

WHAT'S NEW at RUBIN THOMLINSON LLP

Janice led the Legal Update webinar hosted by the Conference Board of Canada's Council on Inclusive Work Environments on October 5.

We held a successful inaugural session of Advanced Workplace Investigation Techniques on October 14. Our next session will be held on March 3, 2011. If you are interested in attending, please contact us at (416) 847-1814 or seminars@rt-law.ca.

Christine Thomlinson co-chaired the HRPAs annual HR Law Conference on October 21. She also discussed, "Practical Issues Arising from Implementation of Bill 168".

Janice participated in a mediation demonstration entitled, "Advocating Your Client's Position Persuasively in Mediation", as part of the Law Society of Upper Canada's 11th Annual Employment Law Summit on October 28.

Janice Rubin was quoted in the article "Employment contracts can keep disputes out of court" in the October issue of Investment Executive magazine.

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Drafting company policies takes time and attention. Companies invest this time because they expect that their employees will comply with the policies. In fact, they count on this compliance for the smooth running of their businesses. Many employers assume that an employee's failure to follow policies should justify some form of discipline, and repeated violations should certainly justify dismissal. However, a recent decision of the Manitoba Queen's Bench, **Salkeld v. 7-Eleven Canada, Inc., 2010 MBQB 157**, helps illustrate that not all policy violations, even repeated violations, will be cause for termination.

Repeated Violations of Company Policy: Just Cause for Dismissal?

Beverly Salkeld was 52 and had worked for 7-Eleven Canada for 27 years. She had a good record and received an "exceeded expectations" grade in her last performance review.

7-Eleven had a concern about children buying cigarettes, because of legislation preventing the sale of tobacco to minors. The company implemented a policy, the "ID Zone Policy", requiring employees to ask for identification from any customer attempting to buy tobacco products who appeared to be younger than 30. According to the Policy, an employee would be fired for two violations. Ms. Salkeld was aware of the Policy, had been trained on the Policy and knew that a breach would result in disciplinary action that could include termination. Regardless, Ms. Salkeld violated the Policy on two separate occasions and was fired.

The first time, Ms. Salkeld sold tobacco

to Mr. Cameron (a mystery shopper) without first asking him for identification. When 7-Eleven found out, they issued her a letter of warning advising her that any further violation of the Policy would result in the termination of her employment. Ms. Salkeld did not agree that she had violated the Policy; she said that she had not asked Mr. Cameron for identification because she did not think he was younger than 30. She signed the letter acknowledging its contents out of fear that she would be fired if she did not.

About six months later, Ms. Salkeld was involved with a second mystery shopper, and she again sold tobacco products to a person under the age of 30 (Ms. Thorne) without requesting identification. She was put on paid leave for approximately two weeks and then informed that she was fired for just cause. She sued for wrongful dismissal

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Repeated Violations of Company Policy: Just Cause for Dismissal?

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and the Court considered whether 7-Eleven's actions were reasonable.

The Court noted that 7-Eleven disciplined employees for failing to ask for identification regardless of whether or not the employee truly believed the customer was younger than 30. Regarding Ms. Salkeld's first violation, the Court considered the reasonableness of Ms. Salkeld's actions and agreed with Ms. Salkeld that Mr. Cameron could have been mistaken for being older than 30. The Court held that the second mystery shopper, Ms. Thorne, did not reasonably appear to be over the age of 30 and found that Ms. Salkeld had violated the Policy when she failed to ask Ms. Thorne for identification.

7-Eleven decided to fire Ms. Salkeld for two breaches of the Policy, however the Court found that she had only breached the Policy once. Interestingly, Justice Spivak held that, even if the interaction with the first mystery shopper (Mr. Cameron) had been a violation of the Policy, there would still not have been just cause to terminate Ms. Salkeld. There was no evidence that the violation of the Policy on either occasion was a willful disregard or intentional breach of the policy.

Justice Spivak stated "I have difficulty accepting that the circumstances here were sufficiently serious to amount to a loss of trust and just cause when balanced against Ms. Salkeld's lengthy adherence to the ID Zone Policy, the absence of an intentional refusal to follow the rules or pattern of careless disregard, and her many years of good service and devotion."

The Court concluded that 7-Eleven terminated Ms. Salkeld without just cause and awarded her 14 months' reasonable notice.

What does this mean for employers?

1. All breaches of a company policy will not amount to just cause for termination.

The circumstances surrounding the breach must also be considered, including the employee's past adherence to company policies and the employee's intentions.

2. Service matters. Employees with longer service will be given more latitude so employers must be particularly cautious when seeking to terminate long-service employees for cause.

3. Consider whether the policy breach was intentional or whether the employee demonstrated a willful disregard for the policy. If there was no willful disregard for the policy and the breach was not intentional, employers should consider whether a written warning or some lesser form of discipline would suffice.

4. Policies aren't worth the paper they're written on if employees don't know about them. In this case, Ms. Salkeld admitted that she was aware of the Policy, but more often than not, employees deny having knowledge of the policy in question and employers struggle to find evidence of the employee's awareness. ●

UPCOMING EVENTS

The second edition of A Practical Guide to the Law of Termination in Ontario, co-authored by **Janice Rubin** and **Hena Singh** and published by Canada Law Book, is now available. [Click here to order your copy.](#)

December 15-17

The next session of [Basic Workplace Investigation Techniques](#) takes place on **December 15 and 16**. We are also conducting a [Report Writing Workshop](#) on **December 17**. If you are interested in attending either session please contact us at (416) 847-1814 or seminars@rt-law.ca.

Upcoming Teleseminar:

An Update on Social Networking
& Internet Use
November 23, 2010

The internet and social media are rapidly becoming our principal form of communication. How do you develop an effective internet and social networking policy? Can your social networking policy cover out-of-office online activities? What are the expectations of privacy in an online world?

Join Christine Thomlinson and Sarah Vokey for an informative hour-long session. The \$99 fee allows 4 people from your organization to participate.

This program will cover why an employee's online activity matters; the elements of an effective internet and social media policy; key steps to protect your workplace and its reputation online while respecting privacy laws; and more.

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