



Tracking Hours of Work Can Allow Employers to Hold Employees Liable for Time Theft

February 2023 Employer Alert

All Canadian employers are legally required to track their employees' hours of work. In particular, each jurisdiction has employment legislation that confirms the requirement for employers to track hours of work. Even without such a legal obligation, employers should still track hours of work. By tracking hours of work, employers can better identify and address productivity issues, can limit exposure to overtime claims, and can potentially document a claim for time-theft. Tracking hours of work can ensure that labour costs are appropriate and as expected.

In a recent **tribunal decision**, by tracking an employee's hours of work, an employer was able to successfully defend against a wrongful dismissal claim and obtain judgment against a former employee for time theft. In that matter, the employee worked remotely for the company and was paid based on her submitted timesheets. After concerns were raised about the employee's productivity, the company had installed a software on her laptop called TimeCamp. This software tracked the employee's time and activities. After a month, the company reviewed the software data and concluded that the employee had falsely claimed 50.76 hours of work. The company dismissed her for misconduct.

After being dismissed, the employee filed a claim alleging that she had been wrongfully dismissed. In response, the employer submitted a counterclaim that the employee had engaged in time

Authors

Christine Ashton
905-940-0526
cashton@wvllp.ca

Our Employment/Labour Lawyers



Christine Ashton



Daniel Condon



Doug Langley

theft. At the hearing, the employee maintained that she had not falsely reported her hours and claimed that the software overlooked the hours she spent working on hardcopies of documents. The tribunal concluded this explanation was not believable, as TimeCamp also tracked printing and uploading, and there was no evidence of substantial hardcopy-related activities. Accordingly, the tribunal held that the employee was properly dismissed for misconduct and, as such, had no termination entitlements. Further, in light of the established time theft, the tribunal ordered that the employee repay the employer.

The above decision confirms the multiple upsides to tracking hours of work. The employer was able to verify the productivity issue, properly dismiss the employee for misconduct, and successfully obtain judgment against the employee for fraudulent wages.

There are many apps and software programs available that allow employers to properly track hours of work. If your business is not currently using one, it should strongly consider doing so in the future. The right to use such an app or software and the use of such an app or software should be properly confirmed in your Employee Handbook. In addition, for employers in Ontario, this app or software must be properly disclosed in your formal written monitoring policy.

For further information about the above, including putting into place hours of work tracking and drafting an employer policy on hours of work tracking, please [contact our firm](#).

