

# Terminating A Remote Employee



Remote work is here to stay, creating complexity when it's time to end the relationship. If you're thinking of ending a remote employee's contract, you'll need to check more than just their performance. Where they live, what's in their contract, dealing with their equipment and how you deliver the news all matter.

## **1. Know the Jurisdiction**

Most employment relationships in Canada are governed by local provincial or territorial law, with the remaining governed by federal law. That means the *Employment Standards Act* (ESA) that applies depends on where the worker lives – not necessarily where your business is based. So, if your company is in Ontario but your remote employee lives in BC, BC's ESA applies.

Ideally, your employment contract should clearly state which province's laws apply. But even then, if the employee lives and works elsewhere, a court may still apply their home province's rules. Always confirm jurisdiction before terminating a remote worker – especially if they're in a different province.

## **2. Make Sure You Have a Legal Reason**

All the same protections for your in-person employees apply to your remote employees. If you're terminating without cause, you don't need a reason, but you *do* need to make sure the decision isn't tainted by any discriminatory grounds under the *Human Rights Code*. The case law does not require the reason to be 100% tied to discrimination, but rather if the decision is even in part tainted by discrimination, there could be a claim by the employee.

When doing terminations, keep an eye on any recent parental leave, disability leaves, or any mentions of any issues tied to the protected grounds under the Human Rights Code and get some advice on how to navigate what continues to be one of the more complex areas of employment law.

If you're trying to terminate for cause, the bar is very high – especially when there's less day-to-day oversight. You'll need documentation of performance issues, progressive discipline, and warnings. Courts rarely uphold for-cause terminations unless the misconduct is serious and well-documented. For your remote workers, this will require all the usual paperwork of progressive discipline warnings, which in turn typically requires modern management that understands how to regularly comment on output rather than only logging in hours up front. Workplaces are still in

transition on how to manage remote workers.

### **3. Check the Employment Contract**

Before doing anything, pull up the employment contract and look for a termination clause. If it's valid and enforceable under current law, you may only need to provide ESA minimum notice or pay in lieu, depending on the terms of the termination clause.

But if there's no contract, or if the clause language has been set aside by the relentless caselaw on termination clauses over the last few years, then you owe *common law* notice – which can be significantly more than the ESA minimums. We're talking months of pay, not weeks. Without a contract in place, the courts will imply contractual terms based on the far more generous common law entitlements.

This is very different from workplaces in the US, so if you are reporting into a US parent company, you'll want to fully understand the approach courts take in Canada on this issue.

### **4. Handling the Logistics**

Plan the termination meeting just like you would in person. Book a private video call, and don't wing it. Be clear and professional – and don't debate or justify the decision. Expect a very awkward 5 to 10 minute call. I have yet to meet a client who loves anything about termination meetings.

Remote terminations involve the additional layer of sorting out return of equipment. If you are providing working notice and the employee will be working with you for another few weeks or months, this can be a coordinated meeting at the end of that working notice.

For those employees where the termination is effective immediately, a common approach is to arrange a courier to arrive at the employee's home office an hour or two after the termination call. Give them enough time to pack things up, but don't sweat the small stuff. Typically it's just the laptop that contains the critical business assets the company needs to protect. If the employee ends up keeping the mouse or keyboard, who cares. The headache and cost of shipping that will easily outweigh any sort of benefit.

The company-issued cell phone remains the more complex issue. Often employees are using that for personal use, taking photos or storing their own information generally, sometimes regardless of company policies that prohibit that. This is more of a case by case situation where the vast majority of terminations do not require a harsh approach. Providing the employee a bit of time to clear any photos of their kids can be strategically important to keep the temperature down. If however, this is an employee with significant sales contacts on the phone or where the circumstance of the termination does involve concerns around loyalty to the company, breaching confidentiality provisions or involves real business risks to the company's clients or customers, sometimes an employer has to pull off that Band-Aid by taking the phone but providing space after the fact for accessing some personal content with IT supervision.

The real business risk lays with the data. Coordinate with your IT team prior to the meeting and for many cases, immediately revoke access to systems during the termination meeting. The hardware is almost always secondary to protecting the data.

Finally, have the written termination letter and release ready to send at the start of the meeting, confirm final pay (including any accrued vacation), and issue the ROE

quickly.

## **Wrapping Up**

Remote workers might be out of sight, but they're still covered by the same employment laws. Missteps can cost your business a lot in time, money and morale.

*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.*

Author: [Lisa Stam](#)

Spring Law