
Employer/Employee Implied Obligations

Certain terms are implied in employment contracts and create obligations and rights for employees and employers. An implied obligation does not need to be expressly included in the contract of employment in order to be enforceable. It should be noted that these implied terms may be expressly altered or waived in the employment contract, but this is often impractical due to the nature of the terms. The following is an overview of the various terms the court commonly implies in employment contracts.

Employee Implied Obligations

Duty to Obey Employer's Lawful and Reasonable Orders

- An order must be lawful, reasonable and within the scope of employment. Insubordination refers to an employee's refusal to obey the lawful and reasonable orders of the employer. Insolence which often accompanies insubordination, is the use of profanity or even violence directed at the employer.

Duty to Attend Work on Time

- An employee must attend work in a timely manner and is only excused from this obligation where they have the employer's permission or if they are unable to report to work.

Duties in Respect of Conduct and Behaviour

Duty to Act Honestly

- An employee may not act in a deceitful, fraudulent or otherwise dishonest manner toward their employer. Such conduct in most circumstances goes to the core of the employment relationship and may constitute cause for dismissal.

Criminal Acts

- As with dishonesty, not every criminal conviction violates the terms of the employment contract. Remember that the [Human Rights Code](#) of British Columbia prohibits discrimination on the basis of a criminal conviction where the conviction is not related to employment. Generally, any criminal conviction that involves dishonesty such as theft or fraud will constitute cause for dismissal.

Alcohol and Drugs

- It may be a violation for an employee to report to work insufficiently sober to perform their job effectively without endangering others. However, be mindful that such behavior may indicate the employee suffers from an addiction, which is considered a physical disability under the [Human Rights Code](#) of British Columbia.

Duty to Perform Work Competently

- An employee has a duty to perform their work competently, which is accompanied by a requirement that the employer provide personalized assistance in training the employee if there is a substantial change to the employee's duties or work processes.

Duty of Good Faith

- Good faith speaks to the employee's obligation to act in the best interests of the employer.

Duty of Confidentiality

- Requires that the employee not otherwise disclose or use the private or confidential information of the employer. This duty extends past dismissal.

Obligations of Fiduciary Employees

- Certain key employees in a fiduciary relationship with the employer have a greater duty to act in the best interests of the employer. Fiduciary employees are those who have relatively broad independent discretion in handling critical aspects of an employer's business, particularly where the employer's business interests are especially vulnerable to the employee's actions. Such an employee may not use any opportunity of the employer's for personal advantage, must disclose any information reasonably expected to impact the employer's business interests, and cannot compete with the employer for a reasonable time after employment has ceased.

Employer Implied Obligations

Duty to Pay for Work Done

- Self-explanatory obligation for the employer to pay the employee for work performed.

Duty to Provide Work

- Traditionally the employer was not under a duty to provide work to an employee, however more recent cases have found that there is a duty to provide work unless it can be established that work is not being provided for a legitimate business reason and the decision was made in good faith. Additionally, where remuneration is based on commission or where the profession is such that its actual performance of the work contributes value to the employee beyond remuneration, there is a duty to provide work.

Duty to Provide a Safe Work Environment

- Largely covered by legislation such as the [Workers Compensation Act](#) and the [Occupational Health and Safety Regulation](#).

Duty to Provide Notice of Termination

An employer is subject to statutory obligations to provide notice of termination under the [Employment Standards Act](#). There is also a duty to provide notice of termination at common law, which is the content of this implied term.