

Terminations Without Cause

written by Rory Lodge | October 30, 2014



Peter Straszynski discusses terminations without cause including the difference between “with cause” and “without cause” termination and what an employee is entitled to when terminated without Just Cause as part of the Torkin Manes LegalPoint Video Series.

Q. What is the difference between a “with cause” and without cause” termination?

There are basically 2 types of termination of employment by an employer... with “just cause” or “without just cause”.... “Just Cause” exists where an employee has been guilty of very serious misconduct, dishonesty or other serious breach of the terms of their employment..... Where there is just cause, an employee can be fired without any notice or payment... Just Cause is very difficult to prove and the overwhelming majority of terminations are “without just cause”.....

Q. What is an employee entitled to when terminated without Just Cause?

In the case of any “without cause” termination, there are typically 3 important considerations....

1. Statutory Minimums

First, we have to consider minimum entitlements under the Ontario Employment Standards Act... The Act sets out bare minimum standards for notice or payments on termination.... It’s common for employers and employees to misunderstand these as “maximum” entitlements or obligations... This is wrong... These standards are “minimums” only. The statutory minimum standards are the first consideration.

2. Written Contract, if any

Next, we look at any written contract of employment to see if it says anything about termination entitlements.... Some contracts set specific entitlements that are different than the statutory minimums.... These contracts may very well determine what the employee will be entitled to..... But remember, there are a variety of technical reasons why the terms of a written contract may not be enforceable, which any

experienced employment lawyer will be able to identify... Written contracts are the second consideration ...If you would like to learn more about Contracts, see our related video on the topic...

3. The Common Law

If there is no written contract determining entitlements... or if the contract is not enforceable for any reason... then the "common law" applies.... This is the 3rd consideration.... At common law, employees are entitled to "reasonable" notice of termination or payments instead.... There are a few important things to know about "reasonable" notice or pay..... First, this is what judges get to decide in "wrongful dismissal" cases.... taking into consideration the employee's age, position and length of service, it is not unusual for Judges to award in the range of 1 months' notice or pay per year of service, and possibly more..... Importantly, this common law notice or pay is "inclusive" of the statutory minimum requirements that we've already identified.... And finally, this "common law" entitlement may be affected where the terminated employee finds new work quickly..... We call this "mitigation".

Conclusion

Every time we look at a termination of employment, we have to carefully examine each of the factors discussed in this video, in order to determine what a particular employee's entitlements will be. It's not always simple to determine.... Employers are very well advised to get proper advice prior to implementing any termination.... It's equally important that employees get proper advice before signing any release or other agreement in the context of a termination.