



# Employment Update

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*“It is always best to have some comfort that you have reviewed and considered all of the issues before you undertake an employee termination.”*

## TERMINATION ISSUES CHECKLIST

William D. Anderson

The dismissal of an employee is never an easy thing even at the best of times. It is always best to have some comfort that you have reviewed and considered all of the issues before you undertake an employee termination. Below is a checklist which can provide a good starting point to ensure that relevant matters are considered and to assist generally with the process of an employee termination. The checklist can of course be modified and expanded upon for the employer's particular circumstances.

1. Review the employee's letter of employment or employment agreement.
  2. Review circumstances of employee's hire. Was the employee recruited?
  3. Review significant changes in relation to the employee's position, role, salary, location, or other material terms of employment to determine if substratum of the employment relationship has been materially amended and hence, the employment agreement no longer reflects current terms.
  4. Determine termination date and calculate, if possible, what is owing to employee for
- all accrued remuneration to date of termination, including salary, vacation pay, commission, incentives and bonus, if any.
5. Is the termination for "just cause" as a result of misconduct? If so, is there a sufficient documentary record of past issues and warnings? Have all of the relevant individuals been interviewed with a record of those interviews? Has the individual been given an opportunity to respond and answer to any issues and allegations?
  6. Compile all relevant codes of conduct or policies applicable to the termination and ensure corporate compliance with the company's own policies and, where applicable, ensure that the company has evidence that the employee was aware of the policies.
  7. If the termination is for performance reasons, is there sufficient documentation to establish lack of performance and progressive warnings related to failure or refusal to maintain performance at reasonable and objective standards and the consequences of failing to do so?
  8. Are there related medical issues which need to be considered and accommodated?

*“[T]hree new unpaid, job-protected leaves of absence under the Employment Standards Act, 2000 come into effect on October 29, 2014.”*



A partner in Blaney McMurtry LLP's Employment and Labour group, William Anderson's experience has led to an expertise in complex labour board and employment litigation.

His practice also includes negotiating severance and wrongful dismissal packages on behalf of executives and other employees. He is particularly active in issues relating to the manufacturing, construction and health care industries.

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9. Are there other human rights or statutorily protected employment rights that need to be addressed, for example, return to work following maternity, parental, WSIB or emergency leaves?
10. If the termination is not for just cause, what is the period of notice of termination required by agreement, by statute or implied by common law?
11. Will the notice period be worked by the employee, in whole or part? If payment is to be made in lieu of notice of termination will remuneration be continued or paid out?
12. Consideration of statutory and contractual obligation to continue benefits during notice periods and any conditions or exceptions to such obligations.
13. Will termination offer be made subject to mitigation or not subject to mitigation?
14. Review all employee remuneration and specific terms. Are there any specific requirements related to pensions, RRSPs, LTIPs, stock options, etc.?
15. Are there any outstanding loans or advances to the employee?
16. Are there company supplies, documents, confidential information, computers, keys, FOBs, credit cards, automobiles, equipment or other property to be returned by employee?
17. Are there employee obligations post termination, including solicitation of customers or non-competition?
18. Are there client or competitor lists that need to be identified related to non-competition provisions?
19. Determine appropriate timing for meeting to provide notice of termination. Consider who should be in attendance at the termination meeting. Is any security necessary?
20. Consider issues relating to employment references and/or provision of confirmation of employment letter. Who will be responsible for post-termination employment reference? ■

## **NEW FAMILY-RELATED LEAVES OF ABSENCE UNDER THE ESA**

**Maria Kotsopoulos**

A reminder that three new unpaid, job-protected leaves of absence under the *Employment Standards Act, 2000* come into effect on October 29, 2014.

1. Family Caregiver Leave is up to 8 weeks of leave for employees to provide care and support to a family member with a serious medical condition. This leave creates a separate entitlement from the current Family Medical Leave in the Act.
2. Critically Ill Child Care Leave is up to 37 weeks of leave to provide care to a

## EMPLOYMENT UPDATE



Maria Kotsopoulos practices with Blaney's Employment and Labour Group in all areas of labour, employment and human rights law.

Maria advocates on behalf of employers, not for profit organizations, trade unions, and employees, and has been involved in matters before the Superior Court of Justice, the Federal Court, the Labour Board, the Human Rights Tribunal, the Workplace Safety and Insurance Appeals Tribunal, and other tribunals.

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critically ill child. This leave is intended to complement new benefits under the federal *Helping Families In Need Act*.

3. Crime-Related Child Death and Disappearance Leave is up to 52 weeks of leave for parents of a missing child and up to 104 weeks of leave for parents of a child who has died as a result of a crime. As above, this leave is intended to complement benefits available under the federal *Helping Families In Need Act*. ■

## INTRODUCING BLANEYS PODCAST

### Blaney McMurtry LLP

The Blaney McMurtry Podcasts are now available for download by visiting <http://www.blaney.com/podcast>. Topics to date include Powers of Attorney, Canada's Anti-Spam Legislation, Termination of Employment and Family Law. New podcasts continue to be posted so check back regularly for the latest topic. ■

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