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What can be done to discipline a manager? Potential solutions to keep in mind

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Except in cases of “serious misconduct,” managing a manager whose performance is unsatisfactory or whose conduct is inappropriate can be delicate.

Because of workplace usage and practices in Quebec, disciplinary management of managers differs from that applied to other employees of the company. Progressive disciplinary measures do not apply to managers, who are rarely, if ever, suspended.

HR Manager : Guidelines

In a situation involving an executive, an HR manager will have to assess whether or not there is a “serious reason” for dismissal in light of the duties assigned to the executive and his or her responsibilities with respect to alleged actions or situation.

For example, an executive who does not take into account the requests of the Board of Directors or his or her supervisor would be guilty of insubordination, which is a serious reason for dismissal, as is the inability to put into place an effective team.

Given that executives have a high degree of discretion in how they carry out their duties and responsibilities, it is up to them to find ways to meet the company’s expectations and objectives, unless these are unrealistic or unreasonable in the circumstances.

Nevertheless, executives must be notified of any dissatisfaction on the part of their employer when their conduct is inappropriate or does not meet stated expectations and objectives. It will then be up to them to make the necessary adjustments.

The courts recognize these special rules for executives.

The employer’s power to sanction

Section 2094 of the *Civil Code of Québec* (C.C.Q.) provides that an employer may unilaterally resiliate an employee’s employment contract without notice for a “serious reason.”

The courts consider that a serious reason is synonymous with dismissal for “good and sufficient cause,” as defined in jurisprudence or in section 124 of the *Act respecting labour standards*.

Taking into account the specific context of executives is necessary. They have considerable latitude in the performance of their duties, they exercise control over many company employees, their responsibilities may influence the future of the company, and they generally have better working conditions.

As a result, employers may be more demanding of executives, who [translation] “should not be treated as subordinate employees in disciplinary matters[1].”

Thus, the courts have recognized the following principles:

> Executives cannot “benefit” from so-called progressive discipline like other company employees, as a suspension would be illogical given the nature of their position.
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> Disciplinary measures are intended to help employees understand the seriousness of a situation in order to be able to remedy it. This cannot reasonably be achieved because a suspended manager would suffer a loss of credibility with the teams that he or she supervises[2].
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> An employer must inform an executive of any dissatisfaction in terms of conduct or performance.
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> “When the executive in question knows the reasons for the dissatisfaction, it is up to him or her to review his or her ways of doing things and meet senior management’s expectations. Senior management is not required to explain what needs to be changed, even more so when the executive has many years of experience.”[3]
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> A “serious reason” refers to an employee’s violation of one or more essential conditions of his or her employment contract, or improper conduct on his or her part. In *Sirois c. O'Neil*, the Court of Appeal considered that the dismissal of Microcell’s President and Chief Executive Officer was justified because, by his conduct, he had alienated the majority of the senior managers that he was responsible for. The Court considered that he had failed to fulfil the obligations inherent to the task entrusted to him, which involved direction, management and organization:
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> [Translation] “He had been given a command position. It was his obligation to form a united, motivated and efficient team. That was his main role. He failed in his task.
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> To illustrate the situation, the locomotive was unable to pull the cars[4].”
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> In order to determine whether the employer’s reasons for dismissal are “serious,” the various factors are assessed according to the circumstances, including the importance of the executive’s position, the nature of his or her employment and the seriousness of the complaints. In *Marc Van Den Bulcke c. Far-WicSystèmesLtée et GroupeSécuritéC.M. inc.* the Superior Court held that:
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> [Translation] [61] “Depending on the circumstances, negligence in the performance of duties, lack of self-discipline and performance below that agreed upon with the employer constitute serious reasons for dismissal without notice or compensation in lieu of notice[5].”
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> The *Tribunal administratif du travail* essentially applies the same principles as the courts.

As an illustration, the *Commission des relations du travail* pointed out that it is up to an executive to know what conduct is incompatible with his or her obligations under the employment contract in *Mommaerts c. Élopak Canada Inc.*[6]:

> [Translation] [122] “(...) Moreover, when the latter is given considerable responsibilities, it becomes clear that he or she cannot be treated in the same way as an employee. Indeed, the greater a person’s responsibilities in a company, the less need there is to warn them of the consequences of the actions that they take or fail to take. This is implicit to the function.

[Translation] [123] “How can we believe that a suspended executive would have the same credibility with employees, fellow executives, suppliers and customers? The answer is obvious and favours a different application of the principle of gradation of sanctions.”

Conclusion

Although executives have privileges over other employees in an organization due to their status, this status can quickly render them vulnerable if they fail to live up to their responsibilities.

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1. *Valcourt c. Maison l'Intervalle*, D.T.E. 95T-322 (S.C.), page 12
2. *Yersh c. CRT et FCA Canada inc. (Chrysler)*, 2019 QCSC 740, para. 111-113
3. *Bélanger c. Opéra de Québec*, D.T.E. 98T-197 (S.C.), page 23. See also *Laramée c. Poly-Actions Inc.*, D.T.E. 90T-923 (S.C.) and *Houle* et *Fédération de l'U.P.A. de Sherbrooke,* D.T.E. 84T-303 (A.T.)
4. J.E.99-1343 (C.A.), page 29
5. 2010 QCSC 6654, para. 61
6. 2011 QCCRT 0375, para.122 and 123