

Disciplining Workers for Wearing Jewelry Near Moving Machinery



It's not just the offence but how you respond to it that determines whether discipline is legal.

Banning workers from wearing rings, necklaces, earrings and other jewelry when they operate or work near machinery with moving parts isn't only sensible but required under OHS laws. After all, ensnarement of a dangling necklace or bracelet in the moving parts of a machine has cost more than one worker a finger, hand, limb or life. But rather than appreciate you for looking after their safety, workers may look at your ban on jewelry as an unwarranted intrusion into their private space. They're wrong, of course. Legally speaking, an employer's need to protect workers from ensnaring machinery outweighs a worker's right to wear jewelry for personal expression. But having the law on your side doesn't give you the right to impose whatever discipline you want. As is true of any kind of discipline, punishment for violating a no-jewelry policy must fit the offence; just as importantly, your disciplinary procedures must be fair and reasonable. The following cases show how these principles play out in real-life situations.

DISCIPLINE IS JUSTIFIED

SITUATION

A worker at a manufacturing plant received a verbal warning for refusing to remove her earrings at work in violation of the company's no-jewelry policy. The next day, she again refused to remove her earrings and got a written warning and was sent home for the day without pay. But she remained defiant and showed up the very next day bedecked in earrings that she refused to remove. This time her punishment was a 2-day suspension along with a written warning stating that any further refusals would result in discipline up to and including termination. But the worker called the company's bluff by repeating her antics on her next workday. Unfortunately for her, the company wasn't bluffing and fired her without notice. So, she sued for wrongful dismissal.

DECISION

The Ontario Labour Relations Board ruled that the worker's failure to comply with the company's no-jewelry policy was just cause to terminate.

EXPLANATION

The worker argued that the manufacturer's no jewelry policy was unreasonable, noting that she'd worn earrings to work without incident for years. But the Board noted that the policy was consistent with Ontario OHS regulation barring rings and jewelry or clothing that's loose or dangling from being worn around certain equipment [*Industrial Establishments Reg.*, Sec.83(2)]. And since the policy had a 'substantial bearing on the employment relationship,' the worker's refusal to comply with it was wilful misconduct justifying termination without notice.

Scherling v. Martin Pet Foods, [2002] CanLII 20640 (ON L.R.B.)

DISCIPLINE IS NOT JUSTIFIED

SITUATION

A manufacturing plant's written jewelry policy quoted a regulation barring rings and jewelry or clothing that's loose or dangling from being worn near rotating shafts, spindles, gears, belts or sources of entanglement. The policy then stated that no jewelry, including wedding bands, watches and hanging earrings, could be worn in the plant. On a Saturday, a worker wore a hoop earring to work. He refused to remove it for sentimental reasons. The worker said he'd be willing to wear a band-aid over the earring. But the supervisor told him that wasn't acceptable. The supervisor warned the worker that if he wanted to work that day or the next, he had to remove the earring; otherwise, he could pursue the issue with HR on Monday. The worker left work and didn't return on Sunday. He was given a 'final warning' and suspended for 2 days.

DECISION

The Ontario Labour Relations Board ruled that suspension wasn't warranted.

EXPLANATION

The Board didn't condone the worker's action, noting that he could have simply removed the earring for the weekend and then taken his complaint to HR on Monday. The Board also noted that other workers who had been asked to remove their earrings had complied. So, the worker did deserve discipline. Still, suspension was too severe under the circumstances, the Board concluded. There was no way the worker could have known that refusing to remove the earring would result in his suspension. The supervisor never warned him that he'd be suspended if he didn't comply with the policy. And under the plant's disciplinary policy, the worker should have at least gotten a written warning before being suspended.

Atchison v. Springs Canada Inc., [2004] CanLII 15388 (ON L.R.B.)

THE 3 TAKEAWAYS

While both cases come from Ontario, the *Scherling* and *Atchison* rulings are instructive no matter what part of Canada you're in. **Bottom Line:** There are 3 things you need to prevent workers from getting their jewelry ensnared in moving machinery and ensure compliance with OHS machine guarding requirements:

1. A Clear & Enforceable No-Jewelry Policy

The first thing you need is a clearly written and consistently enforced safety policy banning workers from wearing jewelry and loose clothing when working with or near machinery. Here's some model language, which can be either freestanding or incorporated into a broader machine guarding safety policy.

DRESS RESTRICTIONS FOR WORK NEAR MACHINERY

To ensure their own safety and the effective implementation of this Machine Guarding Policy, workers who work with or near workers are at risk of making contact with the moving parts of machinery or energized electrical equipment must:

- Wear clothing that does not expose them to hazard;
- Ensure their clothing fits closely about the body;
- Not wear bracelets, rings, dangling neckwear, wristwatches or similar articles (other than a medical alert bracelet with a transparent band that holds the bracelet snugly to the skin;
- Confine their head and facial hair or wearing it at a length that will prevent it from being snagged or caught in the work process;
- Comply with all applicable safe work procedures;
- Refrain from disabling, removing, tampering with, or manipulating machine guards or safeguards without their supervisor's authorization;
- Refrain from walking on or climbing over conveyors unless they are authorized and instructed to do so; and
- Immediately report any defective or missing guards or safeguards to their supervisor.

2. A Game Plan for Using Progressive Discipline to Enforce Safety Rules

Because disciplinary procedures are as important to your legal case as the actual grounds for discipline, you need a strategy for using progressive discipline to enforce your no-jewelry and other safety policies against workers who commit violations.

3. A Legally Sound Progressive Discipline Policy

Last but certainly not least, you need a written progressive discipline policy that explains the disciplinary protocols and procedures at your workplace. If your workers belong to a union, you'll likely have to negotiate the progressive disciplinary rules as part of the collective agreement.