

# 2015-09

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Imagine one of your long-term staff has a bad attitude. She has been with you for over twenty years, and her behaviour has been getting progressively worse. One day, you are having a team meeting about some new ways you want things done in the office when she says to you, in front of your entire team, "Here's what I think: up yours!" And then she storms out of the room. You follow her, and tell her that you are fed up with her disrespectful attitude and lack of professionalism. You tell her that she is suspended for three days, and that you want her to go home and think about her poor conduct. She starts crying and asks you to take it out of her vacation, claiming that she cannot afford to lose three days' pay. Fed up, you say, "Well you should have thought of that before! See you in four days."

She leaves and never returns. A few weeks later, you receive a demand letter from an employee-side lawyer for two years' of her pay, plus legal fees, based on a claim that she was "constructively dismissed". Believe it or not, the fact scenario is based on real case law, and even worse, the employee won. In effect, the Court said the employee never agreed as part of her contract to be disciplined without pay. The Courts in Canada have been very clear that an employee must consent to discipline. This is one of the key reasons it is so important that your workplace policy manual include an expertly crafted Discipline Policy.

There are myriad situations in which the Discipline Policy that we crafted for our clients has saved them enormous sums of money, not to mention time and peace of mind. Among the situations you should look out for are aging employees whose performance is deteriorating over time, or employees who name the system when they become pregnant. Among other things, a well-

game the system when they become pregnant. Among other things, a well-drafted Discipline Policy can be extremely effective to defend against human rights complaints and reprisal actions by employees on parental leave.

If you need any assistance in using your Discipline Policy, or you don't yet have one, contact your MBC team today: 905-825-2268 or [chs@mbclegal.ca](mailto:chs@mbclegal.ca).

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