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Issuing discipline in unionized workplaces

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Labour Spotlight Series

Grow | Protect | Operate | Finance

Speakers



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Agenda

1. Issuing discipline in unionized workplaces
2. Bill 124 declared unconstitutional
3. Q & A

Issuing discipline in unionized workplaces



Management of a unionized workplace

- Follow the collective agreement
- Costs of mismanagement
 - In all contexts, poor performance becomes the standard
- Additional risks with unionized workplaces
 - Grievances
 - Arbitrations

Pre-disciplinary considerations

- Coaching and other non-disciplinary interventions
- Create and enforce employer rules
 - Penalty for breaching rules
- Timely response
- Condonation
- Take advantage of the probationary period

Management rights

- Exclusive right of employers to direct and operate the workplace
 - Suspend, discipline or discharge employees
 - Make, enforce or alter rules and regulations
 - Maintain standards, order, discipline and efficiency
- Careful: employer's right is subject to any limiting language in the collective agreement

What is discipline?

- Purpose is to correct misconduct, not to punish
- Goal of improving / changing behaviour
- Justifiable termination of employment
- Grounds for discipline include:
 - Insubordination
 - Theft
 - Poor attendance
 - Dishonesty
 - Deficient work product

Appropriate level of discipline

1. Do you have cause to discipline the employee?
2. If yes, what is the appropriate penalty?

Principle of progressive discipline applies

Document, document, document

- Document all steps, including non-disciplinary discussions (e.g. coaching sessions)
 - Contemporaneous notes – use a notebook or secure word document

Procedural requirements

- Advance notice
- Union representation at disciplinary meetings
- Clearly set out allegations to the employee
- Timeline for imposing discipline
- Sunset clauses

When discipline escalates: grievances

- Resolve differences arising from the interpretation, application or alleged violation of a collective agreement
 - Individual grievances
 - Group grievances
 - Policy grievances
- Prescribed steps in the grievance process – depends on the collective agreement

What to do when you get a grievance

Ask yourself two questions:

1. What kind of grievance are we dealing with?
2. What stage in the process does the grievance start?

Know when you have to call the union

- Outlined in your collective agreement
- Common situations include:
 - Disciplinary meetings
 - Layoffs
 - Permanent closures
 - Modification of work schedules
 - Technological change

Bill 124 declared unconstitutional



What is Bill 124?

- Limited total compensation increases for broader public sector employees to 1% for each 12-month period within a 3-year moderation period
- Applied to both unionized and non-unionized employees
 - Unionized settings – moderation period began first day of a collective agreement reached after June 5, 2019
- Limited exceptions to the 1% cap

What happened?

- Charter challenge alleging violation of freedom of association, freedom of speech, and equality rights
- Ontario Superior Court of Justice's conclusions:
 - Bill 124 did not restrain freedom of speech or equality rights
 - Bill 124 did substantially interfere with collective bargaining and violated freedom of association
 - Violation not saved by section 1 of the Charter

Similar decision in Manitoba

- In June 2020, Manitoba Court of Queen's Bench declared *Public Services Sustainability Act* violated the right to collective bargaining
 - Legislation imposed a 2-year wage freeze on new public sector collective agreements
 - Salary and other monetary benefits (e.g. bonuses, allowances) could not be increased
- Manitoba Court of Appeal overturned the ruling in October 2021
- Supreme Court of Canada declined to hear the appeal
- Legislation was ultimately repealed by Manitoba Government

Impact of decision on unionized workplaces

- Compensation increases over 1% now permitted
- Negotiation of increases in workplaces currently subject to collective agreements negotiated under Bill 124
 - Re-opener provisions in collective agreements
- Wage trends in impacted industries

The background of the slide features a close-up of a fossilized insect, likely a fly or similar, embedded in a light-colored, textured rock matrix. The insect's legs and body are clearly visible as dark, raised impressions. A large, semi-transparent purple shape with rounded corners is overlaid on the left and center of the image, partially covering the fossil. The word "Questions?" is written in white, bold, sans-serif font on the purple background.

Questions?

The background of the slide is a textured wall with a mix of beige, tan, and grey tones. A large, semi-transparent purple shape is overlaid on the left side of the image, containing the text. The purple shape has a rounded top and a pointed bottom right corner.

What do you want to hear from us next?

Upcoming dates:

March 2022 – Using replacement workers during a strike (Cross Canada)

Thank you



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