

WRONGFUL QUITTING: CAN YOUR EMPLOYEE SUDDENLY WALK OUT THE DOOR?

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Employers are familiar with the concept that employees must be given notice that their employment will be terminated. However, a recent decision from the British Columbia Court of Appeal looks at the issue from a different perspective: what notice must employees give when leaving their employers?

In *Consbec Inc. v Walker*, 2016 BCCA 114, a family-owned company pursued a former employee (and family member) for various losses suffered by the company when the employee left the family business without notice.

The Trial Decision

Mr. Walker was an employee of Consbec for five years prior to his resignation. His role with Consbec involved soliciting blasting and drilling contracts and he was the only employee running Consbec's Western Division office. When Mr. Walker suddenly resigned without notice, Consbec had to temporarily assign one of its employees from Sudbury to Kamloops until Consbec was able to permanently relocate another one of its employees from Sudbury.

Though most of Consbec's claims against Mr. Walker were dismissed, the trial judge did side with the employer on the issue of wrongful resignation. The trial judge found that Mr. Walker was obligated to give reasonable notice of his resignation, even though there was no written employment agreement requiring a specific period of notice. Mr. Walker had given no prior notice that he planned to leave and therefore the company was entitled to damages. While the trial judge did not calculate how much notice Mr. Walker should have given, the trial judge did award the company damages of over \$56,000 for the costs and expenses it incurred in temporarily and permanently relocating employees to cover Mr. Walker's position.

For more on the trial decision see:

<http://www.mcmillan.ca/Its-a-Two-Way-Street-Employees-are-Required-to-Give-Notice-of-Resignation>

The Appeal Decision

Various appeals and cross-appeals were filed by the parties. On the issue of wrongful resignation, the Court of

Appeal confirmed that an employee must give reasonable notice before leaving. To do otherwise is “wrongful quitting”.

The Court of Appeal observed that the main purpose of the notice requirement is to give the employer a reasonable time to adjust to the employee’s departure. The appropriate notice period will depend on the employee’s duties and responsibilities, salary, length of service, and the time it would reasonably take the employer to have others handle the employee’s work or to hire a replacement.

On the issue of how much notice the employee should have given, it is significant that Mr. Walker was found by the trial judge not to be a fiduciary employee. While the company tried to describe him as a manager, the trial judge concluded that his duties were largely limited to managing his own daily activities of work. He was not a person whom Consbec entrusted with discretionary powers that could affect Consbec’s interests and therefore was not a fiduciary. This conclusion was not disturbed on appeal. Had Mr. Walker been a fiduciary or key employee, he would have owed the company greater obligations on resignation.

The Court of Appeal found that in the circumstances a notice period of one month would have been reasonable. Mr. Walker was the only person running the B.C. office but was a manager in name only. His position did not require any specialized skills and training.

In awarding damages, the Court of Appeal departed from the approach of the trial judge. It observed that the measure of damages is not the cost to the company of the employee leaving, but the cost to the company as a result of the employee’s failure to give notice.

This different approach meant that the damages awarded to the company were eliminated on appeal. While the Court of Appeal agreed that the company was entitled to some damages for the cost of temporarily relocating an employee to Kamloops, the cost of permanent relocation was not recoverable because the company would have incurred that cost even if given one month’s notice. Though the company succeeded in proving it suffered some losses, the amount the company saved by not having to pay Mr. Walker his salary for the notice month was greater than the losses incurred.

Conclusion

While a written employment agreement setting out the notice that an employee must give when resigning is highly recommended, *Consbec* confirms that employees nevertheless have a common law obligation to provide reasonable notice of resignation. Despite a lack of specific guidance from the Court of Appeal as to the range of reasonable notice, the Court does provide factors to consider in determining what is reasonable.

Though it may be tempting for scorned employers to sue employees who leave without providing notice, employers should first consider whether they have any recoverable damages. Such damages must arise from

the lack of notice of resignation and not the cost of the employee leaving the company. Absent evidence of costs, expenses, or damages which exceed the salary owed to the employee during the reasonable notice period, the employer will be empty-handed.

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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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