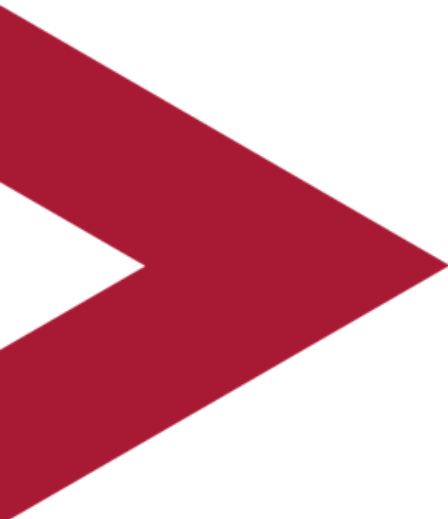




Go Ahead and Ask Us: Your Questions Answered

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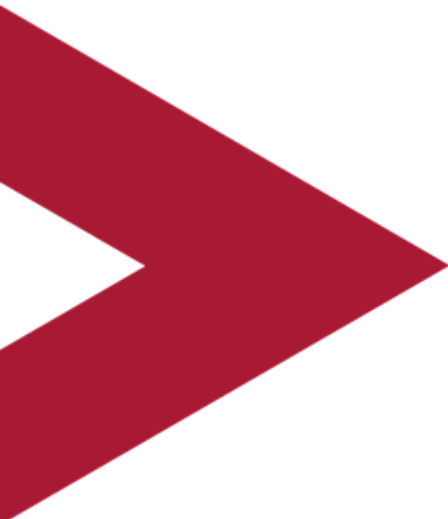
If a person has been employed
for over 10 years in Nova
Scotia, can they be dismissed
for non-culpable absenteeism?

Answer – The Legal Framework

- Important question for Nova Scotian employees and employers governed by The Canada Labour Code
- Nova Scotia – Section 71 of Labour Standards Code:
 - Over 10 years employment
 - Not unionized
 - No discharge “without just cause”
- Canada Labour Code – Section 240
 - Over 12 months of employment
 - Not unionized
 - “unjust” dismissal

Answer

- Can dismiss for non-culpable absenteeism
- Would be “just cause”
- However – Under Section 72 of Labour Standards Code still must pay – up to 8 weeks – as language there is “willful misconduct or disobedience or neglect of duty”
- Canada Labour Code – no requirement for pay



How much can an employer say
publically about an employee
who has been terminated with
cause?

Answer

Less is More

- If you cannot say something good about someone, say nothing at all.

Answer

- NSP was successfully sued in 1996 for wrongful dismissal after firing an employee for cause and then sending an e-mail to hundreds of employees saying that Russell was terminated for incompetence.
- One reason “was to send a clear message to other employees that this is what happens to unsatisfactory, un-improving performance”.
- The court found that Russell had suffered a significant mental distress ordered aggravated damages of \$40,000 for mental distress, however no punitive damages nor damages for defamation.

Answer

- Privacy more valued today; the “tort of intrusion upon seclusion” and some privacy legislation.
- But “going public” may be necessary if you’re dead certain there is cause and where the employer’s reputation is at risk or a workforce message has to be sent.



These materials are intended to provide brief informational summaries only of legal developments and topics of general interest.

These materials should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.