

HR Intervals - Employment Termination Process

Preparing for Termination

Many employees in the nonprofit sector are very dedicated to the mission of the organization, its cause, and the employees they work alongside. This can make the need to terminate the employment of an employee even more difficult. If you must terminate the employment, remember these points:

- Consult a lawyer for advice on the best way to proceed with the termination, given the specific circumstances.
- All employment/labour standards have offices with whom employers can consult. You can check with them about your particular situation.
- Act fairly, consistently, and in good faith at all times.
- Conduct the termination in such a way that you preserve the dignity of the employee. For example, hold the meeting in a private setting and ensure there are no disruptions.

Even with appropriate legal advice and a thoughtful process, there is no guarantee that an employee will not take legal action as the result of a termination. However, to decrease the likelihood that an employee pursues legal action and to increase the likelihood of a successful defense if sued, an employer should:

- Use a written contract of employment which states termination provisions. These should be reviewed by a lawyer to ensure that they will be enforceable. There are strict rules about how to draft termination provisions.
- Have clear employment policies that employees have read, understand, agree to abide by and signed off on.
- Apply the policies consistently and fairly.
- Implement an [onboarding process](#) that clearly outlines your organization's expectations for the behaviour and performance of your employees.
- Provide all employees with [ongoing feedback](#) about their performance which is documented in the employees' HR files.
- Establish a fair [progressive discipline](#) process, clearly explain the process to employees, and consistently implement it.
- Consult with a lawyer prior to termination.
- Throughout the dismissal process, treat the employee with respect but do not express doubt about your decision.
- Once the employee has been notified of the termination, keep the process moving forward — letting the employee question the decision and making excuses is not appropriate at this stage.

Your nonprofit should establish a termination policy and have a termination clause in all employment agreements. During onboarding, employees should be informed on your organization's termination and progressive discipline policies. If you do this, an employee should not be completely surprised by a termination.

Once an employee starts work, expected conduct should be clearly explained and the termination policy should be restated. Throughout the employment relationship, the employee should be given appropriate supervision, feedback on performance, and time to improve.

Problems with conduct or performance should be addressed promptly. In the nonprofit sector, it's also important for the employer to provide employees with timely information of funding issues, in cases where employment is tied to funding. The employer must still provide the required notice or pay in lieu of notice if funding is discontinued, but an open conversation helps prevent the employee from being surprised.

For more information about managing employee performance, [visit performance management](#).

Termination Policy

Your organization should have a policy on termination which complies with the [employment/labour standards for your jurisdiction](#). The policy should address:

- Who will be responsible for the decision to terminate
- Types of actions/behaviour that could result in termination with cause (the policy should state that the list of examples is not exhaustive)
- How breaches of conduct will be investigated
- Legislative requirements

Employment Contract

All new employees should sign a written employment contract that states how much notice the employee will be given if terminated without cause, as outlined in your policy. The amount of notice cannot be any less than the minimum provided in the employment/labour standards legislation and you must ensure that all minimum requirements of the legislation will be met. This contract should be reviewed by a lawyer to ensure it will be enforceable.

If there is a probationary period at the beginning of employment, the length of the period and the termination process during probation should be stated (termination process must comply with employment/labour standards.)

Treat the Employee with Dignity

When termination is necessary, whether it's with or without cause, the employer must treat the employee with dignity and act with professionalism. The termination process requires confidentiality, respect, and compassion on the employer's part.

If an employee believes that they have been wrongfully dismissed and decides to sue your organization, then how they were treated before, during, and after the termination of their employment will become part of the evidence that's considered when making a judgment in the case.

If the employer did not treat the employee with "good faith," a court might order the employer to pay the employee additional compensation by lengthening the period of notice, called "Wallace damages".

In [the Wallace Decision](#), a well-known case on termination, the Supreme Court of Canada stated:

In the course of dismissal, employers ought to be candid, reasonable, honest, and forthright with their employees and should refrain from engaging in conduct that's unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.

The Termination Meeting

Another aspect of the process that's important to consider is how an actual termination will take place. This is particularly important when the termination of employment takes effect immediately, such as when terminated with cause or terminated without cause but with payment in lieu of notice.

Recommendation

Even in cases of serious misconduct, the employer must show that the incident was investigated properly. Consider suspending the employee, with pay, pending an investigation rather than rashly terminating their employment. The steps to be taken on the day that an employee is notified of their termination should be carefully planned.

Prepare the Necessary Documents in Advance

- A letter of termination which states the date upon which it takes effect and any payment you are offering
- An outline of all wages, salaries, benefits, accumulated vacation amounts and indemnities, such as those offered in lieu of notice, as well as information pertaining to the date that these monies will be paid to the employee, should be prepared in advance. Be sure that these amounts are consistent with contract terms and employment standards
- A record of employment, or the date and method of delivery of the record of employment, if it's forthcoming
- Consider the off-boarding process and ensure that communication channels, access codes or cards or other company property and equipment are accounted for
- Even in instances of termination with cause, employees are commonly entitled to an employment confirmation letter in lieu of a professional reference. Preparing one in advance gives the employee access to this document

Choose an Appropriate Location

- Ensure that you're in a quiet, clean, and calm space for the meeting — whether you're on-site at work or meeting remotely
- If you meet in person, choose a neutral site such as a meeting room rather than your office
- If meeting on-site at work, select a location that provides privacy which allows the employee to exit without the embarrassment of facing other staff

Choose an Appropriate Time

- If possible, be sensitive to issues and important dates in the employee's life and choose a day that will minimize stress on the employee
- Avoid holidays and vacations (including religious and/or cultural holidays)
- Avoid Fridays. If an employee is terminated on a Friday, it prevents them from obtaining legal advice or counselling before the weekend and leaves them with the whole weekend to worry and build up anger about the situation
- Terminate early in the day to allow the employee time to consult a lawyer if they choose to

- Choosing a time where fewer staff, volunteers or clients are present can also enhance a feeling of discretion and privacy for the employee

During the Termination Meeting

- Ensure two senior staff members are present at the termination meeting
- Be brief, get to the point, and clearly explain the situation
- Be firm but kind, and avoid emotional, personal, and other unrelated remarks
- Explain how the termination will be communicated to other staff and clients
- Acknowledge that the employee has the right to seek legal counsel
- Review the termination letter with the employee and clarify any payment and benefits that will be provided
- Let the employee know what you are willing to say in a reference. Honesty is the best policy; however, if you terminate the employee for cause, you will want to provide a confirmation of employment that indicates only the dates of employment and the type of position.
- Ensure that the employee returns the organization's property
- Explain the next steps, including where the person should go after the meeting, how to gather their personal belongings, and so forth
- This is primarily an information-giving meeting; however, offer the employee the opportunity to reach out with any questions once they have had a chance to review the document more thoroughly in private

Recommendation

When terminating the employment of a valued employee due to circumstances beyond your control, focus on the employee's strengths, and offer any assistance you can give to them to find new employment, such as connecting them with outplacement services.

Termination Disputes

When a dispute about termination occurs, an employee has options for seeking resolution. They may pursue a claim through their [jurisdiction's human rights commission](#), employment standards authorities, or courts. Employers must seek legal advice if this occurs.

Constructive Dismissal

Constructive dismissal is when there is a fundamental change in the employment relationship that amounts to a dismissal. A claim of constructive dismissal may occur when the employer, without the consent of the employee:

- Significantly reduces an employee's salary.
- Significantly changes an employee's benefits.
- Makes a significant change to an employee's work location.
- Makes a significant change to the employees' hours of work.
- Makes a significant change to the employee's authority or responsibilities.

Other situations may amount to constructive dismissal. A constructive dismissal happens when the employer unilaterally changes a fundamental term of the employment relationship, and the employee resigns rather than accept that change. It must be clear that the employee is not accepting the change. Similarly, the employee, by not resigning, accepts the new terms of the employment.

An employee may claim constructive dismissal to the courts or, in some jurisdictions, to the employment standards authority. In deciding the merits of the case, the courts will determine if the change in the employment relationship was so fundamental that it amounted to a termination of employment and, if so, what compensation is appropriate.

Wrongful Dismissal

Wrongful dismissal is a legal claim made before the courts that the employee was not provided with enough notice/payment in lieu of notice when they were terminated from employment.

If the claim of wrongful dismissal is justified, the courts will look at the contract of employment, whether it's in writing or not, and common law or civil law in Québec, to determine 'reasonable notice' and the appropriate financial compensation in lieu of notice.

Under common law, "reasonable notice" has been determined by the courts by looking at age, profession, experience, length of service, nature of the employment, and factors related to the ability of the employee to find similar employment. Common law notice periods and payment in lieu as decided by the courts are often significantly more than the statutory requirements, especially for people in senior management positions.

In cases of wrongful dismissal, the courts will also look at how the employee was treated before, during, and after the termination of employment. If the employer did not act in good faith, the amount of damages awarded to the employee might be even greater.

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