**Habitual issues**

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Monday, Apr 17, 2023

When so many people work and interact at industrial and commercial establishments, conflicts between them are bound to arise. Similarly, management may have to deal with disciplinary matters as employees with different temperaments and backgrounds are engaged in various activities at these enterprises.

While the discipline issues of management staff are handled according to the terms of their employment, those of the non-management employees are dealt with under the law.

The provisions relating to handling of disciplinary matters are comprehensively covered in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and similar acts promulgated by the provinces. Legislators have quite wisely inducted the concept of progressive discipline under the law and acts and omissions committed by employees are classified into two categories of minor and major offences.

The minor offences (misdemeanours) and major offences (misconduct) are listed separately in the ordinance. The misdemeanours include disregard or disobedience of rules or orders, making false or misleading statements and inefficient, dilatory, careless, or wasteful working etc. An employee found guilty of any of these misdemeanours may either be issued a reprimand or imposed a nominal fine as prescribed under the law. However, frequent repetition of any of these acts and omissions by an employee makes them a major offence.

Even the list of misconducts comprises two sets of offences. There are those which may lead to dismissal of the employee from service even if any one of them is committed once, provided it is proved in the domestic inquiry held for this purpose. These include willful insubordination or disobedience to any lawful and reasonable order of a superior; theft, fraud, or dishonesty in connection with the employer’s business or property; willful damage to or loss of employer’s goods or property and riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline etc.

The act of sexual harassment committed by an employee falls within the purview of an act subversive of discipline. However, it is covered separately under the Protection against Harassment of Women at the Workplace Act, 2010.

Besides, there are five other types of acts and omissions, which constitute misconduct only if committed habitually. These are: habitual absence without leave or habitual late attendance; habitual breach of any law applicable to the establishment, and habitual negligence or neglect of work. It implies that these five acts and omissions committed by an employee are subject to being habitual to become misconduct. Therefore, it is essential to know the frequency of an act or omission that makes them habitual.

There is a landmark judgment to this effect given by a two-judge bench of the Sindh High Court (SHC) in September 2012. Usually, companies do not take strict action against employees’ habit of coming late to work. They try to improve their time-keeping through counselling or issuance of written reprimands. However, in this constitutional petition brought up by GlaxoSmithKline Pakistan Ltd, a charge man of the company had eleven years’ history of coming late to work. He came late for 223 times during the period January 1991-October 2001.

Despite receiving from the management 26 advisory letters, he failed to improve his time-keeping. The management’s decision to dismiss him from the job was upheld by the SHC. In its judgment, the court observed that the employee’s act of late attendance was continuous, chronic and frequent and hence it was ‘habitual’.

This case is unique as it reckons an employee’s eleven years attendance record to take action against him. Generally, organizations take a serious view of cases related to habitual absence without leave as compared with those of habitually late coming to work. No specific period can be ascribed for being habitual, which will depend upon the nature of allegations in each case.

Absence without leave for more than ten days constitutes misconduct under the law. An employee who indulges in excessive unauthorized absenteeism, say for two to three days every month for six months or more, makes him/herself liable to disciplinary action by the management. Employees’ chronic and regular absenteeism not only causes disruption in work processes but is also instrumental in increasing the cost of production incurred on replacements.

In 1969, the labour court had upheld the action of Karachi Shipyard and Engineering Works Ltd, Karachi, which dismissed an employee who was absent for 28 days spread over a period of six months.

Section 48 of the Factories Act, 1934 imposes restriction on double employment of workers. Similarly, companies get an undertaking from new hires that they are not engaged in any other job or business besides the one being offered. Any infringement of this rule constitutes violation of the company’s policy on conflict of interest.

However, as mentioned above, disregard or disobedience of a company’s rule does not amount to misconduct – unless repeated frequently. Therefore, an employee engaged in dual employment will first have to be warned to refrain from such employment.

Excessive absenteeism is an acute and widespread problem confronted by organizations around the world, which must be handled promptly while remaining within the legal framework.

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