

TERMINATING EMPLOYEES

The Termination Meeting

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Terminating an employee is one of the most difficult decisions employers face. Once the decision to terminate has been made, employers must consider the potential negative effects upon the employee, other staff, the organization's reputation, and the threat of litigation. To avoid negative consequences, the conduct of the termination is as important as the decision itself.

Reason for Terminating

Termination can be undertaken with or without cause. Termination with cause is usually reserved for serious, proven misconduct, such as theft, fraud, assault, sexual harassment, excessive absences for unsubstantiated reasons, serious insubordination, or conflict of interest. Poor performance will rarely be considered cause for dismissal, unless there is clear evidence that the employee has not responded to progressive disciplinary measures.

In termination without cause, in its simplest form, the employee is entitled to one of three provisions: minimum standards under the relevant employment standards legislation, an amount specified in a contract, or an amount provided under the common law. The employer should seek legal advice to determine a particular employee's entitlements upon termination without cause.

The Termination Letter

Before the termination meeting, the employer should carefully craft a termination letter. Its content and specificity will depend upon the circumstances and whether the termination is with or without cause. Legal advice should be sought on drafting the letter and completing an employee's Record of Employment.

The Termination Meeting

To mitigate potential legal liability, employers must follow specified procedures in carrying out any termination, whether with or without cause. We offer the following ten tips on how to carry out a proper termination meeting:

1. Prepare what you will say; make a checklist of items to be covered.
2. One person should be the "official voice" during the meeting, with a witness taking notes. Do not "gang up" on the employee.
3. Be brief. Let the employee know unmistakably that he or she is being terminated, but in general terms. If the employee pushes for specifics, simply state that the decision was made by management; it is final and you cannot discuss further details.



4. If alleging cause, make sure that this is clear, including whether or not you are offering any gratuitous payment in lieu of notice.
5. In many cases, the meeting will become emotional. The person conducting the meeting should be firm, yet sensitive, without losing control of the meeting.
6. Have the termination letter plus any written offer and associated documents ready for the employee. Do not require the employee to read the letter or sign a release immediately.
7. Describe the notice, or payment in lieu of notice, being provided, plus any offers in exchange for a signed release.
8. Allow employees to take their personal effects with them, or make arrangements to retrieve these items at a later date, supervised by management. Employees should not be allowed access to any company computers or other electronic devices after termination, unless supervised by management.
9. Carry out a dismissal early in the week and late in the day, so that the employee can seek advice and leave without encountering co-workers.
10. Pay for a taxi to drive the employee home, or contact someone to come and pick up the employee.

The Last Word

When contemplating the termination of any employee, seek legal advice before making the decision, not after.



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