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Disciplinary Measures Applied to Employees Under the Age of Majority

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There are many individuals under the age of majority in the labour market, whether in full-time jobs or, most often, in part-time jobs. Also, during the summer season, many employers hire students to replace vacationing employees. For several of these young people, this is their first job and their first exposure to the work place.

Various events can give rise to the application of a disciplinary process to these young employees. Some people argue that a specific procedure should be used when imposing disciplinary measures on employees who are less than 18 years old. They claim that an employer has the obligation to contact the minor's parents and to act only in their presence.

There is no law which sets forth a specific procedure, but the jurisprudence has imposed upon employers the obligation to act with moderation and proper judgment with respect to dismissals and disciplinary measures, and even more so when dealing with vulnerable employees such as those under the age of majority.

The *Civil Code of Québec*

We must consider the application of both articles 33 and 156 of the *Civil Code of Québec*, which read as follows:

"33. Every decision concerning a child shall be taken in light of the child's interests and the respect of his rights.

Consideration is given, in addition to the moral, intellectual, emotional and material needs of the child, to the child's age, health, personality and family environment, and to the other aspects of his situation.

156. A minor fourteen years of age or over is deemed to be of full age for all acts pertaining to his employment or to the practice of his craft or profession."

Employees 13 Years of Age or Under

In matters of discipline in the work place, article 33 of the *Civil Code* raises problems regarding employees 13 years of age or under. For example, an employer must be able to prove that a decision to dismiss the child has been "taken in light of the child's interests".

An employer may show that, by taking this prima facie punitive measure, he is trying to inculcate solid moral values in the child (integrity, respect, loyalty, etc.). However, it is difficult to see how an employer could adopt such a moral approach without acting in close consultation with the employee's parents, who are no doubt in the best position to allow the employer to properly take into account all of the factors set out in the second paragraph of article 33.

Employees 14 Years of Age or Over

As a result of article 156 of the *Civil Code*, article 33 does not have any effect with respect to employees who are at least 14 years old.

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This takes care of the problem insofar as the *Civil Code* is concerned, but, as discussed below, when assessing the correctness of a disciplinary measure, the courts will consider the fact that an employee is young, that he may not have much experience and that he may lack maturity.

An *Act in respect of Criminal Justice for Young Persons*

This federal Act, which was adopted by the House of Commons on May 29, 2001 and is currently before the Senate, is intended to replace the *Young Offenders Act*. In essence, it governs State intervention with respect to young people (17 years of age or under) who commit criminal or penal offences. Therefore, *a priori*, it does not set any standards affecting employment contracts between employers and employees.

Section 146 of the new Act (which is almost identical to section 56 of the *Young Offenders Act*) provides specific protection to minors regarding the circumstances in which they may make an incriminating statement. Thus, among other things, one must inform the "young person" of his right to consult a lawyer and a parent before making any statement. Such a statement is usually taken by a peace officer, but may also be taken by a "person in authority", an expression which could include an employer if the offence is related to the work place.

Here is a practical example: A human resources manager suspects a 16-year old employee of the company of having committed a theft. He calls the employee to his office and takes a statement in which the employee admits to the theft. The human resources manager then contacts the local police and provides the police with a copy of the incriminating statement.

At the criminal trial, the Crown prosecutor will consider that, in this situation, the human resources manager was a "person in authority". The Crown prosecutor will be able to introduce the incriminating statement into evidence only if, in a preliminary debate called a "voir-dire", he can establish that the statement was obtained in compliance with all the conditions provided in section 146.

This explains why a police officer involved in such a situation, one in which he cannot confirm the circumstances in which the employer's representatives obtained the statement, will often prefer to take down another statement from the minor, so as to ensure that all the requirements of section 146 have been observed.

However, section 146 governs the use of incriminating statements only within the context of a criminal trial; it does not apply to a dispute governed by labour law in which the employer is faced with the contestation of a disciplinary measure. A statement taken by an employer may be legal and admissible before a grievance adjudicator, a commissioner or a judge, even if it would not be admissible in a criminal trial because section 146 has been breached.

Rules Against the Abuse of Rights

Therefore, the legality of a disciplinary measure imposed on an employee under the age of majority will not be subject to the procedural rules prescribed by the *Young Offenders Act* and will most probably not be subject to the rules set forth in *An Act in respect of Criminal Justice for Young Persons.*

Nonetheless, an employer must see to it that disciplinary measures are imposed in a manner that is reasonable and not abusive, arbitrary or discriminatory. Indeed, section 46 of the *Charter of Human Rights and Freedoms* sets forth the right of every worker to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

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Numerous judgments have pointed out the specific vulnerability of an employee facing a dismissal. Those judgments include the following:

- *Wallace* v. *United Grain Growers Ltd*, (1997) 3 S.C.R. 7;
- *Standard Broadcasting Corporation Limited* v. *Stewart*, (1994) R.J.Q. 603 (C.A.);
- *Bernardini* v. *Alitalia Air Lines*, J.E. 93-909 (C.S.).

As mentioned above, the courts are sensitive to the special vulnerability of young workers and often tend to consider their inexperience or lack of maturity as mitigating factors, notwithstanding that they may not have much seniority or may not have accumulated many years of service for the employer.

In dealing with a vulnerable employee (whether due to his age, state of health or other condition), an employer must take reasonable and appropriate precautions when triggering the disciplinary process. Otherwise, the courts could consider that the employer has abused his management rights, even if there is just and sufficient cause to impose a disciplinary measure.

Practical Tips

Although there is no law which sets forth specific rules applicable to an employer when imposing disciplinary measures on an employee under the age of majority, we believe that some guidelines are in order:

- an employer must act with judgment and take into account the relative vulnerability of his young employees. The employer must be able to show that he took a reasonable decision after having enquired as to the young employee's state of mind and, if the parents' involvement is a point of contention, as to the young employee's relationship with his parents;
- if a collective agreement requires the presence of a union representative at a meeting with an employee regarding the disciplinary process, this obligation is particularly crucial with respect to employees who are minors;
- with respect to an employee 13 years of age or under, the employer should always consult and involve the employee's parents, in accordance with article 33 of the *Civil Code*;
- as for an employee 14 years of age or over, the employer should act with caution before refusing the employee's request that his parents be present. One should consider the degree of seriousness of the offence in question, the urgency of the situation as well as any clues that the employee would be deeply disturbed by the inquiry process;
- conversely, an employer should not have an absolute rule of automatically calling an employee's parents, particularly when the young employee objects, given that a minor 14 years of age or over is deemed to be of full age for the purposes of his employment according to article 156 of the *Civil Code*. The employee might be objecting for valid reasons, namely the expectation of an overreaction by his parents.

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