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TERMINATIONS & OFFBOARDING



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TABLE OF CONTENTS

INTRODUCTION	3
TERMINATIONS	3
Dismissal and Severance	3
Without Cause Terminations	4
Termination for Just Cause	5
Release of Liability	6
Practical Tips for Termination	7
OFFBOARDING	9
Offboarding Checklist	10
Exit Interview	13

INTRODUCTION

The purpose of this document is to provide strong, foundational knowledge and best practices around the termination of the employment relationship. The information and templates included here are aimed to highlight the key factors to consider when handling the departure of an employee under various circumstances, so that you can ensure proper, fair and legal treatment of the departing team member while protecting the dignity of all parties.

TERMINATIONS

This section outlines important considerations for terminating employees in *non-unionized* workplaces for employees covered by the *Employment Standards Act* (“ESA”).

Dismissal and Severance

An employer has a right to dismiss an employee at any time for any reason (so long as there is no discrimination).

Where an employee has done nothing wrong, an employer must provide an employee with advance notice that their employment will be ending, or pay in lieu of such notice (i.e. severance pay). This type of termination is called “without cause”.

In certain situations, an employer may also terminate an employee with “just cause”, immediately and without advance notice or payment of severance.

Without Cause Terminations

Under the ESA, employers must comply with the minimum notice provision when terminating an employee without cause. The amount of written notice and/or pay is based on how long an employee has been employed:

<i>Amount of written notice and / or pay required for termination of an individual</i>	
<i>Length of employment</i>	<i>Amount required</i>
Three months or less	No notice and / or pay
More than three months	One week of notice and / or pay
More than one year	Two weeks of notice and / or pay
More than three years	Three weeks of notice and / or pay, plus one week of notice / pay after each additional year of employment (to a maximum of eight weeks)

If an employer and employee agree, e.g. in an employment contract, that upon termination the employee will be provided *more* than the ESA minimum amount of notice/pay in lieu, then that employer must honour that agreement.

A third situation arises where an employer and employee did not agree to limit the amount of notice or pay in lieu of the ESA minimums, or the agreement between them is not legally enforceable otherwise. In this situation, that employee may be entitled to additional severance under common law.

The common law comes from decisions of judges. Important decisions from the courts become legal precedents for similar cases in the future. Under common law, the amount of reasonable notice (or pay in lieu) an employee will be entitled to depends

on the employee's age, character of employment and availability of similar work, along with other factors.

Unlike under the ESA, common law notice is often in months rather than weeks. This is one reason it is important for employers to use employment contracts that include well drafted and enforceable termination clauses.

Termination for Just Cause

If an employee does something awful at work, an employer may want to fire them immediately without payment of severance. This is allowed where an employer can prove that what the employee did was so terrible that it caused an irreparable breakdown of the employment relationship (i.e. just cause).

Where an employee has *significant performance issues*, if an employer wants to immediately fire the employee and not provide them notice (or pay severance in lieu), the employer has to prove that:

1. They established and communicated a reasonable objective standard of performance;
2. The employee failed to meet those standards;
3. The employee was warned that they weren't meeting the employer's expectations, and that their employment would be in jeopardy if they failed to improve; and
4. The employee was given a reasonable amount of time to correct the situation.

Following and documenting the above four steps can be time consuming and require an employer's focused attention. However, if an employer fires an employee without taking the above four steps, they will likely owe the employee severance pay.

The four steps described above are required when an employee's performance is poor.

However, *sometimes an employee does something so terrible that just that one act can be enough to justify just cause*. For example, if an employee were to physically attack one of their colleagues at work, steal from their employer, or lie to their employer about something really important, an employer may be able to prove that they have just cause to immediately fire their employee without providing them any notice (or paying severance in lieu).

Even where an employee does something terrible and the employee should be fired on the spot, the courts will look at the full context of what happened, and could still decide there wasn't just cause, and that the employer actually owes the employee severance.

Ultimately, the punishment must fit the crime, and firing someone for just cause is the most severe punishment in Canadian employment law. For that reason, the courts will only allow employers to dismiss employees for just cause in the most egregious circumstances. **Based on this, employers should consider seeking legal advice before terminating an employee for just cause.**

Release of Liability

A release of liability is an agreement in which one party waives their right to make a legal claim against another party ("Release").

When the employment relationship ends, an employer may want an employee to sign a Release, to have certainty that employee will not be able to make any employment related legal claims against the employer.

A Release is a contract. A contract between two parties requires each to exchange something of value. The legal term for this “something of value” is called “consideration”. For a contract to be valid and legally enforceable, the consideration needs to be “fresh” i.e. something of value that is *new*.

For a Release to be valid and legally enforceable, the employer needs to provide *something new of value to the employee* in exchange for the employee agreeing to waive their rights to sue the employer. For example, an additional payment that the employee would not otherwise be entitled to.

Importantly, ESA termination notice (or pay in lieu), is owed to an employee on a without cause termination. Therefore, providing ESA termination pay does not constitute “fresh consideration” for a Release and it is illegal to withhold ESA termination pay in exchange for a Release.

If an employer wants an employee to sign a Release then that employer will need to provide that employee with something of additional value e.g. an additional payment, for the Release to be legally enforceable.

Practical Tips for Termination

These practices will assist employers in terminating employees.

- Choose a private space where there is little traffic or presence from other staff. Conducting the dismissal meeting in person is the best practice, but not always possible depending on the nature of the employee’s work and the business. By video conference is better than over the phone.
- Conduct the dismissal meeting when the employee can leave the premises without a lot of attention from other staff (before the start of the work day, or

at the end).

- Whenever possible, have two management representatives at the dismissal meeting, so there is more than one witness.
- During the dismissal meeting, use an employee's Dismissal Letter as speaking notes and follow it.
- If the employee was generally a good performer, consider providing a positive reference letter and / or confirmation of employment letter.
- Immediately after the dismissal meeting, all management representatives at the meeting should take notes. This can be done on paper or digitally, but either way, should include the date, time and length of the meeting and a description of what was said and by whom.
- If the employee has personal belongings at their desk or around the workplace, ask whether they would prefer to gather those items now accompanied by a member of management, or have the items couriered to them later.
- Only "escort" the employee off the premises if the employee is in a heightened emotional state or you are concerned they will act out. Otherwise, have a member of management "accompany" them by instructing them it is time to go, and watch them leave (only interfering in the departure if the employee acts out). In the vast majority of cases, employees leave the workplace without a problem.
- If applicable, schedule cutting off employees from login access from laptop, phones etc. so they are cut off by the time the dismissal meeting ends.

Templates for a [without cause termination letter](#) and a [release letter](#) have been included as resources for your organization. We have also included a [dismissal guidance document](#).

OFFBOARDING

Offboarding is the process of transitioning a current team member out of the organization. An effective offboarding process ensures that a departing team member is managed legally, fairly and properly. It can mean the difference between an amicable separation and legal implications should the offboarding be the result of termination.

The offboarding process also plays an important role in maintaining your reputation as an employer and optimizing your current employees' working experience. By showing the same level of care and attention to team members who are leaving as ones that are arriving at your organization, you send a strong message that you truly care.

This is a process that often gets overlooked and it's understandable; employee departure is rarely top of mind for any organization. Chances are that you're not offboarding people very often, and every time you do it's like having to learn the process again trying to remember all the little details. This is precisely why it's important to have an offboarding checklist to capture all the tactical items as well as the more human aspects of offboarding and all the formalities to ensure a smooth transition and nothing gets missed.

Farewell - Offboarding is an important part of the employee life cycle that, when handled properly, can strengthen your employer brand, and potentially turn your departing team members into brand ambassadors who will continue to be advocates for your organization within your prospective talent pool for years to come.

Offboarding Checklist

Communication with the Team:

Communicate the change quickly:

- Schedule one-on-one conversations with any direct reports or people they work closely with
- Where appropriate, schedule an organization-wide email to go out to all team members following the conversations

Information to include:

- When is the team member's last day?
- Who will be taking over their responsibilities in the interim?

Prepare Paperwork:

- Letter acknowledging resignation (as needed)
- Letter of termination (as needed)
- Nondisclosure and Noncompete (as needed)
- Termination, Release and Confirmation Agreement (as needed)

Initiate Knowledge Transfer:

For the exiting employee to complete if they are resigning:

- Can you break down your daily routine into step-by-step instructions?
- Are there any projects that you repeat on a weekly, monthly, quarterly or annual basis? What are they and how do you do them?
- What files does your successor need to know about and have access to?
- Who are your regular contacts, inside and outside the organization, so we can inform them about the transition?
- Are there any systems that your successor needs training on?
- What tasks take priority in your role?

- Please confirm that all of your files, including packaged design files (images, fonts, etc), are saved in the appropriate folders.
- Please share your list of memberships and / or subscriptions utilized for your role and provide contact and / or login details.
- Please share a complete list of your usernames and passwords for any accounts you utilize in your role.

Exit Interview:

Ideally conducted on their last day by HR or a neutral third party.

Recover Company Assets:

In a remote-first world, it is important to set clear expectations as to how and when any company assets will be recovered and by whom. It is equally important to state what repercussions, if any, exist should you not be able to recover company assets.

Have Some Fun: (As Appropriate)

- Pass a card around and get everyone to sign it with their well wishes
- Schedule a goodbye lunch or happy hour (and pay for it)
- Get them a personalized gift that only they would love

Leave the Door Open for a Return: (As Appropriate)

Should you wish to leave the door open for the exiting team member to return in the future you could connect with them on LinkedIn and maintain a high level of professionalism as they depart the organization to keep things positive.

Tie Up Loose Ends:

IT:

- Remove the team member's user account from any relevant systems and change passwords on any shared accounts
- Forward phone calls and emails to the team member's direct supervisor or their successor

Marketing:

- Remove team member profile from your website (if needed)

HR:

- Cancel benefits
- Update org chart
- Update their status in HRIS

Finance:

- Calculate their final payroll (wages, expenses, vacation pay, etc.) and pay out within 6 calendar days of final date (Consider handing them a paper cheque on their last day or making the payment early so they have peace of mind)

Direct Supervisor:

- Remove the team member from any meeting invites
- Communicate any last-minute details in the transition as they arise

Last Day Logistics:

- Recover company assets (computer, cell phone, IT assets, keys, access cards, etc.)
- Generate ROE

We have included this [resignation acceptance template](#) for your easy reference.

Exit Interview

The purpose of exit interviews is to capture a departing employee's unique experience during their time at your organization, so you can understand what went well for them during their time working for you, and what didn't. The insights you gather in an exit interview can give you a glimpse into what your organization can be doing better as an employer, as people who are on their way out are more likely to speak openly and honestly about their experiences than employees who are still here. In addition, it's likely that the departing employee has recently been job hunting and interviewing and can offer some useful intelligence on how your organization compares with other employers.

The exit interview depends on the willingness of the departing employee to provide their honest feedback, so it is important that the answers provided here are kept private, and are only shared with relevant members of senior management on a need-to-know basis. Be deliberate about defining this process and think about how you will go about acting on exit interview feedback without giving away the source of that feedback. Communicate this at the beginning of the exit interview so the employee's mind can be put at ease about sharing their honest feedback without fear of repercussions.

Exit interviews should be reserved for voluntary separations, because issues raised by layoffs and terminations for cause will require a special approach. Moreover, participation in exit interviews should be encouraged but not made mandatory.

Conducting an exit interview is a delicate task that requires tact, emotional intelligence, and the ability to connect with the departing team member in a meaningful way in order to get the most value out of the conversation. The best

practice is to designate an HR practitioner to handle this process, and ideally someone who has a neutral relationship with the departing team member. To help standardize the exit interview process, it's best to have the same person conduct all exit interviews for the organization as much as possible.

Use [this exit interview template](#) and tailor it for your organization.