

Please Come Back! Strategies For Navigating Termination Demands



Many employers in Ontario are becoming aware, whether through news articles, or painful and costly first-hand experiences, that employees can be owed significant entitlements upon termination. As we have explored in more detail in our previous blog posts, employers may owe terminated employees much more than was promised in the employment contract if a court determines that the contract's termination clause isn't legal.

Employers often learn about these potential entitlements for the first time after receiving a demand letter from the lawyer representing the recently terminated employee. As lawyers who frequently represent both recently terminated employees and employers who have recently received a demand letter, we can tell you that the amount that recently terminated employees could be entitled to is usually very surprising to all involved (and not a welcome one for employers).

The most common concern for most employers after reading these sorts of demand letters is naturally how they can avoid engaging in a stressful, time-consuming, and costly trial over the termination especially when they've been advised that their chances of succeeding at trial are very low. Of course, however, as much as employers want to avoid the trial, they also seek out strategies and options for resolving the matter without meeting 100% of their former employee's demands.

While it's unlikely to be top of mind, or even seem counterintuitive, some employers decide to offer their recently terminated employee a job. But why and what are the risks and rewards? Read on to find out.

But First, What is Mitigation?

Typically, demand letters from recently terminated employees focus on pay for a period of time that the employee will need, following the termination, to find new work. The periods typically sought range from as little as a few weeks to two years, depending on a variety of circumstances.

If the matter makes it all the way to trial, a court will decide (again based on a variety of circumstances) what sort of cushion the employee needed to get from one job to the next. But the employee is typically expected to actually spend this time making reasonable efforts to find new work. The employee is typically only expected to look for work that has similar responsibilities, duties, and compensation to their

previous role.

When employees find new work, what they are awarded following termination may be limited. This is why the former employer may remain invested in the employee finding new work.

Considering Re-Employment Post Termination

While we recognize that you may be viewing us as a bit of a biased source, we're going to say this anyway: we can't overemphasize the value of consulting with an employment lawyer before **deciding to terminate an employee**. While we respect that this will of course cost you both time and money up-front, understanding what an employee may be entitled to upon termination and strategizing with your lawyer on how to approach this before the termination, could save you a lot of money in the end. For example, a lawyer can help you decide whether the appropriate circumstances exist for you to provide an otherwise trustworthy, diligent, and loyal employee with some working notice of termination (where your employee continues to report to and complete their regular duties). While this isn't the right solution in every situation, there are cases where having the employee continue to complete their regular duties while also knowing they need to start looking for new work makes good sense for everyone involved. Even if working notice isn't the right fit, employment lawyers can help you navigate the termination and hopefully make it as painless as possible.

Occasionally, employers may also decide to effectively return the terminated employee to work (yes you read that correctly). This may occur when an employer who is faced with paying an employee during a very lengthy period would rather employ that employee for the same period. The circumstances surrounding this option **have to be entirely right**. It's imperative that the return be managed in a way that the relationship can go on functioning healthily and that the employer offers up the appropriate legal and financial entitlements in light of the termination and return. While an employee can't be forced to return, an unreasonable refusal may impact their claim to termination entitlements. **A word of caution:** these offers involve **legal complexities**, must be made under the **right circumstances**, and involve very specific **legal requirements**. This isn't something we recommend that you DIY and instead, we suggest [you get in touch](#).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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