

Tips On The Right Way To Fire Employees In Ontario



Contributed By: Andrew N. Vey

Dismissing an employee is not a pleasant experience. But whether you like it or not, this is one task that most businesses will encounter at some point. However, as President Trump reminded us after reports surfaced that Secretary of State Rex Tillerson learned of his firing by way of a twitter post, there is both a right way and a wrong way to conduct employee terminations.

Ontario courts have recognized that employees are particularly vulnerable at the time of dismissal. As such, it is vital that employers carefully plan for any termination of employment. While there is no fixed formula for this process, here are a few tips that employers should bear in mind when approaching their next employee termination:

- **Ensure confidentiality and privacy:** No employee should be forced to endure their dismissal from employment in a public setting. As such, be sure to keep the details of an employee's termination as private as possible. Other than those directly involved, no other workers should learn of the employee's dismissal prior to the event or be provided with any more than minimal information (i.e. person X no longer works with the company) after the dismissal. Termination meetings should be conducted in a private and discrete location away from the ordinary course of business. In addition, holding a termination meeting later in the day may also help avoid any unnecessary embarrassment for the worker.
- **Be brief and to the point:** In so much as possible, try to keep termination meetings short. Termination meetings are by their very nature charged affairs so the longer they go on, the more potential there is for stress and confrontation. It can be helpful to prepare a brief script in advance to make sure you remember the topics that need to be covered in an efficient manner.
- **Have a witness and make notes:** It is helpful to have at least two members of management, or human resources, attend at any termination meeting. This proactive step can be useful in the event that there is a future dispute as to what occurred in the course of the dismissal meeting. Essentially, the second employer representative is there to act as a witness. Additionally, as soon as the termination meeting is concluded, both employer representatives should immediately draft, sign and date notes as to what transpired in the termination meeting.
- **Be ready for the inevitable question “why?”:** In almost every termination meeting, the employee in question will want to know why they are losing their

job. While most provincially-regulated employers in Ontario are not required to give a reason when dismissing an employee without cause, as a matter of best practice, it is generally advisable to provide an answer. Not knowing why they are out of work will not only frustrate the employee but may precipitate legal action which could otherwise have been avoided. In giving a reason for the dismissal, be truthful and succinct.

- **Prepare a termination letter:** There can be a lot of details involved in the dismissal of an employee. Issues range from severance to benefits coverage to accrued vacation (just to name of few). Having a written termination letter will help to ensure that all this information is addressed clearly and concisely for the employee and avoid misunderstandings about the employer's position. It is common that employees will not hear or remember events in a termination meeting past the words "we're letting you go" so having a written record of the terms of the dismissal can be of vital importance to the employee.
- **Be sensitive:** When ending a worker's employment, try to be as supportive and considerate as possible. Listen to their feedback and watch the employee's mood and reactions. If they seem particularly distraught, offer to call a family member or cab to help them get home. Likewise, you can offer to have their effects packed up and sent to them if they don't want to collect things personally. Where possible, avoid escorting the worker out of the workplace under guard after the meeting (but do keep an eye on them to ensure nothing improper happens). Finally, if the worker is known to be aggressive or volatile, make arrangements in advance to have security available should they need to be called into the meeting and consider the safety of other staff members in carrying out the termination.
- **Don't force decisions in the meeting:** If you are making the employee a settlement offer in exchange for a release of claims against the employer, avoid having the employee decide on the spot. Even if they offer to sign immediately, it is generally best practice to advise them to go away and think about things. Should they wish to accept the employer's offer, timelines and methods for doing so should be laid out clearly in the termination letter.

The above list is by no means exhaustive. Each employee dismissal will come with its own unique circumstances and challenges. However, with sufficient planning, organization and sensitivity to the employee, it is possible to get through the dismissal process in respectful fashion, while avoiding the creation of problems that may later come back to haunt the employer.

Originally published on March 16, 2018

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.



Andrew N. Vey

About the Author: Andrew N. Vey

Andrew is a founding partner of Vey Willetts LLP. From the start of his legal career, Andrew has focused exclusively on workplace law. His style of practice emphasizes finding collaborative solutions where possible combined with tenacious advocacy where necessary. Andrew formerly worked with two Toronto-based labour and employment boutiques before returning to Ottawa to start his own firm.

Andrew holds a Bachelor of Arts (Honours) in Political Science from Carleton

University and a Juris Doctor from the University of Toronto. He is a frequent speaker on workplace law for groups such as the Human Resources Professionals Association and Hire Immigrants Ottawa. Outside of the office Andrew serves as Vice President of the Board of Directors for the Causeway Work Centre and is a member of the Law Society of Upper Canada and the County of Carleton Law Association.