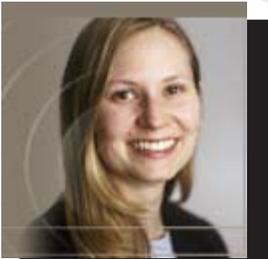


You Raise the Issue

KARA GILLESPIE

Question: I pay my employees ten cents for every widget that they produce. What happens if they do not produce enough of the widgets to make at least the minimum wage? Do I have to pay them minimum wage or can I pay them only for the amount of widgets that they have produced?



Kara Gillespie

Paying your employees an incentive based wage, such as a per piece rate wage, is permitted under the Employment Standards Regulations. However, by paying your employees in this way you cannot avoid the requirement of having to pay them minimum wage if they do not produce enough widgets.

The present minimum wage in Alberta, effective October 1, 1999, is \$5.90 an hour. To calculate the minimum wage in circumstances where employees are paid on a per piece basis, you do not have to calculate what the employees' hourly earnings were per hour or per day but rather you can average out their earnings over the entire pay period. To calculate the employees' hourly wage use the following formula:

When averaged out over the whole pay period, the hourly wage for the employee must be at least equal to the minimum wage.

Other issues to watch out for, if you are paying your employees by some incentive based wage rather than by the hour, are overtime and holiday pay. Your employees are still entitled to be paid time and a half for overtime and holiday hours they work. If they work either more than eight hours per day or forty-four hours per week, then according to the Employment Standards Code, their wage rate is deemed to be the minimum wage and they are to get one and one-half times that amount for all of their overtime hours. The same is true for general holiday pay. Your employees hourly wage will be deemed to be the minimum wage and they will be paid one and one-half times that amount for any holidays that they work.

Can I terminate an employee who I think has been stealing from the cash register?

Theft from an employer will almost always be grounds to terminate an employee. The employment relationship requires that the employer be able to have faith in the employee. When an employee steals from an employer they are violating the implied term in the Employment Contract, which is that the employee remains honest and trustworthy at all times.

However, your question indicates that you only suspect your employee is stealing from you, which implies that you have not actually caught the person in the act and are not certain if this is true. Before you take any steps to terminate this employee for theft, you must be sure that they are guilty of committing that act. You must take reasonable steps to investigate the situation and be positive that they are in fact stealing from the cash register,

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before you can terminate them for theft.

Unfortunately, if you do determine that the employee is stealing from the cash register, then you likely have grounds for dismissal. You should make it clear to the employee that theft is the reason for his/her dismissal.

You should also be aware that if you operate a company that has employees represented by a union, there have been rare instances in which an arbitrator has reinstated an employee who has committed theft from his/her employer. However, reinstatement is still very rare. It would only occur if the arbitrator believed that the employment relationship was still viable.

As stated above, theft from an employer is usually considered to be such a serious breach of the employment contract, that termination is the result. If you believe one of your employees is committing theft from you, seek professional advice right away.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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