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**Tips for Terminating Employees**

A *termination* is simply the ending of an employment relationship and is more commonly referred to as “firing” or “laying off”. This article focuses on the technical procedures associated with termination, rather than the obligations related to severance. (To learn more about *wrongful dismissal* and *reasonable notice*, please refer to an earlier article [here](https://rdmlawyers.com/insights/employment-law/wrongful-dismissal-reasonable-notice-explained/).)

No one enjoys terminating an employee, especially when there are no concerns or serious allegations. Often an employee will have no idea that a termination is coming and may be upset or in shock.

**How & When**

It is best to meet with the employee in person. The meeting should be held privately, which might mean off-site, in a separate office or in a boardroom. It is generally advisable to have two managerial-level employees present.

While there is no one best time to undertake a termination, if it is done at the end of the work day, the employee can clear out his or her belongings without having to worry about curious or distraught co-workers. You may also want to consider allowing the employee to return after hours to complete this task or – depending on the situation and company policy – it may be more suitable to have a manager do so on their behalf. If an employee needs to return company property, you should also consider giving him or her the option of doing so outside of operating hours

**Privacy & Disclosure**

Information about an employee’s termination should only be disclosed on a need-to-know basis. This includes information shared with staff, customers, Canada Revenue Agency and prospective employers who may call for a reference.

Defamation is the action of damaging the reputation of a person. Truth is a defence to claims for defamation. As long as the information you share is true – and not based on suspicion, intimation, etc. – then a defamation claim should not succeed, although it may cost a lot of money for a judge to make that determination.

Problems can arise for employers in asserting “just cause” terminations – those based on neglect of duty, misconduct or incompetence, for example – especially when no such cause is found. It could result in damages such as lost opportunities for the former employee as well as cause a delay for him or her receiving Employment Insurance benefits and, ultimately, in finding a new job.

That is why it is recommended that the severance package (explained in more detail below) include

either a reference letter or a confirmation of employment letter setting out the dates of employment and the former employee’s general duties. This demonstrates good faith on the part of an employer and helps the terminated employee move forward.

**Severance Package**

In addition to the materials mentioned above, a severance package should also include a written letter confirming the employee’s termination date. You may also need to provide information related to the option of converting any group benefits to individual benefits.

It is generally advisable to provide an offer in relation to severance. With such an offer, an employer should include a release for the employee to sign. This release can act as a defence if the employee later considers commencing legal proceedings arising from their employment and termination. It is important not to pressure the employee into signing any documents at the time of termination.

If sufficient opportunity to consider a severance offer is not provided, a court may later find the release or settlement is unenforceable on the basis of coercion while the employee was in a vulnerable state. Courts generally view the employer as being in a position of power.

Ideally, an employer should give the person long enough to obtain independent legal advice which could mean a few days or a week. It may also require the extension of a set deadline.

**Employment Standards Act**

The Employment Standards Act sets out the employer’s obligations and mandatory minimums. This means an employer cannot create contractual terms that are less favourable to the employee than those minimum standards. It is important to know what minimum standards apply to you. For example, the Record of Employment should be provided within 48 hours and can be included in the severance package.

Terminating an employee is a task that should be carried out based on diligence, fairness and consideration. Basically, a good rule of thumb is to treat the employee about to be terminated how you would like your family member to be treated. Remember that courts have awarded punitive damages against employers who act in bad faith (see our blog post on a recent case of bad faith damages [here](https://rdmlawyers.com/insights/employment-law/court-awards-bad-faith-damages-for-forced-resignation-of-employee/)) and it is possible the information shared about an employee may result in a defamation claim.

If you are an employer and have questions about best practices and legal obligations surrounding the termination of an employee, or an employee who would like assistance with assessing a severance package, contact one of [RDM’s](https://rdmlawyers.com/service/employment-law/) employment lawyers today for a consultation.