



e2r Alert!

Progressive Discipline: Case Review

Further to our e-Learning yesterday, progressive discipline is an established system where the severity of the consequences increases with each infraction of workplace rules, policies, procedures or standards.

Typical "progression" is as follows:

- Verbal warning
- Written warning
- Suspension (with or without pay)
- Termination

Progressive discipline should be applied in response to all forms of employee misconduct and would depend on the nature and severity of the infraction. Where there is repetition in misconduct, the discipline would generally escalate with each infraction.

When appropriately drafted and communicated, employers can leverage the progressive discipline policy to inform employees that there is a behaviour/performance issue and ensure that they clearly understand expectations and the consequences if the behaviour/performance is not corrected.

Where the Employer Got it Right - *Pirani v. CIBC*

Pirani, a financial services representative, was employed at CIBC for 9 years and was dismissed for cause for failure to adhere to key CIBC policies and procedures (namely around overdraft limits and credit bureau checks). Following her termination, Pirani commenced a claim for wrongful dismissal.

Prior to Pirani's dismissal, CIBC had engaged in progressive discipline and had provided her with 2 written warnings for similar breaches in policies and procedures. CIBC argued that this demonstrated a pattern of serious misconduct and neglect of duty.

The judge dismissed the action, finding that CIBC had cause for termination and Pirani was not owed termination pay and/or severance. Pirani's "*dismissal was proportionate response to misconduct*" as she was "*aware of bank's policies, rules, and procedures, yet repeatedly breached them*".

Take away: The court decided in favour of CIBC where it followed its own progressive discipline policy and had appropriately responded to the misconduct. CIBC had published policies/procedures in place and required all employees to adhere to them.

Where the Employer Got It Wrong - *Attzs v. Saputo Dairy Products Canada G.P. (Saputo)*

Attzs, a warehouse attendant, was employed at Saputo for 4 years and was dismissed for cause after being caught on video surveillance vaping on company premises. Following his termination, Attzs commenced a claim for wrongful dismissal.

Saputo did not engage in progressive discipline with Attzs and, at that time, had not publicly updated their Anti-Smoking policy to include vaping. In addition, other employees, who had separately been caught vaping on company premises, had only been provided with a warning.

The judge ruled that Attzs had been wrongfully dismissed, noting that Saputo did not follow its own progressive discipline policy and had failed to establish just cause.

Attzs should have received a “*warning or perhaps suspension, prior to being terminated for cause*”. The court citing that the “*nature and degree of conduct did not warrant immediate dismissal*”.

Attzs was awarded damages in lieu of reasonable notice (roughly 4 months of pay).

Take away: The court decided in favour of Attzs where Saputo had failed to apply reasonable discipline and consistently follow its own policy.

Having a progressive discipline policy in place will ensure that employees clearly understand that misconduct will not be tolerated, and that discipline will be reasonably applied.

If you have any questions about progressive discipline and/or would like our support drafting a policy, please do not hesitate to contact ClientCare.