

maxpeople

Employee Termination Checklist

2024

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Advance planning is essential in effectively managing terminations within an organization. Below are a few key considerations to review prior to terminating an employee that can help avoid common legal pitfalls employers face when handling employee terminations.

Ensure you have all relevant and updated documentation. Documents to review are unique to each individual termination, however common documents include current payroll information, employment agreements, incentive policies such as commission/bonus plans, as well as any benefits plans which may apply.

Tip: Key Human Resources templates, such as employment agreements, should be reviewed regularly by an experienced employment lawyer to ensure that they remain enforceable and compliant in accordance with rapid changes in case law and/or legislation.

Determine if the termination will be *with cause* or *without cause*. If asserting cause, ensure that you have the relevant written documentation supporting this position. Asserting cause without sufficient basis can result in a wrongful dismissal claim and in some cases additional exposure to damages if not done in good faith.

Determine if there are any Human Rights or Ministry of Labour related issues which are relevant to the employee. Employers should ensure that the decision to terminate does not constitute a breach of human rights, health and safety, or employment standards legislation. If there are concerns of any potential violation, it is recommended that you consult with an experienced employment lawyer to determine how this will impact the termination.

Determine the employee's entitlement upon termination. Employers should familiarize themselves with the relevant employment standards legislation which applies to determine the employee's statutory termination entitlement (e.g., the Ontario *Employment Standards Act, 2000*). However, depending on a number of different factors, the employee may be entitled to greater amounts under their employment agreement or the common law.

Carefully plan in advance how you will protect Company property and confidential information. Determine how you will protect the confidential information in the employee's possession and prevent the employee from breaching non-solicitation and confidentiality agreements which may apply.

Prepare a Termination Letter and Termination Script. The termination letter should confirm the details of the termination in writing, including confirming the employee's final working day, outlining how the employee's termination entitlement will be provided, and reminding the employee of any restrictions on post-termination obligations which may still exist. The termination script will provide the framework for you to follow to ensure that the message is clear and concise during the termination meeting and more importantly that you stay on track.

Have a Private and Confidential Termination Meeting with the Employee. While providing the employee with the reasoning behind their termination is not required (unless they are being terminated with cause), a meeting provides an opportunity to walk through the details of the termination, answer any questions, and coordinate the details of the employee's departure.

WE CAN HELP!

For additional support with a termination or other workplace matters, please reach out to MaxPeople for assistance.



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