

Job abandonment: When can an employer call it quits?

Your employee goes on a medical leave of absence. They do not submit any medical documentation. Your attempts to obtain information substantiating the leave of absence are unsuccessful. Does this sound familiar? Unfortunately, this scenario is very common in Canadian workplaces. If faced with this situation, when can an employer end the employment relationship by claiming job abandonment?

A recent Ontario Superior Court decision offers insight into when the threshold for job abandonment can be successfully met by an employer. In *Betts v. IBM Canada Ltd.*, Mr. Betts was employed for approximately 15 years with IBM Canada Ltd. (“IBM”), most recently in New Brunswick.

In October 2013, Mr. Betts experienced a major depression episode and stopped reporting to work for health reasons. IBM advised him of the process to apply for disability benefits, which were administered by a third party. Without notifying the insurance carrier or IBM, Mr. Betts moved from New Brunswick to Ontario to live with his fiancée. This move was in contravention of IBM’s STD plan which required approval of the third party adjudicator before a move away from the employee’s usual place of residence during a period of illness.

Although the employee was aware of the necessary requirements for his disability benefits application, he failed, even after being provided with extensions, to provide the necessary medical documentation in the prescribed timeframes and his claim was denied. Upon being provided an additional opportunity to submit medical documentation, he submitted documents that were prepared by a psychologist. The policy required information from a physician and his application was denied.

Mr. Betts subsequently appealed the decision. IBM made it clear to him that if he did not comply with the requirement to submit medical documentation, he would be held to have voluntarily resigned. Unfortunately, the employee’s non-compliance continued and IBM took the position that he had resigned.

Mr. Betts subsequently brought an action for wrongful dismissal damages. IBM claimed that Mr. Betts abandoned his employment and thus, voluntarily resigned. The Court found in favour of IBM and determined that he had abandoned his employment. Over the course of eight months, Mr. Betts had failed to submit the requested medical documentation in contravention of the Company's policy and despite IBM's ongoing requests. His move to Ontario was also taken into consideration as indicia of his intention to abandon his employment. IBM's expectations were clear and reasonable. Mr. Betts was afforded ample time to comply with the requests. Further, he did not provide a reasonable explanation for his non-compliance.

What can employers learn from this decision? When dealing with uncooperative employees on a medical leave of absence, the following steps should be taken:

1. Send written communications to the employee requesting medical documentation substantiating the leave of absence.
2. Send follow-up communications and extend deadlines where they are not met by the employee.
3. Always ensure that the employee is aware of the consequences of failing to comply.

Although it may take some time to meet the threshold of job abandonment, with proper documentation it can be achieved. Please contact e2r if you would like to discuss job abandonment with an Advisor.