

EMPLOYMENT STANDARDS FACT SHEET

TERMINATION FOR JUST CAUSE INVOLVING ABUSE OF VULNERABLE INDIVIDUALS

Introduction

Employment Standards attempts to balance the rights of employees whose employment has been terminated with the rights of Alberta's most vulnerable individuals. This fact sheet outlines how complaints for termination pay from employees who are alleged to have abused vulnerable individuals will be dealt with.

In home care, domestic employment and supported living arrangements that fall under the *Employment Standards Code*, employees may be terminated for abuse of the vulnerable individual that they are hired to support. As vulnerable individuals depend on these employees for their safety and well being, specific guidelines related to abuse are appropriate when determining whether just cause exists for termination of employment. A verbal abusive outburst by a support person, even if precipitated by a vulnerable individual's actions, could be more devastating to the emotional and mental well being of these vulnerable individuals than to other individuals.

Recognizing the seriousness of abuse of vulnerable Albertans, the Government of Alberta and Persons with Developmental Disabilities (PDD) have established measures to address this issue. The actions taken to address this are:

- Enactment of provincial legislation, the *Protection For Persons in Care Act*, which deals with abuse in group homes, hospitals and other publicly funded care facilities.
- Establishment of the PDD policy framework, the Abuse Prevention and Response Protocol, which applies to all PDD funded situations. Employment Standards will apply the definitions contained in the Protocol in the investigation of all complaints involving dismissal where abuse of vulnerable persons is alleged. Excerpts from the Protocol (available at www.pdd.org) follow.

Abuse Prevention and Response Protocol

While abuse means many different things to different people, for the purposes of the Abuse Prevention and Response Protocol, abuse occurs when a staff person misuses their authority by acting in a way that causes harm or could potentially cause harm to an individual receiving PDD funded supports. In PDD funded situations this means abuse by paid staff against an individual receiving funding from PDD. Some forms of abuse will be considered "criminal in nature" as they can be found in the *Criminal Code*. Other forms of abuse can be equally harmful and need to be taken just as seriously even though they are not violations of the *Criminal Code*. PDD identifies categories of abuse under the following headings:

(1) Physical Abuse

Physical acts of assault such as hitting, punching, kicking, biting, throwing, burning or violent shaking that cause, or could cause physical injury.

(2) Sexual Abuse

Sexual assault (touching of a person's sexual features without consent) and/or sexual harassment (any conduct, comment, gesture or contact of sexual nature likely to cause offence or humiliation to an individual).

(3) Physical Negligence

A failure to provide or make available necessities to people, such as food, clothing, shelter, hygiene, medical care, protection from hazardous environments, and support or supervision appropriate to the person's age, development or situation.

(4) Emotional Abuse

The rejecting, ignoring, criticizing, insulting, threatening, harassing, degrading, humiliating, intimidating or terrorizing of a person. Acts or omissions that cause or are likely to cause conduct, cognitive, affective or other mental disorders, emotional stress or mental suffering.

(5) Exploitation

Acts that take advantage of a person, including but not limited to money and material things, as well as persuasion to do things that are illegal or not in the individual's best interest.

(6) Inappropriate Use of Restrictive Procedures

Restrictive procedures are acts that restrict rights, freedom, choices or self-determination of an individual. An example of this would be inappropriate use of medication.

Application to Employment Standards

In Employment Standards complaints for termination pay, abuse of vulnerable individuals will be considered "just cause" for termination of employment. If an employee's employment is terminated for just cause, written notice of termination, pay in place of notice, or a combination of notice and pay are not required. To determine if abuse occurred, the above descriptions of abuse are used when investigating these complaints. Other things to establish are:

- Did the employee receive training on the Abuse Prevention and Response Protocol?
- How long has the employee worked with this vulnerable population?
- Even though a personality conflict between the vulnerable individual and support staff precipitated the abuse, did the staff person demonstrate care, compassion and respect towards the vulnerable individual?

This document is for general information. For the purposes of interpretation and application of the law, the *Employment Standards Code* and the *Employment Standards Regulation* should be consulted.

- Contact our Information Centre at: **427-3731**
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: www.gov.ab.ca/hre/employmentstandards