

## You Raise The Issue

KENT BROWN

**Question: We believe that one of our employees has abandoned her position because she has failed to report for work for 5 days. What course of action should we follow?**

If you are an employer that operates a business that is non-unionized, the first thing to do is clarify if there is an employment contract with this employee. If there is an employment contract, review it to determine if there is reference to abandonment of position.

If the employee has met the criteria for abandonment of her position, **the employee should be notified by you, in writing**, stating that you believe that she has abandoned her position and is no longer an employee of the company. Set out the portion of the contract that you are relying on, and the facts that you believe fit within the requirements of the contract. If you have no interest in the employee returning, do not provide them with an opportunity to respond to your letter. If you are interested in having the employee return, give them an opportunity to provide a satisfactory reason for their failure to report to work or remain at work as required. Request that the response be in writing, within a specific number of days. Indicate that if the employee fails to respond within the time limit specified, her employment will be terminated.

If there is no employment contract in place, you will have to determine if the employee has abandoned her position based on her actions. She may have failed to report for work without an excuse, or left work without permission. If she has engaged in an activity that you believe amounts to an abandonment of her position, notify her in writing. Set out the grounds for your belief, and that you believe she has abandoned her position as a result. Follow the steps set out above depending on whether or not you want the employee to return.

If you are an employer that operates a company that is unionized, you must first refer to the collective agreement that governs the relationship between you and the employee. Many collective agreements have specific reference to abandonment of position. Employees can abandon their position by doing things such as failing to return from approved leave of absence, failure to report for work for a specific number of days, or failure to return from vacation. Make sure you refer to the specific language of your collective agreement.

The language in the collective agreement often refers to the employee being deemed to have abandoned her position if she engages in one of the activities listed in the abandonment article. However, some arbitrators have ruled that the deeming provision will not automatically take effect. Just like in the non-unionized environment, you must notify the employee, in writing, that you believe that she has abandoned her position.

It is very important that you take action. Do not simply assume that the employee has abandoned her position. You must notify the employee, and it should be in writing. Failure to notify the employee may prevent you from relying on the employee's abandonment at a later date. If you then refuse to

2000, 10235 - 101 STREET  
EDMONTON, AB T5J 3G1  
PH: 780.423.3003

400 THE LOUGHEED BUILDING  
604 1 STREET SW  
CALGARY, AB T2P 1M7  
PH: 403.260.8500

201, 5120 - 49TH STREET  
YELLOWKNIFE, NT X1A 1P8  
PH: 867.920.4542

[www.fieldlaw.com](http://www.fieldlaw.com)

allow her to return to work at a later date, you may be found to have wrongfully dismissed her from her employment. As in all things in employee and labour relations, keeping a written record of the events is often the best course of action to follow.

**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:

The Labour and Employment Group  
Edmonton 780-423-3003  
Calgary 403-260-8500

**REPRINTS**

Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.