

HOW TO DISMISS AN EMPLOYEE

By: Lauren M. Bernardi

Before dismissing anyone, you need to establish a policy regarding who will conduct the termination meeting, where, when and how.

Who

Train the person who will be conducting the termination. This includes training on how to respond to objections and what your organization's policy will be on the severance package.

The person handling the termination should prepare a "script" of what he or she is going to say, in advance of the meeting.¹

The person who conducts the termination should be compassionate and able to respond to the variety of emotions employees will display. Two people should be in the room during the termination meeting, so that you have a witness.

Where

A neutral area such as a boardroom is a good place to conduct the meeting because it enables the person conducting the termination to leave. Terminated employees sometimes want to discuss the issue at length.

The meeting room should be in a location that avoids inconvenience or embarrassment to the employee when leaving the meeting. For example, do not hold it in a glassed-in office or a place that requires an upset employee to have to walk through the entire workplace.

When

If possible, do not conduct the termination meeting on a significant day or time of year, such as a birthday.

There are two schools of thought as to the day of the week on which you should conduct the meeting. Some people believe that the termination meeting should take place late in the day on a Friday, so that the person can leave and have the weekend to recover. Others argue that you should conduct the meeting early in the week, and either late in the day or at lunch. This gives the employee an opportunity to seek advice and start a job search during the week, while avoiding immediate contact with co-workers. What works best will depend on your work environment and how you anticipate the employee will react.

¹ A sample termination script is included in the Appendix.

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How

The following tips outline how to conduct the meeting:

- do not enter into a debate with the employee or appear to waffle on your decision
- get to the point immediately and keep it short – more than ten to fifteen minutes is unnecessary and extremely stressful
- let the employee know what kind of reference you are prepared to provide
- provide an accurate termination notice that sets out what, if any, severance you are offering
- make arrangements for the departure of the employee and the return of your property
- be gentle — do not march employees out of the workplace unless you have a genuine concern about their reaction; and
- make notes of the meeting and include them in the employee's personnel file.

Note: A case decided by the Supreme Court of Canada makes it clear that if you conduct a dismissal in bad faith, you may be vulnerable to additional damages above and beyond those required for notice. Bad faith means treating the employee badly in the course of the termination, e.g., playing “hardball” by alleging that you have cause to dismiss the employee when you don't. This makes it all the more critical to treat your employee fairly when terminating them.

Providing References

Many employers are reluctant to provide references to terminated employees. There are several reasons for this:

1. If you provide a bad or negative reference to a previous employee and he or she suffers a loss as a result, the employee may sue you for negligent misrepresentation.
2. If you provide a glowing reference and the employee does not work out, the new employer may sue you for negligent misrepresentation.
3. If you do not provide a reference at all, the employee may sue you for impeding his or her ability to find alternate work.

This makes it very difficult to know what approach is best. You may take comfort in the fact that honesty is your best defence. If you can support your statements, either positive or negative, you will be able to avoid a claim for negligent misrepresentation.

To further protect yourself, you may wish to discuss with the employee, while negotiating the severance package, what would be an acceptable letter of reference for him or her.

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You would prepare this with a waiver from the employee that releases you from any liability arising from providing such a reference. Then any verbal references you provide would be in accordance with this letter of reference.

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Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

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About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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