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Accused but Not Yet Convicted: What to do When Your Employee is Accused of a Crime?

By: Anthony Houde and Emilie Paquin-Holmested | Montréal

One Saturday morning, as you are quietly sipping your coffee and flipping through the newspaper, you suddenly stumble upon an article about one of your employees. He or she has been accused of committing a criminal offense outside the workplace but has not yet been convicted. Your mind races through a series of questions: How will this affect my business' reputation? Is this employee putting my clientele or other employees' safety at risk? More importantly: What should I do now? The following provides you with a few tips.

Generally, an employer has no authority over employees' conduct outside of the workplace. But, if your legitimate business interests are affected by the accusations against your employee, you may take the necessary action to protect those interests.

The Duty to Investigate

Before taking an administrative or disciplinary measure, you must investigate the situation. Determine whether the continued presence of the accused puts your business interests at risk. Consider whether solutions other than removing the employee are possible. Continue to reevaluate your position as new facts come to light. While investigating, consider the nature of the accusations, the tasks performed by your employee and the nature of your business.

Administrative Measures

Grounds for an Administrative Suspension

An employee accused of a crime could be administratively suspended during either the criminal proceedings or your own investigation. However, in order to do so, there must be a connection between the nature of the charges brought against your employee, his functions and the legitimate interests of your business.

Guidelines for an Employer

Before suspending an accused employee, you should consider alternate solutions, such as reassigning the employee to other tasks. But these alternate solutions need not cause significant inconvenience or other serious harm to your legitimate business interests. Nor should they affect the reputation or the image of your business. For example, the employer of a police officer charged for driving while impaired could, for obvious reasons, prevent him from patrolling alone. The employer could also reassign the police officer to administrative tasks. However, we can hardly imagine how an employer could reassign a financial advisor accused of committing fraud.

Furthermore, your decision to impose an administrative suspension must always be guided by good faith and by the duty to respond reasonably to the situation. The duration of such an administrative suspension should be for a fixed or determinable period, and for a relatively short time. Otherwise, the administrative suspension could be considered a constructive dismissal.

Rest assured that your decision to administratively suspend an employee does not violate the employee's entitlement to the presumption of innocence. The culpability of your employee is not an issue you should consider in your analysis.

Suspension With or Without Pay?

Employers located in the province of Quebec who decide to administratively suspend an employee should do so with pay, unless there are exceptional circumstances ([Cabiakman v. Industrial Alliance Life Insurance Co.](#)). In the rest of Canada, the state of the law is less clear. Indeed, many arbitrators have recognized an employer's right to suspend an employee without pay to the extent that the administrative suspension is justified. However, if an employee is later acquitted or the charges against him are withdrawn, some arbitrators have ordered employers to reimburse employees' their salary for the duration of the administrative suspension. But this is not the majority view.

Disciplinary Measures

Presence of a Just Cause

Disciplinary measure must of course be supported by just cause. The same rule applies to an employee who has been accused of committing a criminal offense. For example, an employee who is absent without justification, because he is detained by police, may be subject to discipline because of his absence.

Accused, *but Not Yet Convicted*

When will arbitrators maintain the dismissal of an employee who has been accused and not yet convicted of committing a crime outside the workplace?

In Quebec, very few dismissals have been upheld in these circumstances. But in some cases, the employer had sufficient information to demonstrate that the employee had committed certain acts that were incompatible with his employment and the employer's business interests. In one of these cases, the employee, a slot machine technician in a casino, had participated in shop lifting in a supermarket with his spouse. The employee was later acquitted. The employee's dismissal was nonetheless upheld. The employer had sufficient evidence to prove the employee's participation in the crime. It was important that honesty and integrity were two qualities essential to being a slot machine technician.

Similarly, in the rest of Canada, the employer who wishes to dismiss an employee accused and not convicted of committing a crime must have sufficient evidence to demonstrate that the employee committed acts that are incompatible with his employment and the business interests of the employer.

Conclusion

Discovering that one's employee has been accused of committing a criminal offense is an unpleasant and stressful occurrence for any employer. Although you might wish to react quickly in order to solve this issue, it is important for you to reflect on the strategy that you will adopt in order to protect your business' interests while respecting the employee's rights.

For more information on the subject of this bulletin, please contact the authors:

Anthony Houde

514 397 5226

ahoude@fasken.com

Emilie Paquin-Holmested

514 394 4518

epaquin@fasken.com

Contacts

VANCOUVER

Kevin P. O'Neill

604 631 3147

koneill@fasken.com

Charles G. Harrison

604 631 3132

charrison@fasken.com

CALGARY

Katie Clayton

403 261 5376

kclayton@fasken.com

TORONTO

Karen M. Sargeant

416 868 3475

ksargeant@fasken.com

Brian P. Smeenk

416 868 3438

bsmeenk@fasken.com

OTTAWA

Stephen B. Acker

613 236 3882

sacker@fasken.com

OTTAWA / MONTRÉAL

Dominique Monet

514 397 7425

dmonet@fasken.com

MONTRÉAL

Dominique Launay

514 397 5240

dlaunay@fasken.com

QUÉBEC CITY

Jasmin Marcotte

418 640 2030

jmarcotte@fasken.com

LONDON

Cerys Williams

+ 44 207 917 8955

cwilliams@fasken.co.uk

PARIS

Judith Beckhard-Cardoso

+33 1 44 94 96 98

jbeckhard@fasken.com

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