

Is Assaulting a Co-Worker While Off-Duty Just Cause for Immediate Termination?



SITUATION

A woman and her daughter work for a cleaning company. The worker goes to the office to pick up her paycheck while out on sick leave. After getting the check, she encounters the company's payroll clerk on a cigarette break outside the building. The worker accuses the clerk of unprofessional conduct for how the clerk handled her check and her daughter's check and says, 'You guys are a bunch of a**holes.' The clerk says, 'Takes one to know one.' The worker pushes the clerk, who falls and is injured. The company fires the worker, noting that its employment policy expressly states that threatening or physically assaulting a co-worker is grounds for immediate termination. And the worker is aware of this policy. Still, she claims the company didn't have just cause to fire her.

QUESTION

Was the worker's termination justified'

- A) No, because she was on sick leave at the time and so not on duty.
- B) No, because the altercation happened outside of the workplace.

- C) Yes, because the company has a duty to protect other workers from the risk of workplace violence.
- D) Yes, because the company policy indicated workers could be terminated immediately for assaulting co-workers.

ANSWER

D. A workplace violence policy stipulating immediate termination as the discipline to be imposed for violence against co-workers justifies the worker's termination for assaulting the clerk.

This hypothetical is based upon an actual labour arbitration decision in Saskatchewan in which a worker on sick leave visited the office and pushed her co-worker during a verbal altercation directly outside the office building. The arbitrator noted that the company's employment policy clearly stated that assaulting a co-worker is grounds for immediate termination. The arbitrator found that the worker acknowledged reviewing the policy and so was aware that assaulting a co-worker would lead to her immediate firing. And the worker pleaded guilty to the criminal charge of assault. Thus, the arbitrator ruled that the worker did assault her co-worker, violating the policy, irreparably damaging the employment relationship and leaving the employer 'no choice but to terminate' her.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although the worker was technically 'off duty' when she pushed the clerk, the company's employment policy broadly prohibited *any* threat or physical assault against co-workers, not just actions committed during working hours or in the course of carrying out employment duties. Additionally, even when a worker is off duty, an employer could impose discipline for her actions if there's a connection between the conduct and the job, such as the

conduct involved a company client or took place at a company-sponsored event. (For three steps to take when considering disciplining a worker for off duty conduct, see '[When is Off-Duty Conduct Just Cause for Discipline](#)'.) Here, although the worker was on sick leave at the time of the assault, the incident took place directly outside of the office and involved a co-worker. Thus, there was a connection between her conduct and the job.

B is wrong because although the assault didn't take place in the company's office itself, it did occur directly outside of the office building. In addition, it involved a co-worker. Furthermore, the company anti-violence policy wasn't limited to only assaults occurring physically within the workplace.

Insider Says: To make sure you can discipline workers for violence against co-workers occurring even far away from the workplace, your company's violence policy should [ban all violence against co-workers regardless of the location](#).

C is wrong because although an employer does have an obligation under the OHS laws to protect its workers from [workplace violence](#), immediate termination for engaging in such conduct isn't always justified. For example, if the company's policy didn't expressly warn workers that violence against co-workers could be grounds for immediate termination or the worker wasn't trained on or aware of this policy, her firing may not be justified (although some form of discipline would certainly be warranted).

SHOW YOUR LAWYER

Tawpisin v. Muskeg Lake Cree Nation, [2012] C.L.A.D. No. 342, Nov. 21, 2012