



Tips for Handling Dismissals

May 5, 2015

Preparation

- Avoid impulsive dismissals even in very serious cases. If the employee must be removed from the workplace, suspend him/her with pay pending an investigation. Following the investigation determine whether to dismiss the employee with or without cause. If the employee is to be dismissed with cause consider whether a small separation package will be offered in exchange for a full and final release. Legal advice should be obtained in advance of the dismissal.
- A termination letter should be provided in every case.
- For employees governed by the *Employment Standards Act, 2000* (Ontario) there is no need to provide a reason for the dismissal in the termination letter but providing a reason during the termination meeting may prevent the employee from assuming that the reason is a discriminatory one.
- If the termination letter refers to the reasons for the dismissal they should not be misleading. The same applies to reasons given in the meeting – you do not have to tell the whole story, but what you say must be true and must not be misleading.
- In most cases it will be a without cause termination and the letter will contain a without prejudice offer of a separation package in exchange for a full and final release which will be enclosed with the letter.

Termination Meeting

- Meet with the employee in person
- Two members of the management team should be present, e.g. the employer's manager and a member of the human resources department
- One should do the talking and the other should take notes
- In some cases it may be appropriate to have an outplacement counsellor standing by
- The meeting should take place in a private place such as a boardroom or private office. The advantage of a boardroom is that the employer representatives cannot be "trapped" if the employee wants to keep talking
- Avoid holding the meeting on a Friday as the employee will likely be unable to reach any professional advisor he/she wishes to speak to and may build up resentment over the weekend
- Avoid dismissing the employee on a significant date such as his/her birthday, or too soon after a traumatic incident such as the death of a family member
- Try to hold the meeting towards the end of the business day in order to avoid any embarrassment to the employee when leaving the premises
- Keep the meeting short, 10 to 15 minutes at most
- Make sure that there are no interruptions during the meeting

- Give the employee the termination letter and release. Explain that it contains separation arrangements and describe them in brief
- If there is no working notice, ask the employee to return all company property before he/she leaves the office
- Allow the employee to return to his/her office to remove his/her personal belongings. This can be done in the presence of another employee chosen by the employee. Do not have security personnel escort the employee. Another option is to ask the employee if he/she would like to return at another time to collect his/her personal belongings or the company could pack them up and send them to the employee
- Offer to arrange for transportation home for the employee
- It may be helpful to prepare a termination script.

Following the Termination Meeting

- Immediately after the meeting both company personnel should independently prepare notes confirming the time and length of the meeting and what was said.
- It may be necessary to permit the employee to retain or delete personal items from the employer's computer system. This should be arranged at a mutually convenient time with a company representative present.
- The employee should be restricted from computer and system access following the effective date of his/her dismissal.
- If the dismissal was without cause it is in the employer's interest to provide the employee with a reference letter – not just a confirmation of employment letter. A reference letter will assist the employee in mitigating his/her damages and reduce the company's exposure in a wrongful dismissal action. The letter should be truthful and should not be misleading. Employers have qualified privilege when providing letters of reference – they will only be liable if they act with malice, not if they honestly believe that the statements were true but were careless or negligent in forming that opinion.
- Some courts have awarded additional damages to employees when they found that a reference was not provided to an employee.

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