

# Top Five Things to Consider When Dismissing an Employee



The decision to [terminate an individual's employment](#) is not an easy one. At times, however, whether due to economic pressures, or poor performance, it may nevertheless be necessary.

The process your organization follows when carrying out a termination of employment is important. It can have a big impact on the affected individual and, if done carefully, can reduce the potential risk of liability to your organization.

Here are our top five things that any employer should take into consideration when looking to dismiss an employee.[1]

## **1. Consider whether termination is appropriate**

Prior to moving ahead with an employee dismissal, it is important to consider the surrounding context. Generally speaking, employers should avoid dismissing an employee immediately before, during or after a leave of absence. For example, it may be imprudent to fire an individual immediately following a physician-approved absence for illness, or a parental leave, taken in accordance with statutory entitlements.

In both cases, it may be perceived that the decision to dismiss the individual was made, at least in part, due to his/her absence from the workplace, as well as reflecting a potential violation of statutory requirements. As such, if it is necessary to dismiss an individual immediately following his/her return from an approved leave, be sure that you can clearly demonstrate, with sufficient evidence, that the decision to dismiss was solely for a legitimate work-related reason wholly unrelated to the employee's absence from the workplace.

In many cases, this can be difficult for employers to prove. Moreover, the *Employment Standards Act, 2000* only permits the termination of employment following a return from leave in limited and carefully prescribed circumstances. Accordingly, if the decision to terminate is being made in close proximity to an approved leave, it is best practice to seek guidance from your legal counsel.

## **2. Understand obligations to the employee upon termination**

Prior to setting up the termination meeting, ensure that you have a clear understanding of the employee's statutory and contractual entitlements, and that the company will be complying with the same. In addition, put together a clear

termination letter informing the individual of the payments and entitlements they will receive (both mandatory and those additional amounts that would be provided in exchange for the execution of a release agreement).

### **3. How and when to tell the employee that he/she is being dismissed**

The importance of the manner, and timing, of a termination cannot be overstated.

Termination should never come as a surprise. Ideally, even in the case of economic lay-offs, the employee should have a good idea that the decision is coming.

We regularly speak with former employees that are surprised and hurt at being let go and frequently take issue with the way that the decision was communicated to them. As such, the termination meeting presents an opportunity for an employer to present information in a respectful and courteous manner. Think carefully about which person within your organization is best positioned to deliver the message. In addition, it is always best practice to have two company representatives present for this meeting (i.e. a manager and a representative from HR), have the termination letter in hand and agree beforehand what reasons, if any, will be provided to the individual.

Beyond that, give consideration to where the termination meeting will take place. Ideally, you will want the meeting to occur in relative privacy (i.e. in a private meeting room), thus reducing the risk of embarrassment and awkward questions from interested co-workers.

Finally, when an employee is fired is as important as the process itself. Organizations should avoid letting go employees on a Friday afternoon (or right before a holiday period). It leaves the dismissed employee with extra time to sit and stew on things, which can lead to feelings of anger and resentment. Instead, consider carrying out the dismissal mid-week, so that the individual can immediately look to apply for Employment Insurance benefits and begin reaching out to people within their network for support.

### **4. The information that you should share with the employee**

As mentioned above, individuals (especially those that are surprised to learn they are being dismissed) may ask why they are being dismissed. Have an answer prepared to this question. While provincially regulated employers in Ontario are not required to provide any reasons, explaining to an employee, in a respectful way, why their employment is ending, can help the individual come to terms with the unwelcome news.

That said, ensure that any answer you do provide is truthful. Employers can accrue unintended liability by misstating the reasons for a termination (i.e. the employer states that the position is being eliminated and then 2 weeks later the dismissed employee sees a job posting for their former role).

Beyond that, share practical information with the dismissed employee, such as when their benefits coverage will end, how to convert benefits coverage (and timelines for the same) and, if a severance offer is being made, encourage the individual to take time to review and receive whatever advice they may feel necessary in this regard prior to responding.

### **5. Steps following the dismissal meeting**

It is best practice for your organization to have a plan in place for what happens following the termination meeting.

You may want to provide the dismissed employee with a point person at the

organization to whom they can direct any enquiries following the dismissal (often this may be a former manager or HR representative). Another option to consider is retaining a career transition provider to be available to the individual immediately following dismissal and for a period of time thereafter to offer assistance in moving forward.

In addition, you will want to make sure that the individual is provided with an opportunity to retrieve their personal items (including those that may be stored electronically on work assets), as well as securing the return of any company property, including keys, parking passes and electronic devices.

The key takeaway for employers, is to navigate the termination process carefully. Do your homework, have a clear plan in place, then follow through.

**Paul J. Willetts** | Employment and Labour Lawyer

**Vey Willetts LLP** | Ottawa Employment & Labour Lawyers  
275 Slater Street | Suite 900 | Ottawa, ON | K1P 5H9

t: 613.238.4430 | c: 613.315.1415 | f: 1.800.760.1865

[vwlawyers.ca](http://vwlawyers.ca)