

You Raise the Issue

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Question: I have recently heard that an employer may be held liable for a constructive dismissal if the Court finds that the employer improperly disciplined an employee. If I use constructive discipline am I at risk of being held to have terminated an employee?

There has recently been a decision in which an employer improperly applied corrective discipline and was found to have constructively dismissed an employee. However, this does not mean that an employer cannot use corrective discipline.

The case mentioned arose in Ontario and involved a large employer. The employee had received good performance reviews, bonuses and pay raises in the twelve years prior to the date he accepted a new position within the organization. From the date he accepted the new position, things began to go wrong, and the employee ultimately tendered his resignation. In hindsight, it became apparent that the majority of problems came from a vast difference in personality between the employee and his new supervisor.

From the employee's point of view, the first problems arose when he received a poor performance review. The next day he received a warning letter which indicated that tasks were not being completed in a timely fashion and that his employer was not happy with his attendance record. Prior to this review, no problems had been brought to the employee's attention. Further, after the performance review, the employee thought he had satisfactorily answered all the questions raised. The employee testified to having been shocked by the warning letter. At trial, the supervisor who had written the letter admitted he had no direct knowledge of the employee's day-to-day activities and had relied on complaints received from others when writing the letter. The employee completed a request for a transfer which his supervisor refused to approve.

During this time period, the employee suffered some medical problems and went on short term disability. Following his return to work, he received another warning letter. In this letter, among other things, the employer complained about his absence from work. The employee then asked to take six weeks off, without pay, as a "cooling off" period. His supervisor denied this request and then placed him on probation. Shortly after being placed on probation, the employee resigned.

The Court, in reaching its decision, found that the deterioration of the employment relationship was due to "extremely poor communications" between the employee and the employer's management personnel. Specifically, the Court took note of the employer's inefficient management structure, the employer's failure to ensure that the employee was fully integrated into the new position to which he was transferred, and the personality differences between the employee and his supervisor.

The Court was especially critical of the supervisor's manner in dealing with the employee, which it described as "impatient, intolerant, and authoritarian". The supervisor did not consider the employee's response to the employer's complaints



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but, rather, proceeded to discipline the employee based on very little direct knowledge of the situation. The supervisor paid no attention to the employee's request for a transfer or whether that request was in either the employee's or the employer's best interest. The Court also criticized the employer for not making enquiries into reasons for the employee's absences. Had it done so, it would very easily have discovered the employee was absent for legitimate medical and personal reasons.

The Court concluded that the employee had been constructively dismissed because the employer had, by the conduct of the supervisor, made the employee's continued employment intolerable. The Court found that the employer had shown an intention to no longer be bound by the employment contract. The Court also clarified that the test for constructive dismissal was objective: Was the conduct of the supervisor so far past the bounds of reasonableness that it would be reasonable for the employee to find continued employment intolerable?

The advice that employer's may draw from this case is the importance of good communication between managers and employees. If an employer intends to discipline an employee, it should investigate the complained of incident so that it can be reasonably sure it has a full understanding of the facts. After addressing the matter with the employee, the employer should then give the employee a chance to respond to the criticism. The purpose of corrective discipline is to afford an employee an opportunity to improve. Dealing with matters of discipline in a manner that may later be described as impatient, intolerant or authoritarian may reduce the opportunity for improvement, defeating the purpose of corrective discipline. This may lead the Court to find that the employer has made the employee's working conditions intolerable, thereby constructively dismissing the employee.

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