

BULLETIN

## □ Off-duty conduct □

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What is -  
off-duty  
conduct?"  
When can  
employers  
discipline  
employees  
for -off-  
duty  
conduct"?



Employee behaviour that is characterized as -off-duty conduct" is behaviour occurring outside the scope of an employees performance of regular duties, but falls below a reasonable norm in relationship to the employers legitimate concerns, and could give the employer grounds to assert that the employee is unsuitable to carry out her or his duties.

Although -off-duty conduct" is commonly thought of as behaviour that occurs outside the workplace and away from the employers place of work, it can also include telephone calls or comments made from the employers place of business, or email messages sent from an employers computer.

Once it has been determined that an employees behaviour constitutes off-duty conduct, the employer must show, in order to justify discipline, that the incident giving rise to the disciplinary sanction had or has some effect on its operations. Each case turns on its own peculiar facts and the nature and gravity of the discipline imposed varies.

When deciding whether an employer was justified in discharging an employee for off-duty conduct, arbitrators generally require the employer to demonstrate:

1. the employees conduct harmed the employers reputation or product;
2. the employees conduct renders him or her unable to perform his or her duties;
3. the employees conduct leads to a refusal, reluctance or inability of other employees to work with him or her;
4. the employees conduct constitutes a serious breach of the Criminal Code, therefore the general reputation of the employer and its employees is injured;
5. the employees conduct places difficulty in the way of the employer properly carrying out its function of efficiently managing its works and efficiently directing its working forces.

In any discipline for off-duty conduct the employer would be required to meet the -just cause" test, including the more rigorous onus required to bring off-duty conduct into question in the workplace.

Further, as in all disciplinary cases, any arguments by an employer that an employee should be disciplined for off-duty conduct would be subject to arguments of mitigation.

Mitigating circumstances include whether the

employee admitted responsibility, provided a reasonable explanation, or was experiencing serious personal circumstances leading to out-of-character conduct. 

Ritu Mahil is HSA legal counsel.

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180 East Columbia  
New Westminster, BC V3L 0G7

Website  
[www.hsabc.org](http://www.hsabc.org)

Telephone 604-517-0994  
1-800-663-2017