

WeirFoulds Employment Law Hot Takes: The Double (or Quadruple) Lives in Silicon Valley – The Rise of Serial Moonlighting

October 15, 2025

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As early as 2022, Soham Parekh, a Silicon Valley engineer, worked at four technology start-up companies, all at the same time while physically located in India. Upon discovering that he had been moonlighting from abroad, the employee was terminated from his employment – by more than one of those start-up companies, and the CEOs of those companies took to X (formerly Twitter) to warn other prospective employers of his moonlighting practices and false work experiences.

Moonlighting can negatively impact employers and their business if they are unaware that employees are working multiple jobs simultaneously. For example, issues may arise in relation to the quality, confidentiality and intellectual property of the employee's work product, competition issues with other businesses if the same or similar work product is used across different employers. Another issue of concern is time theft, particularly in remote work environments where the employer may not be able to monitor employee work hours.

Employers can protect their businesses from improper moonlighting practices by requiring exclusivity as a condition of employment or permitting outside employment only with prior approval. Effective monitoring of employee productivity and attendance (including virtual attendance in remote work arrangements) will assist employers in identifying employees who are or may be moonlighting. Where moonlighting is suspected (or employee productivity is an issue), employers should consider whether electronic monitoring of those employees is appropriate. However, provincially regulated employers in Ontario who employ 25 or more employees on January 1 of any year should note that the *Employment Standards Act, 2000* requires the employer to have a written policy on the electronic monitoring of employees, and all employers should also be mindful of the privacy considerations relating to electronic monitoring of employees.

With the increase in hybrid and remote working arrangements and developments in technology and applications, employers should be aware that moonlighting may exist within their employee ranks and take proactive steps to reduce the legal and reputational risks of employee moonlighting. There are many ways to address and prevent moonlighting, and WeirFoulds' Employment Law Group would be pleased to assist with navigating these complex and increasingly common scenarios.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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