

# Can Employer Fire Worker for Drunk Driving Accident in Company Car?



## SITUATION

A worker for a small business takes a company car without permission to visit a client off-site. After the meeting, he stops at a bar for lunch and has several beers. While driving back to the office, he loses control of the vehicle and crashes, destroying the car and critically injuring himself. Blood alcohol tests run by the hospital confirm that the worker was legally drunk at the time of the accident. The company's employee handbook, which the worker signed, bars drinking while on the job, even off-premises, and says such conduct can result in termination. The employer doesn't conduct its own investigation of the accident. But one month after the worker pleads guilty to drunk driving charges, it fires him. He sues for wrongful dismissal.

## QUESTION

**Did the employer have just cause to fire the worker'**

- A. Yes, because drinking on the job is always just cause for termination.
- B. Yes, because the worker drank while traveling for business reasons, destroyed a company vehicle and engaged in criminal conduct.
- C. No, because the employer didn't perform any investigation of the accident.
- D. No, because the worker drank on his lunch break.

**ANSWERB. The employer had just cause to terminate the worker based on the totality of the circumstances.**

Whether a worker's misconduct is grounds for termination depends on all of the surrounding circumstances, including such factors as how serious the misconduct was and whether the misconduct caused harm. This hypothetical is based on an actual case from Ontario in which the court ruled that an employer had just cause to terminate a worker for a drunk driving accident. The court found that the worker's drinking violated the express terms of the employment handbook he

signed, caused an accident on public roads and destroyed company property that he was using without permission. In addition, the worker's criminal conduct exposed the company to potential liability for injuries to third parties.

#### **WHY THE WRONG ANSWERS ARE WRONG**

**A is wrong** because simply drinking while on the job may not always be just cause for termination. The seriousness of the conduct and the context in which it occurred must also be considered. For example, you may not be able to fire a worker when the drinking at work didn't cause any harm or if you hadn't consistently enforced your no alcohol policies. [See, Arbitrator Orders Reinstatement of Workers Who Drank While in Company Vehicle.] And if the worker is an alcoholic, you may have to accommodate his disability rather than fire him. [See, Employer Must Accommodate Electrician Who Was Drunk at Work.] In this case, the worker's termination was justified because not only was he drinking while on duty but also he knew the company prohibited drinking on the job (even off site), took the company car without permission and destroyed it, and engaged in criminal conduct.

**C is wrong** because the employer had all the facts it needed before it terminated the worker. In general, employers *should* conduct investigations of misconduct before determining the appropriate discipline for the workers involved. But given the nature of the misconduct in this case, the employer was entitled to rely on the hospital tests that confirmed the worker's intoxication and the fact he pleaded guilty to criminal drunk driving charges. So the employer had sufficient facts on which to fire the worker without conducting its own investigation.

**D is wrong** because even if the worker was off the clock when he drank the beer, he was on company time and driving a company vehicle while intoxicated when he got into the accident.

#### **SHOW YOUR LAWYER**

*Dziecielski v. Lighting Dimensions Inc.*, [2012] ONSC 1877 (CanLII), March 22, 2012

**Insider Says:** As the holiday season approaches, you should understand the risks of serving alcohol at your holiday party.