

e2r Alert!

OFF DUTY CONDUCT: WHEN TO DRAW THE LINE

The Stanley Cup playoffs were an emotional time for hockey fans throughout Canada, especially in the city of Vancouver. With the prospect of being crowned Stanley Cup champions, thousands of hockey fans descended onto the streets of downtown Vancouver in anticipation of what would be a spectacular post-game victory celebration. Instead, what occurred was perhaps one of the most tragic post-game riots in Canadian history. Many disgruntled hockey fans turned into rampaging rioters, some disguising their faces, while others remained easily identifiable. In the aftermath, millions of dollars-worth of damage had been done to various retailers, in addition to scores of injuries and arrests.

In the aftermath, many employers discovered that some of their own employees had in fact participated in the riots. Their participation begs the question: Can off-duty conduct constitute grounds for discipline, or where necessary, termination for cause?

What Does The Law Say?

Courts have held that it is an implied term of contract that an employee refrain from engaging in any outside activities that are, or have the potential to be, prejudicial to the interests or reputation of an employer. As such, off-duty conduct may give rise to discipline, and in rare circumstances, termination for cause. Ultimately, a court will look to determine as to whether there is a sufficient “nexus” (or connection) between the impugned conduct and the workplace. In determining as to whether a nexus exists, courts have been known to consider the following criteria:

1. Does the impugned conduct hurt the company’s reputation?
2. Does the impugned conduct render the employee unable to do his/her job effectively?
3. Does the impugned conduct make co-workers unwilling, unable or reluctant to work with the employee?
4. Is the impugned conduct a serious breach of the Criminal Code?; and/or
5. Does the impugned conduct make it hard for the company to properly carry out its function of managing the business and directing its workforce?

Be Proactive

While an employer cannot anticipate every off-duty incident that may result in discipline or termination for cause, it would be wise to establish a clear policy that will serve as a warning to would-be offenders. The message is accountability, and the bottom line is that employees need to be cognizant of the fact that their actions may have immediate consequences for their employment. As such, every off-duty conduct policy should:

- Define the purpose of the policy;

- Outline the kind of conduct that will be subject to discipline;
- Clearly set out the level of discipline that may apply should an employee violate the policy; and
- Establish a duty to report such conduct at the earliest opportunity.

We encourage you to contact us so that we may assist you in devising such a policy.

Please contact e2r Solutions® should you have any questions regarding the foregoing.

If you do not wish to receive further e2r Alerts!, please reply to this email with the word Unsubscribe in the subject line of your reply and your email address will be deleted from our distribution list.

"Real Human Resources Advice in Real Time"

70 The Esplanade, Suite 401
Toronto, ON M5E 1R2
toll free 1.866.327.7657
tel 416.867.3093
fax 416.867.1434
www.e2rsolutions.com

e2r Solutions® is a service of Woolgar VanWiechen Ketcheson Ducoffe LLP, a certified MDP.

IMPORTANT/CONFIDENTIAL: This email message and any attached files are intended for the use of the individual or entity to which it is addressed, and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately by telephone at 416.867.3093 and destroy the original message.