



## Just Cause of Firing Employees by Jodi L. Wyman

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An employer is allowed to dismiss an employee without notice if they have “just cause” to do so. For years Courts have been busy defining what are and what are not reasonable grounds to fire an employee. To make matters more complicated, the law is regularly re-defined and re-examined. Employers have to ensure they keep up with the latest Court decisions and get legal advice for difficult situations.

Not all employee misconduct will constitute just cause for dismissal. It must be the type of conduct that violates the major conditions of the employment contract and/or it amounts to a breach of trust. Courts have said that the misconduct must be very serious, and cannot be of a minor nature given what an important part of life one’s job is. The employer will obviously have to have good evidence of the misconduct, as well as documented warnings. Most importantly, the grounds for dismissal must not be as a result of a disability, or the employer could be faced with a discrimination claim.

Some grounds for termination include:

- Dishonesty, Fraud or Theft. When there is clear and convincing evidence an employee engaged in dishonest conduct or fraud and did not remedy the situation, and when the employer suffered harm as a result.
- Disobeying policy or instructions. If the employee refuses to follow clear and consistent instructions relevant to their job without reasonable excuse.
- Being Late or Absent. When the employee is frequently absent or late without reasonable excuse and the instances are well-documented, as are the warnings and threat of dismissal.
- Refusal to Accept a Transfer. The employer must show that the employee had previously accepted transfers or understood transfers were a likely part of the job, was given ample notice and would not suffer any financial hardship as a result of the move.
- Performance problems. If the employee is working far below the standard expected, in spite of proper training and supervision and in spite of warnings and assistance.
- Competing with the Employer or Looking for Other Work. If the employee engages in a competing business, uses confidential information for a competitor or solicits the employer’s customers.
- Substance Abuse. If the employee’s performance was affected by drug or alcohol use and the use is not the result of emotional problems or an addiction (and therefore may be a disability).
- Harassment. If the Employee participated in harassing behaviour over a long period of time even after having been warned that such conduct was unacceptable.
- Conflicts with Co-Workers. If an employee is repeatedly abusive or rude and refuses to change, or if there was an assault or fight in the workplace.

- Criminal Behaviour. If there is strong evidence of the employee's illegal activities either while on the job or while off-duty but using the employer's resources, and if the behaviour would cause harm to the employer's business, reputation or staff.

This list is not exhaustive, and depending upon the factors, there may be other reasons to terminate an employee without notice. As with any area of employment law, contracts, in particular collective agreements, must be reviewed as a starting point.