



## Don't jump the gun: AWOL employees

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We stressed in our recent seminar series how important it is that employers treat employees with respect. A new case highlights that point, in particular regarding an employer's obligation to absent employees. The lesson from the case is that employers should make a reasonable effort to find out why an employee is absent before concluding that employee has quit. Failure to do so may lead not only to damages for wrongful dismissal but also damages for breach of the duty to act in good faith.

In *Beggs v. Westport Foods Ltd.*, 2010 BCSC 833, the plaintiff was employed as a part-time clerk in a supermarket meat department. In February 2009, her mobile home was destroyed by a fire. She called her supervisor and reported that she would not be coming to work the next day as scheduled and she did not know when she would be returning to work. She did not contact the employer again for several months. The employer's attempts to contact the plaintiff were limited to two attempted phone calls, which were unsuccessful because the plaintiff's phone line was down due to the fire damage. The plaintiff began to suffer from anxiety and depression. She took a doctor's letter to her employer to support a medical leave. There, she found out that the employer had already issued a record of employment which stated the employee had quit. The plaintiff took the position that she had not quit. The employer responded by warning the plaintiff "not to make accusations". The employer followed up with a letter from its lawyer confirming its view that the plaintiff had quit; warning the plaintiff that it would counterclaim if she began litigation; and disparaging her illness as an "alleged" medical condition. The employer then sent a further letter from its lawyer offering the plaintiff an unspecified job, and threatened to use the offer against the plaintiff if she refused it.

The plaintiff sued. The court found that the plaintiff had not quit but had been wrongfully dismissed, and awarded damages. The court also awarded \$20,000 in damages for breach of the employer's duty of good faith. The court found that the employer had acted insensitively when it failed to investigate the ongoing absence, and its conduct had exacerbated the plaintiff's illness. The court noted:

*The employer made no attempt to apologize or make things right; even after learning that the plaintiff's home had been destroyed by the fire along with most of her belongings; traumatic for anyone. The plaintiff was at a disadvantage. Besides the obvious unequal bargaining position, she was vulnerable emotionally and financially. She had to seek medical care and was put on medication as a result, and advised to stay off work. Her reputation was attacked in the letters from counsel for the defendant. She felt further intimidation.*

Based on the court's decision, employers should make a reasonable effort to follow up with an absent employee before concluding the employee has quit. One potential approach to reduce the risk of a similar claim is to have a policy setting out the party's respective obligations in the case of an absence. The policy may set out who carries the primary obligation of maintaining communication between the parties and the consequences for failure to communicate.