

Member's Quarterly

Fall 2023 Edition

Feature

Quiet Quitting

Mapping the boundaries for Employees and Employers

With the post-COVID prevalence of remote work, previously dormant questions such as confronting burnout and recalibrating work-life balance have become a priority for many workers. Such reflection has generated two notable buzz phrases over the last two years: "Tang Ping", a term meaning to "lie flat," which originated in China in April 2021, and "Quiet Quitting," a concept that gained social media traction in the United States in September 2022.

Tang Ping and Quiet Quitting share a common philosophy – it is pointless to go above and beyond at work, so just do the bare minimum to get by. This article will focus on the latter term as it has been more commonly adopted by the North American audience.

To be clear, Quiet Quitting does not involve actual resignation, or even non-performance of work responsibilities; employees simply perform their jobs as described, within their designated working hours, and nothing more. Nevertheless, Quiet Quitting raises at least some yellow flags. A review of the rights and obligations of employees and employers would assist to define each party's boundaries in the Quiet Quitting context.

Employee Rights and Obligations

Employees generally have no legal obligation to excel at their work. Typically, standard employment agreement language merely requires an employee to discharge work duties prescribed by the employer in a diligent and faithful manner.

Further, Employment Standards legislation in most jurisdictions requires overtime pay for hours worked beyond 8 hours in a day or 44 hours in a work week for employees not otherwise expressly excluded from the application of these rules, such as managers. Ontario has taken its legislation one step further by mandating employers with more than 25 employees to implement a policy contemplating an employee's "right to disconnect" from work-related communications after work hours. A collective agreement or employment contract may also introduce additional protections around hours of work over and above statutory protections.

Concurrently, employers have a reasonable expectation that employees will perform their work duties during normal work hours, having regard to the type of work being done. Where an employee is habitually paid for work they have not performed, an employer may have just cause to terminate on the basis of time theft. Such was the case in the decision of *Besse v Reach CPA Inc*, 2023 BCCRT 27. Likewise, an employee who routinely refuses to comply with lawful directions may be subject to just cause termination for insubordination.

Because an employer will not owe severance payment to employees dismissed for just cause, employers must carefully document the time theft/insubordination, bring the same to the employee's attention, and engage in progressive discipline prior to dismissing an employee for just cause. Employers are strongly encouraged to seek legal advice before pursuing this route.



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Employer Rights and Obligations

Given that Quiet Quitting is not shirking one's work responsibilities or taking unauthorized absences from work, an employer cannot dismiss an employee engaged in this philosophy for just cause, absent additional factors.

That being said, employers have several options available to them to manage Quiet Quitting.

The first option is to do nothing. As stated, Quiet Quitting employees are not absent or underperforming employees. They merely lack the initiative to go above and beyond in their work. Accordingly, while an employer would hope that their employees willingly strive for excellence, there is no real basis to penalize Quiet Quitting employees.

A second option is to review the expectations outlined in the employee's employment agreement and any other relevant employee policies. These expectations should be clear and effectively support the business' goals. However, caution must be taken if any changes are to be made to such expectations as they may be construed as unilateral alterations to fundamental employment terms. Unilateral changes including reducing salary, increasing work hours above those originally agreed upon at hire, and engaging in bullying tactics expose the employer to constructive dismissal claims.

To mitigate the risks associated with (re)setting expectations, an employer may: i) obtain an employee's express consent for the change; ii) provide reasonable working notice prior to implementing the change; and/or iii) offer fresh consideration, such as a salary increase, in exchange for the new expectations.

Perhaps a more effective option is to incentivize employees to excel. Where possible, it is advantageous to gain an understanding of the employees' job satisfaction and concerns. Potential incentives include professional development training, dedicated mentorship, mental health supports, salary increases and service recognition.

Lastly, unless otherwise barred by contract or statute, employers still retain the right to dismiss an employee without cause. In without cause terminations, employers need only provide contractual or common law reasonable notice or payment in lieu. While without cause dismissals remain available to employers, the cost of replacing Quiet Quitting employees may outweigh any benefits for the same in tight labour markets.

In summary, Quiet Quitting does not affect employee and employer rights and obligations. Nevertheless, the global popularity of terms like Quiet Quitting reminds both employees and employers of the necessity of upfront, consistent and clear work expectations, as well as the importance of a work environment that actively inspires excellence.

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