

Employees can sue for job loss — before you fire them!

Tom has been on your payroll for 2 years. He's a hard worker, but short-fused and self-righteous at times. Yesterday you asked him to muck out the horse stalls because your son was away. Tom did it, but blustered and fumed, saying he was hired to grow greenhouse vegetables, not shovel &*\$% manure!

Today, when you asked Tom if he could grease the tractor, he stormed out of the barn muttering something about constructive dismissal.

You know that if you fire employees without just cause or reasonable notice, they can sue you for wrongful dismissal, but what's this constructive dismissal stuff?

The principle is simple. "When an employer unilaterally changes a fundamental condition of the employment relationship, an employee can seek damages for breach of contract," explains Steven McShane, a human resource management and organizational behavior professor at Simon Fraser University in British Columbia.

Two actions can get you into trouble as an employer: changing the way an employee is paid, and changing the job he or she is responsible for doing, says B.C. ag. ministry farm management specialist Lorne Owen.

You can't, for example, switch from straight salary to a combination of base salary and production-related bonuses unless the employee consents, says McShane.

If you gave an employee the use of a vehicle to drive back and forth to work and then sell it, he could sue you on the grounds that the vehicle was part of his remuneration, McShane adds. Likewise, if you promised to provide housing, but later ask the employee to vacate the house so your recently separated daughter and her children can move in, he or she can sue you.

Substantively altering a job without express consent gives the employee grounds for a constructive dismissal claim, says Owen.

Suppose you run a nursery or large feedlot operation and your manager is responsible for 10 employees. Your brother comes home to work in the family business and is given responsibility for most of the employees and a

large percentage of the decision-making. Even if you continue paying your manager the same salary, he or she may be able to sue you for constructive dismissal because of loss of responsibility.

Or suppose you transfer a cow boss at one of your satellite locations to a stockman's position at the home ranch. If his responsibilities are reduced or it appears he has been demoted, he may have a case.

Constructive dismissal is an emerging topic in the legal arena, says McShane. It's a factor in one-third of dismissal claims.

As a farmer, you can ill afford to ignore the issue, says Owen, who organized a series of labor management workshops for farm managers this spring under the Canada-B.C. farm business management program. If you're sued and lose, the price can be high.

The awards that judges are granting vary, depending on an employee's length of service, age, education, and experience, says McShane. A typical 20- to 30-year-old farm laborer with one year's experience or more would likely be awarded one to 3 months' salary. A farm manager with several years' experience would be awarded considerably more.

So what about Tom? Does he have a case? Not likely. The change in duties was minor and only temporary. Nevertheless, it's a good idea to sit down and have a talk with him, says Owen.

Explain that you would like him to help out with other jobs around the farm. Outline your expectations and just what his responsibilities will be in the future.

Make sure he understands the changes and has sufficient time to digest the news. Get his consent.

It's a good idea to put both the proposed changes and Tom's consent in writing, says Owen. Doing so will mean each of you is perfectly clear about your new agreement.

Ultimately, this candor and clarity should make for a more harmonious working relationship, says Owen. If it doesn't, it will serve as strong defense against constructive dismissal charges. GG