

Off-duty conduct is beyond the scrutiny of your employer except in certain exceptional circumstances

February 1, 2000

The Report: February / March 2000 vol.21 num.1

by JUDITH MCCORMICK / CALM



Can what I choose to do off-duty have any impact on my employment? Can my employer have any say in what I choose to do on my days off?



He was an avid motorcyclist. She didn't pay her bills on time. He was convicted of possession of marijuana.

What do these three workers have in common?

All were fired for things that happened outside working hours.

At first glance it seems strange that an employer should have any rights to intrude on a workers personal life.

After all, a worker isnt paid for off-duty hours. Why should this employer have any say at all in what he does?

Most arbitrators agree this is a starting point. As one commented, workers are entitled to be free of their employers reach when they leave work.

However, arbitrators have also allowed an employer to discipline or discharge workers based on their personal activities when there is a legitimate, overriding business interest at stake.

For example, the avid motorcyclist above had numerous accidents that meant he was frequently off work.

The marijuana smoker was an airline employee responsible for the safety of the public, who would be sensitive to his character and reputation, according to the arbitrator.

The creditors of the third worker also had a close business relationship with the employer and were approaching the employer about her failure to pay her bills.

In other words, these kinds of cases are likely to turn on factors such as whether the workers personal activities harm the employers reputation, interfere with production, or prevent the worker from satisfactorily performing the job.

On the other hand, the case law also makes it clear that if a workers personal life doesnt hurt the employers business interests, its none of the employers business.

Judith McCormack, a former chair of the Ontario Labour Relations Board, is a lawyer with Sack Goldblatt Mitchell in Toronto.

Type:

[The Report](#)

- [Print](#)
- [PDF](#)

180 East Columbia
New Westminster, BC V3L 0G7

Website
www.hsabc.org

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