Blaney McMurtry LLP

PUBLICATION

Are You About to Dismiss an Employee? Here is a Checklist to Review First

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The dismissal of an employee is never an easy thing, even at the best of times, and 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 that can provide a good starting point for ensuring that relevant matters are considered and for helping 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 the 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 the substratum of the employment relationship has been amended materially and hence the employment agreement no longer reflects current terms.
4. Determine the termination date and calculate, if possible, what is owing to the employee for all accrued remuneration to that date, 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, and is there 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 that the company has complied with its own policies. In addition, 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 (a) lack of performance, (b) progressive warnings related to failure or refusal to maintain performance at reasonable and objective standards and, (c) the consequences of failing to do so?

8. Are there related medical issues that need to be considered and accommodated?

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 the 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 with reference to non-competition provisions?

19. Determine appropriate timing for the meeting to provide notice of termination. Consider who should be in attendance at that 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 references?