



Last chance agreements: a heavy burden on the employer

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On February 28, 2013, the [Commission des relations du travail](#) (the CRT) [cancelled the dismissal and ordered the reinstatement](#) of an employee who filed a recourse pursuant to Section 124 of the [Act Respecting Labour Standards](#) (LSA) alleging the failure by his employer to respect a reinstatement agreement also known as a "last chance" agreement.

The Facts

Mr. Saucier was employed by the City of Quebec (the City) for almost twenty years, as a foreman. From 2006, he began to experience a mounting absenteeism record related to a problem of alcoholism. After each return to work, the City offered Mr. Saucier various measures of accommodation.

After one of his many absences, Mr. Saucier signed a document that outlined the conditions the City imposed with respect to a possible return to work, including the obligation to undergo a detoxification treatment and random drug testing. On October 1st, Mr. Saucier signed a return to work protocol with similar requirements. These two documents constituted Mr. Saucier's conditional reinstatement agreement.

Five months after his reinstatement, one of Mr. Saucier's superiors detected the smell of alcohol around him and decided to subject him to alcohol tests. Both of these tests revealed the presence of alcohol. The employer decided to submit Mr. Saucier to a medical examination and, based solely on the conclusion that he had started drinking again, took the decision to dismiss him.

Analysis

The CRT recognized that the City had the right, given the long history of the employee, to impose certain conditions and grant him one last chance to provide a consistent work record.

While the City insisted that the agreement for reinstatement was breached based on positive test results, the CRT pointed out that the employer did not explain the results, the operation or reliability of these tests. The CRT went on to state that in the circumstances, these tests failed to establish whether the employee was under the influence of alcohol at work. The CRT described the approach of Mr. Saucier's superiors as "dilettantism" due to their failure to seek out Mr. Saucier's version of the facts.

The CRT noted that the reinstatement agreement, in addition to imposing the fulfillment of certain conditions by the employee, also bound the employer and imposed its obligation to promote the return and continued employment for the employee. As for Mr. Saucier, although he previously had problems of absenteeism, he was able to correct the situation upon his return and missed no more days of work for

reasons related to alcoholism. While the employee complied with all requirements of the agreement, the City, on the other hand, failed to meet its obligations, relying on test results that do not prove that he was under the influence of alcohol at work, subjecting the employee to an expert without grounds, and dismissing Mr. Saucier without just and sufficient cause. The reinstatement of the employee was ordered by the CRT.

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