

EMPLOYMENT AND PRIVACY IMPLICATIONS OF RECENT BC TIME THEFT CASE

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A question we are often asked by employers is how they can manage the work and performance of their remote working employees. This raises obvious challenges from both an employment and privacy perspective, as demonstrated by a recent time theft case in British Columbia.

On January 11, 2023, the BC Civil Resolution Tribunal (CRT) published its decision in *Besse v. Reach CPA Inc.*, 2023 BCCRT 27, concluding that an employer had just cause to terminate their remote employee's employment as a result of time theft. "Time theft" is when an employee accepts payment for work they have not performed, or time they spent not actually working. The CRT held that the employee's time theft amounted to serious misconduct that led to an irreparable breakdown in the employment relationship that justified a dismissal for cause. Importantly, the CRT noted that trust and honesty is especially important in the remote work environment where employees work without supervision.

The Facts

The employee, Ms. Besse, was employed as an accountant by the employer, Reach CPA Inc. (Reach), from October 12, 2021 to March 29, 2022. It was a term of Ms. Besse's employment agreement with Reach that she would work remotely from home and that she could use her work laptop for personal use.

On February 21, 2022, Reach installed a time-tracking program called TimeCamp on Ms. Besse's work laptop following concerns from Ms. Besse that she was not working as effectively as she could.

Around March 16, 2022, Reach became concerned about a timesheet entry Ms. Besse had made for a file that she had not worked on. As a result, Reach reviewed Ms. Besse's TimeCamp data from February 22, 2022 to March 25, 2022. From a review of this data, it appeared that Ms. Besse had recorded 50.76 hours on her timesheets during which she did not perform work-related tasks.

Ms. Besse's employment was terminated for just cause on March 29, 2022 following a meeting with her on that day during which she was confronted with the TimeCamp data.

The CRT Evidence

Ms. Besse attempted to argue that TimeCamp was difficult to use and that she could not get it to differentiate between work and personal activities. Reach however submitted video evidence to demonstrate that TimeCamp automatically recorded activities as work or personal based on electronic pathways and that specific steps were not required by Ms. Besse.

Ms. Besse also tried to argue that she spent a lot of time working with paper copies, but this evidence was rejected by the CRT as the TimeCamp data did not support Ms. Besse's argument. There was also no evidence that Ms. Besse uploaded the work to Reach's electronic system.

The CRT also placed weight on admissions made by Ms. Besse during her termination meeting on March 29, 2022. Ms. Besse admitted that she recorded time on files that she had not worked on.

The Decision

The CRT accepted Reach's evidence and concluded that TimeCamp "likely accurately recorded" Miss Besse's work activities and that she engaged in time theft. As indicated above, the CRT confirmed that time theft is serious misconduct and that dismissal for just cause was justified, especially given the importance of trust and honesty in a remote work environment.

Takeaways for Employers

The decision confirms that time theft is serious misconduct that could justify a dismissal for cause if supported by the facts. It also emphasizes the importance of trust and honesty in the remote work environment.

While time theft is serious misconduct, it is important to ensure that electronic monitoring of employees comply with privacy and other applicable laws. Privacy legislation for federal and some provincial employers (British Columbia, Alberta and Quebec) prohibit any collection, use or disclosure of personal information that a reasonable person would not consider appropriate in the circumstances. Privacy legislation may also require employers to provide notice, obtain consent, or implement policies before rolling out an employee monitoring system. Ontario also recently introduced a requirement that employers with 25 or more employees implement an electronic monitoring policy (our previous bulletin on this topic can be found [here](#)). Outside of jurisdictions with comprehensive privacy legislation, common law remedies such as privacy torts may be available to employees whose employers invade their privacy without lawful justification. Ultimately, the need for employers to manage their employees must be balanced against the privacy interests of those employees in order to promote a healthy (and legally compliant) work environment.

If you are an employer with any questions about time theft or electronic monitoring, please don't hesitate to reach out to Michelle McKinnon and Robbie Grant.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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