

Current Workplace Issues

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When has an employee resigned?

This seems like a straightforward enough question, but the answer is not always as clear as it may appear. A recent decision of Alberta Court of Queen's Bench reinforces that employers should be cautious in how they handle an employee resignation. If a court later decides that an employee has not actually resigned, employers could find themselves liable for a wrongful dismissal award.

In *Turner v. Westburne Electrical Inc.*, a 13-year employee in a senior sales position offered his "verbal resignation" to his manager after receiving a disciplinary letter from him. He left the meeting, and, later that day, again provided his "verbal resignation" along with an offer to submit a written one. Instead, a meeting was scheduled for the next day.

The next day meeting was held between the employee and his manager to discuss the "resignation." What happened in this meeting was in dispute at trial. The employee said he felt his concerns had been addressed sufficiently and decided to stay but that his manager had pressed him for a written resignation, which was refused.

The manager said the subject of the resignation never came up at the meeting, which may explain his surprise to see the employee back at his desk the following day. It was not disputed that he then pressed the employee for a written resignation, which was refused, at which point he asked the employee to leave the building.

The employee sued for wrongful dismissal and won. The court found that the resignation had not been accepted, and as such the employer was held liable for 10 months' pay in lieu of notice.

Having an employee say "I quit" may not be enough, particularly when the statement is made in the heat of the moment.

The court will test a purported "resignation" by asking whether, given all the surrounding circumstances, would a reasonable person have understood that the employee had resigned? As such, there is both an objective element – to a reasonable observer would it look like the employee had resigned? – and a subjective element – would the reasonable observer see that the employee actually intended to resign?

Further, it is not enough that the employee has offered a resignation. The employer must also accept it.

Equivocal acceptance will also not be enough. If it is an employer's intent to accept a resignation, they must be careful not to accept a resignation while at the same time agreeing to try to work it out, or to meet further on the issue, as to do so may place the legitimacy of the resignation in jeopardy. The fact that the employer had scheduled a meeting the next day to discuss the

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“resignation” helped the court to determine that the resignation had not been accepted on the day it was offered.

An offer of resignation may also be rescinded by an employee prior to acceptance, which is what the court found happened at the next-day meeting in this instance.

The only two participants of the next-day meeting were the manager and the employee, neither of whom agreed with the other as to what had happened. An employer would therefore, where possible, be wise to have a second person present to witness an expected resignation to avoid dispute over basic facts later.

This decision reiterates the court’s long held position that they will give employees leeway in the case of spontaneous outbursts of anger or frustration when deciding on the legitimacy of a purported resignation. Where an employer is faced with such an outburst in which the employee has resigned, an employer should wait a reasonable period of time to allow the employee to calm down before asking them to confirm their resignation, preferably in writing. This practice will provide greater certainty to an employer in accepting a questionable resignation, and will also allow an employee an opportunity to rescind a resignation that would likely not have been effective in any case.

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