weekend; that beautiful summer day when nobody wants to be cooped up inside; or the use of sick leave after the denial of a last-minute vacation request.

The latter scenario reared its ugly head before an Alberta court in a decision this summer. In *Telus Communications Inc. v. Telecommunications Workers' Union*, 2013 ABQB 355, Jarrod Underwood, a unionized service technician, was terminated with cause from his employment with Telus after he "texted" in sick to his manager... after Telus discovered he was actually playing in a slo-pitch softball tournament.

His manager had become suspicious of his purported illness because he had previously been denied that day off. The manager caught Mr. Underwood red-handed, literally finding him at the softball field two hours after his text message claiming he was too sick to work.

Although the arbitrator initially reinstated Mr. Underwood to his position, the Court reviewed the arbitrator's decision and determined it was unreasonable in the circumstances, ruling that Telus indeed had cause for termination. The Court rejected Mr. Underwood's argument that his claimed bout of diarrhea incapacitated him from serving Telus' customers but did not prevent him from playing softball, commenting that this argument "defies logic and common sense."

The Court was highly influenced not only by Mr. Underwood's initial dishonesty in lying about the reason for his absence, but of his insistence once confronted that he was "only watching" when he was actually pitching. This double-play of evasiveness was held to irreparably damage the employment relationship, particularly in light of the unsupervised nature of Mr. Underwood's work.

Although many workplaces are not unionized, this case is a useful guide for employers with or without an organized workforce. Among other things, companies are advised to:

- Impose and consistently apply sick leave policies which strictly limit the use of sick days and provide a clear reporting procedure which includes calling in (no texting!).
- Take full advantage of an employee's careless use of social media; not every company literally catches an employee in the act, but employees may shoot themselves in the foot by posting their actions on Facebook or Twitter - so be on the lookout.
- Ensure an employee caught in similar circumstances has an opportunity to give his or her side of the story; many judges insist the obligation of "procedural fairness" requires some form of investigation by the company, plus it provides the added benefit that the employee might dig their grave even deeper by lying yet again.
- Consider and weigh the context in every case before a decision is made: though dishonesty in the workplace is a serious offence, it is not necessarily tantamount to cause for termination in every instance.
- Discipline employees for any form of dishonesty in writing, even if termination is not contemplated at that stage; it will greatly improve the company's position if an employee reoffends.

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www.canadaemploymentlawyer.com

HR MANAGER'S GUIDE TO INDEPENDENT CONTRACTORS IN THE WORKPLACE

Available for purchase from
Carswell's store.



UPCOMING EVENTS

January 24th, 2014

David Whitten will be speaking about executive employment agreements at the Human Resources Professionals Association's Annual Conference and Trade Show, January 24th, 2014, in Toronto.

Learning objectives include:

- Understand the various provisions found within executive employment agreements, including equity incentive plans, change in control provisions and post-employment restrictions
- Review effective provisions in executive employment agreements from both the executive's and the employer's perspective
- Understand the dynamics of negotiating executive employment agreements
- Know when to use certain provisions and when not to
- Learn how to address common issues that arise in enforcing executive employment agreements

For more information please visit HRPAs website.

LAW BLOG

I found that out after I fired an employee. Can I use that after-acquired information to justify terminating for cause?


Shhhh! Confidentiality is Important. It costs to be a tattle-tale.


Sears Canada closing stores-what about employees?

Employee fired after seeking marijuana on Twitter while at work

Read more at
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