



Court Confirms Employer Can Dismiss Employee Where Side Job is a Problem

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Over the last decade, there has been a rise in the number of workers with a second job (often referred to as a side hustle or side job). Now with inflation, even more workers are considering taking on a side job to address the increased household costs. As an employer, it can become an issue when an employee has a side job. The employee may show up for their shift tired and distracted. Even worse, you may discover that the employee is attempting to work both jobs at the same time, committing time theft.

As an employer there are steps you should take in regards to your employees potentially working side jobs. First, you should ensure that you are addressing side jobs in your employment agreements and in your employee handbook. These documents will clearly establish the expectations, including that during work hours employees are to be focused on your business. These documents will also confirm that, if an employee is working elsewhere, they must disclose it to you. This will allow you to properly identify and address any conflicts of interest. Further, these documents can restrict an employee's ability to work elsewhere (including outside of working hours). Of course, these documents must be carefully drafted to comply with any non-competition prohibition.

Even if your business has neglected to address side jobs in the employment agreements and employee handbook, you may still be able to dismiss an employee for just cause if an issue arises as a result of a side job.

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In the recent British Columbia decision of *Dove v. Destiny Media Technologies Inc.*, an employee was dismissed for cause. The employer had confirmed through an investigation that, due to a side job, the employee was regularly absent from work and struggling with meeting deadlines. It was also determined that the employee was often working at her side job during the hours she was supposed to be working for the employer. After the employee was dismissed for just cause, she filed a claim alleging there was no cause. The Court dismissed the claim, confirming that the employer had just cause.

The decision of *Dove* confirms that employees can be properly dismissed, without any termination entitlements, in regards to a side job. It also confirms the importance of employers properly investigating and responding to any concerns regarding a side job. The investigation needs to confirm the impact of the side job (e.g. a conflict of interest, time theft, etc.). Further to the investigation, the employee should be given a chance to respond to the allegations. Once the investigation is concluded, the response should be proportionate (e.g. a warning, a suspension, a dismissal with cause, etc.). If a decision is made to dismiss the employee as a result of a side job, employers should be mindful of the potential termination entitlements. Even if just cause is established, in Ontario, there remains statutory termination entitlements unless wilful misconduct is also established.

For further information on how to address your employees engaging in side jobs, including putting into place side job provisions in your employment agreements and employee handbook, please [contact our firm](#).

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