

Human Resources Management Tools

Termination of Employment



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Table of Contents

Termination of Employment _____	6
Overview of Employment Terminations _____	6
Reasons for Termination _____	8
Points to Keep in Mind _____	9
Preparing for the Event _____	11
How Much Should We Pay? _____	12
Location _____	12
Timing _____	13
Documents to Provide to Employees _____	14
The Termination Meeting _____	16
Employee Questions _____	17
Employee Reactions _____	18
Employees with Confidential Information _____	19
The Employee's Departure _____	20
Telling the Rest of Your Team _____	20
Exit Interviews _____	23
Releases and References _____	25
Obtaining Settlement Agreements and Releases _____	25
Providing Letters of Reference _____	25

Responding to Reference Checks _____	26
How Can You <i>Reduce the Need</i> to Terminate Employees? ____	27
Appendix I: Labour/Employment Standards _____	28
Appendix II: Sample Content for Termination Letter 1 _____	29
Appendix III: Sample Content for Termination Letter 2 _____	31
Appendix IV: Sample Release _____	32
Appendix V: Termination Checklist _____	33

Termination of Employment

Few managers – cultural or otherwise – savour the idea of “getting good” at dismissing people. Nevertheless, you need to know how to terminate employees in a way that preserves their dignity while meeting your organization’s needs, and ensures as smooth as possible a transition out of the workplace. Even the most experienced managers feel stress and anxiety when they go through the termination process. Having a clear idea of the process and how to do it effectively won’t make it any more pleasant, but could prevent you from making costly mistakes. The purpose of this module is to provide you, as a manager in a cultural organization, with practical guidelines to help with the separation process.

OVERVIEW OF EMPLOYEE TERMINATIONS

There are three reasons why you should handle terminations in an informed and professional way:

1. *The person being terminated deserves to be treated with respect and have their dignity preserved, regardless of the circumstances.* Also remember that you may bear some responsibility for the situation if you should not have hired the person in the first place (perhaps you ignored warning signs, or were desperate to fill the position and accepted less-than-ideal qualifications, or failed to do reference checks).
2. *Many cultural organizations face severe financial constraints as an on-going reality.* They can ill-afford to pay the financial penalty that often goes with handling a termination badly. The financial cost can be two-fold if the terminated employee takes legal action: increased severance payments imposed by the courts, and legal fees. These problems can be avoided by being aware of and following a sound and legally defensible termination procedure.
3. *Your remaining employees will be impacted by the termination – even if they welcome it – and will be watching and expecting you to handle it in a professional way.*

The key to a “successful termination” begins with hiring, when you should clearly express your expectations, and continues throughout the employer/employee relationship. Performance feedback while the individual is in your organization - formal and informal - also plays a critical role in a well-managed termination. But the actual termination *event* is what stays in everyone’s mind the longest time.

Remember that a termination impacts everyone – even the termination of someone that is not liked will affect co-workers if it is not handled properly.

The best you can hope for when terminating someone is to have a chance meeting sometime in the future and hear them say, “You know... leaving the theatre group was the best thing that ever happened to me.” The worst thing that can happen is a long drawn-out – and costly – legal process involving lawyers and government agencies.

Don't forget: A former employee can be your best (or worse) marketing person in terms of promoting your organization in the cultural community.

Reasons for Termination

Let's begin with some definitions. Note that these definitions may be different from those used in federal or provincial laws and regulations. They are intended only to provide basic guidelines in this material.

▶ Voluntary termination

The employee resigns from the organization based on his or her own decision. Even when an employee resigns through their own choice, you should still conduct an "exit" interview (described later). You should also always ask for written notification of resignation which you will need for your files.

▶ Involuntary termination

You, as employer, initiate the termination. There are 3 types of involuntary termination:

• **Poor performance**

An employee has consistently performed below expectations, in spite of your giving clear feedback that improvement was needed. Before terminating for poor performance, make sure you have kept records that the person had been advised of performance shortcomings, given a reasonable amount of time to correct the deficiencies, and documented that the employee has failed to make the necessary improvements.

• **Termination for Just Cause**

This occurs when a person's conduct is in serious violation of company policy or the individual has acted in a way that significantly endangers fellow employees. When terminating for just cause, make sure that you thoroughly document the employee's actions that have led to the dismissal.

Conduct justifying immediate termination includes but is not limited to:

- Theft
- Dishonesty
- Use of intoxicating substances at work or being intoxicated at work
- Insubordination
- Discriminatory conduct towards others
- Harassment (sexual and otherwise)

- **Restructuring or economic reasons**

If the termination is the result of restructuring your organization, or downsizing as a cost-saving measure, make sure that this is transparently the case. In many cases employers have given restructuring as a reason for dismissal and then advertised to fill the exact same position. This can result in costly lawsuits.

POINTS TO KEEP IN MIND

The following points are critical at *all* stages of a person's employment – when you hire them, when you first identify that they have a performance problem, or when you are considering terminating them. If you stick to them, you'll find the unwelcome process of dismissal much easier.

1. *Review your organization's policies and your employment offer letters.* Make sure that there is nothing that specifies length of employment or indicates employment lasts "as long as performance is satisfactory" or something similar.
2. *If you have organizational and employee policies in writing, follow them.* If you find that you're always making exceptions to the rules, then change the rules. Clearly they're no longer acting as useful guidelines.
3. *Establish reasonable standards of conduct and give them to your employees in writing.* They should be written in simple, straightforward language. You should also have your employees sign an acknowledgment that they are aware of and have read your organization policies and standards of conduct and that they agree to follow the rules you have established, and that failure to observe those rules could eventually lead to termination.
4. *As soon as a performance problem crops up, start documenting your communications to your employee.* Generally, it's best to follow a progressive communication process: clear verbal feedback, written warning that unless there is an improvement in performance their job is in danger, and if necessary followed by termination.
5. *Anytime you are notifying an employee that their job is in danger, it should be in writing.* It's a good idea to have another person present in these types of performance counseling sessions, if at all possible.

6. *Ideally you should be providing your staff with periodic performance reviews, both formal and informal, and they should obviously be fair and honest. Make sure your staff are recognized when they are doing well, where improvement or development is needed, and what the outcome will be if performance doesn't improve.*
7. *Know the steps you need to follow in the termination process and plan it ahead.*
8. *Treat the individual with respect and preserve their dignity during the whole process.*
9. *Keep all discussions confidential.*
10. *Document the termination – you may need to refer to these notes if the individual takes legal action. You should communicate the facts consistently and honestly when you are asked.*

Preparing for the Event

Successful termination meetings are carefully thought through beforehand. Your planning and preparation for a termination meeting should include the following:

1. *Review the employees file and any documentation from previous performance discussions.*
2. *Plan what to say to avoid saying something that you will later regret.* It happens all the time and can lead to major legal problems and costs. You might want to role play (in confidence) your “script” with another manager. If applicable, make sure your superiors or Board are aware of the reasons for termination and the planned termination date.
3. *Make sure that you can answer all the typical questions (see section on “Typical Questions”) that the employee may ask.*
4. *Have a checklist for any of the organization’s property that should be returned by the employee.* These may include office or building keys, laptop computer, cellphone, pager, pass card, etc. It’s easy to forget something when you’re trying to get through a stressful termination meeting, and notes will help.
5. *Have the written termination letter ready at the meeting (see sample letters in Appendices II and III).*
6. *If you have any questions about the process or the circumstances that have resulted in the termination, consult a human resources specialist or labour lawyer.*
7. *It’s always advisable to have another person the meeting whenever possible, particularly if you anticipate any kind of negative reaction.* Make sure this person knows their role and has been briefed on how to respond to any comments.
8. *If appropriate, you may need to change security passwords, locks, etc.*

So what does a “successful” termination meeting look like? You can consider a termination meeting to have been successful if:

- ▶ The employee understands the essential information about his or her status.
- ▶ You have treated the person fairly and with respect.
- ▶ The organization fulfills its legal and ethical responsibilities.

- ▶ The disruption to other employees is minimal.

Note that a “calm and agreeable” terminated employee is not an essential component of a well-handled termination meeting. You should try to anticipate any negative reaction, be prepared for it, and handle it as best you can. But termination meetings are stressful for everyone. Ultimately you have little control over the person’s reaction. They may have serious financial, family or health issues of which you are unaware that may seriously affect their reaction.

The best you can do is be prepared to handle anything that happens in a calm, professional and sensitive way.

HOW MUCH SHOULD WE PAY?

Any employee terminated for reasons other than just cause must be given minimum statutory notice, or pay in lieu of notice, in accordance with the statute in force in the location of employment. Some jurisdictions also require individual severance pay in certain situations. The minimum federal and provincial Employment Standards must be met, or your organization's chance of legal problems from the termination increases substantially.

Refer to *Appendix I* for the relevant provincial and federal websites.

In addition to individual termination notice or pay requirements, some jurisdictions also require individual severance payments to employees that meet certain criteria. The criteria vary widely between the jurisdictions requiring this severance pay.

Always remember that all statutory minimum standards are just that - *minimums*. Any precedents set in previous court decisions in cases of wrongful dismissal will also have an effect on the amount of notice or pay that the judge decides you must provide to a terminated employee, and it will usually require much more than the amount required by statute.

LOCATION

The termination meeting should be held in a private office or room where you won’t be interrupted. Most termination meetings are held at the employee’s normal place of work, although some employers hold these meetings at a

separate location to avoid any embarrassment for the employee or interruption to the ongoing work of the organization.

In deciding where to conduct the termination meeting, consider the following factors:

- ▶ where the employee normally works;
- ▶ who else (if anyone) will be attending the meeting with you;
- ▶ the reasons for the termination;
- ▶ the person's anticipated reaction to the termination;
- ▶ the layout of the work environment;
- ▶ whether there is any need to safeguard the organization's property;
- ▶ whether you want the employee to make a quiet and discrete exit once the meeting is over, or to return to their workplace (see section on "The Employee's Departure").

Where you hold the meeting the termination meeting will depend on the circumstances of each case and realistic considerations such as available office space. Many cultural organizations have fairly small, open-plan work areas, making it difficult to find private space.

If you hold the meeting off-site, the person may later complain that they were taken away to a foreign place to be delivered the news. If the meeting is held in the workplace, the individual may be upset and uncomfortable about having to face their colleagues once the meeting is over.

If you believe that the employee will handle the situation reasonably well, the meeting can normally take place in a private area in the workplace. If you're concerned that the employee may react angrily or pose a threat to the organization's property, then you will want to hold the termination meeting off-site or in a meeting room away from other staff.

TIMING

Some people prefer to get terminations completed as soon as possible after the decision is made. Others are so uncomfortable with the whole process that they keep putting it off. But your feelings should *not* be the deciding factor in determining when termination takes place.

There is much on-going debate among human resources professionals over when a termination meeting should be scheduled. Some believe that it should be done at the end of the work day on a Friday so that it doesn't disrupt the week and the rest of the staff (and the terminated employee) can start anew on Monday morning. Others don't agree with Friday afternoon dismissals because it can deprive the person of the opportunity to get legal advice or other support services until the following Monday. A terminated employee may worry (and cause their family to worry) needlessly over the weekend about a question that could have been answered with a five-minute phone call to an advisor or lawyer.

Regardless of which day of the week you decide to hold the termination meeting, our recommendation is that the meeting should be conducted at the beginning of the work day. If you do this, the person won't later resent that they had to work to the end of their final day, possibly interacting with you or others who know they are about to be terminated. Secondly, it's easier for you who has to deliver the bad news.

It also – unless you're asking them to leave immediately – allows them to make a few phone calls, say goodbye to workmates and not feel rushed.

People also tend to be less tired in the morning and better able to cope with stress. If an employee is dismissed at the end of a tiring day, the situation can be even more unpleasant and unpredictable.

DOCUMENTS TO PROVIDE TO EMPLOYEES

When the termination is effective immediately, you should provide the employee with:

1. their record of employment;
2. payment for all wages and vacation pay owing up to the last day of work;
3. the termination letter; and
4. any release that the employee is being asked to sign.

Appendix II shows a sample letter for terminating an employee *for reasons other than just cause*, and *Appendix III* a sample letter for terminating *with just cause*. *Appendix IV* gives an example of a Release letter.

All of these items should be given to the employee either at the termination meeting or very soon afterwards. If applicable, you should also provide them, if applicable, with pension information regarding any future compensation or benefits items he or she may receive. If the termination does not take effect until a future date, simply provide the employee with a letter confirming their last day of work and what the severance arrangements will be, and then deliver the other items on their last day.

The Termination Meeting

The termination meeting is definitely the most difficult aspect of the whole process. No one likes to do it. In all likelihood, the employee will be upset, perhaps even devastated. However, if you handle it professionally and sensitively, the termination meeting can be completed without increasing the risk of future repercussions for you or your organization.

Key points to be considered in conducting the meeting:

- ▶ Be clear and straightforward with the person during the termination meeting but empathetic to their situation. Advise them of the decision to sever his or her employment, when the termination will come into effect and the reasons for the termination.
- ▶ Opinions vary on whether or not an employer should discuss the reasons for termination where no just cause is being cited. Some employers simply advise the employee that the dismissal is for “business reasons” and do not go into detail. Other employers feel a duty to state the general reasons for the dismissal (i.e. whether the decision is for economic reasons or performance issues).
- ▶ When the reason for the dismissal is economic, remind the employee that the decision has nothing to do with his or her abilities but is a result of the financial environment in which your organization (or most cultural organizations) is operating. If the termination is performance-related, although not for just cause, always refer to work-related, behavioural aspects of their performance. Never make remarks about the individual’s personality.
- ▶ Keep the meeting as brief as possible. Do not allow the person to engage you in detailed discussions of performance issues, problems they’ve had, and who’s “to blame”. There are three reasons for not getting into prolonged discussion:
 - It can open up areas of disagreement when the reasons for the dismissal are irrelevant to the issue of notice, and the termination is inevitable.
 - It can give the person the impression that their termination is “negotiable”.
 - It increases the likelihood that you could say something that the person (or their lawyer) could use against you if there is a legal dispute.

- ▶ Where the dismissal is for just cause, you are obligated to inform the employee of the nature of the misconduct or performance deficiencies being relied on. The employer should also make it clear that there will not be any notice or severance in the circumstances.
- ▶ If the dismissal is for reasons other than just cause, advise the employee of the amount of notice or severance being provided. As the details of this (and benefits continuance, if applicable) will normally be set out in a letter to the employee, you need not go into a lot of detail about this during the termination meeting.
- ▶ If applicable, discuss the return of any property which the employee might have belonging to the organization, what tasks, if any, need to be completed before the person leaves and when they are expected to leave the workplace.
- ▶ Where the employee is receiving some working notice, inform them of their work requirements during the notice period and what arrangements can be made should the employee need to attend interviews or other job search activities. If another employee will be taking responsibility for the person's work, they should be advised of this after the termination meeting so a transition plan can be put into place.
- ▶ Avoid getting into any confrontation with the employee and remain composed and professional throughout the meeting. If the employee is too upset to continue, conclude the meeting.

Following the termination meeting, document it with a written, detailed description of the meeting. Include in your notes what was said to the employee and what the employee said.

EMPLOYEE QUESTIONS

Be prepared to answer these typical questions that people raise during termination meetings:

- ▶ When should I leave?
- ▶ Who will take over my work?
- ▶ Will I get severance pay? How much?
- ▶ When will I receive my last paycheque?
- ▶ Will I be paid for accumulated sick leave or vacation time not taken?

- ▶ Am I eligible for unemployment insurance?
- ▶ Will you or the organization provide employment references? What will you say if you're asked to give a reference?
- ▶ What will my co-workers be told about my termination?
- ▶ When do I have to return company property such as a pager or cellphone, keys, etc.?
- ▶ Can I continue to use my office or work area to look for a job?
- ▶ Can I use my PC to prepare my resume?
- ▶ Can I say good bye to everyone before I go?
- ▶ When can I go back to my desk to get all my personal things?

EMPLOYEE REACTIONS

Be prepared for anything. People's reactions to being terminated can run the full range of human feelings. As stated before, you don't know what personal circumstances may affect their reaction. Here are a few tips for how to handle strong reactions:

- ▶ If you've taken appropriate action in reaching your decision (i.e. discussing the consequences of poor performance) the termination decision should not be a complete surprise to the employee. Be courteous, confident and firm.
- ▶ If they ask what they can do to get the decision reversed, inform them that the decision is final. Never argue with an employee to justify a termination decision.
- ▶ An individual might respond that the termination will cause hardship to themselves and their families. In the case of an employee terminated for poor performance, you may wish to point out that the employee had ample warning, or refer to any severance payments that they will receive.
- ▶ If the person breaks down (i.e. cries), allow them ample time to recover, offer a tissue or glass of water, acknowledge that you know how difficult this is for them, but don't apologize for what has happened.
- ▶ If an employee shouts or swears, never respond in kind. Stay calm and professional.

- ▶ If a terminated employee threatens legal action, you should either not respond or make a neutral comment such as “You are, of course, free to consult an advisor or lawyer if you wish.”

EMPLOYEES WITH CONFIDENTIAL INFORMATION

In some cases, employees have access to confidential material (i.e. computer files, financial records, documentation, etc.) that you will want to immediately deny access to when they resign or are terminated. In these cases, consider having an appropriate manager or yourself stay with the terminated employee at all times until they leave the premises to ensure no organizational material is destroyed or removed.

The Employee's Departure

You should avoid supervising an employee's exit from the workplace unless there are compelling reasons for doing so. Such reasons might be that you're concerned the person might either deliberately or inadvertently remove some of the organization's property or cause a commotion when leaving. You might also be concerned that the employee will delete computer files if given the opportunity.

In most cases, employers trust employees to act appropriately and don't find it necessary to supervise their departure. Supervising a person's exit can lead to legal damages if the court finds that your action was unnecessary or signaled to other staff that the person was untrustworthy where there is no basis for that belief. When possible, allow dismissed employees to leave the workplace on their own time, perhaps with a friend or work colleague for support.

If the person drives to work and, in your view, is too upset to drive a car, you would be wise to pay for a taxi to take the person home, and possibly for a return journey to pick up their car.

TELLING THE REST OF YOUR TEAM

This is a real challenge for most managers. How do you keep your remaining team members on track both from a productivity and morale standpoint?

The loss of a team member, especially if the individual was well liked or respected by their peers, can have a devastating and sometimes debilitating effect.

This is a very common bi-product of the termination process, connected with feelings of confusion, divided loyalties and sometimes even guilt associated with still being part of the organization.

You need to be aware of your responsibilities *after* the termination, as well as before and during.

You need to stay in touch with team members (personally and, if appropriate, in writing), individually and as a group, and be sensitive to their reactions to the termination.

Don't underestimate the power of relationships among your staff. The terminated employee will very likely talk to some of their workmates about the situation and the termination meeting. It's useful to give some thought to what kinds of questions might be going through the minds of the remaining members of your team:

- ▶ Could this happen to me?
- ▶ Should I be looking for another job?
- ▶ Was she/he treated fairly and with respect?
- ▶ How secure is my job?
- ▶ Is this a sign of things to come?
- ▶ Is *[your name]* being honest with us?
- ▶ Did she/he get fair compensation on termination?
- ▶ Will she/he be replaced in that role?
- ▶ Will I have to take on more work, temporarily or permanently?
- ▶ What effect will this have on our group and the way we work?
- ▶ What did she/he do to deserve getting fired?
- ▶ How will this affect me and my work?

So what can you do to reduce the negative effects of a termination on your remaining team members?

Carefully observe the impact of the termination on your remaining staff.

Keep your announcement simple and brief. Be prepared to inform those impacted by the employee's departure such as immediate co-workers, subordinates, external contacts, etc. Tell them that the employee no longer works for the organization and how his or her duties and responsibilities will be carried out in future.

If you sense that the impact has been significant, consider these actions:

- ▶ Meet with the remaining team members both individually and as a group to draw out their concerns and questions. Be honest about what you can and cannot discuss and why.
- ▶ Clarify the implications for the team on a temporary or permanent basis with respect to workload.

- ▶ Make sure that you've given serious consideration to all aspects of the process. This means thinking about everyone involved, anticipating their potential concerns, and developing a plan that deals with the issues and maintains your organization's reputation as an employer-of-choice in the cultural community.
- ▶ If you're coaching other managers prior to them conducting a termination meeting, remind them that showing compassion and empathy will go a long way towards maintaining a good relationship with the departing employee, and with remaining staff. You may want to suggest "scripts" they could use when dealing with the situation, particularly if they're new to this difficult activity.
- ▶ *Be very careful* about saying anything that could be perceived as an attempt to disrupt the relationship between existing team members and the terminated employee. It is totally inappropriate for you to imply that current employees should refrain from continuing their personal relationship with the individual.
- ▶ Give direction to team members as to how to respond to inquiries regarding the terminated employee.
- ▶ Be sensitive to any unusual patterns or trends in absenteeism, productivity or general work atmosphere.
- ▶ Explain your plan to either reallocate the responsibilities or hire a replacement for the individual.
- ▶ Consider if additional training is required by any team members to deal with the changing/different responsibilities.

Appendix V shows a checklist you can use to ensure that you cover the major issues in handling a termination effectively.

Exit Interviews

An exit interview is quite separate and different from a termination meeting. It's usually carried out when an employee has resigned, or is leaving involuntarily but amicably.

Exit interviews can be hugely valuable. Their main purpose is to get information that may benefit the management of and staff retention within your organization. It's a great way to get useful feedback about how the organization can improve the way it does things. In most cases, the departing employee has nothing to lose by being completely candid. You may, for example, learn more about why the person has decided to leave, or you may find that a supervisor is not leading employees as well as you thought. Or, you may detect a trend that indicates your employees require more support or training in a particular area.

The interview should be conducted by someone other than the person's immediate superior. Obviously the "objectivity" that you need in an exit interview is lost if you also conducted the termination meeting! In a very small organization, therefore, you might want to give the employee a simple exit interview questionnaire and ask them to complete and mail it back to you.

Listed below are guidelines to help you through the exit interview process.

1. *Prepare for the interview by briefly talking with the employee's manager and reading the employee's personnel file, performance reviews, etc.*
2. *Allow enough time for discussion.* Prepare questions like:
 - ▶ *(If a voluntary departure)* Is there anything more you can tell me about why you've decided to leave?
 - ▶ *(If a voluntary departure)* Is there anything we could have done to keep you here?
 - ▶ Do you feel management communicates well here?
 - ▶ If you were running the place, what would you do differently?
 - ▶ What changes do you think would help our staff do their jobs better?
3. *Hold the meeting as close as possible to the person's departure.* Many organizations plan this as the absolute last stop for departing employees.
4. *Explain that the purpose of the interview is to gather information about the person's perception of the organization*

and how it treats its employees. Assure the person that their comments during the exit interview will remain anonymous unless they are alleging misconduct on the part of another employee.

5. *Set a relaxing tone.* Be warm, receptive and interested in what the person has to say.
6. *Listen!* Don't add your own personal comments, give opinions or defend the organization and its actions. Your role is to get information and stay objective.
7. *If it hasn't already been done, gather or verify that all company property and material has been returned.*
8. *Document the exit interview.* Organizations often develop an exit interview form that is completed by the interviewer.

Releases and References

OBTAINING SETTLEMENT AGREEMENTS AND RELEASES

A crucial aspect of the termination process for you is to get a signed settlement agreement and/or release from the departing employee. They should be obtained before you make any severance or notice payments. The reason for this is clear: once the employee has the money, their incentive to deliver these documents vanishes.

The signed release is needed to ensure that the person doesn't later take legal action for unpaid wages, additional notice or severance pay, alleged discrimination or make other claims arising from the dismissal.

PROVIDING LETTERS OF REFERENCE

If you've agreed to provide the employee with a letter of reference, do so as soon as possible so the employee can use the letter in their job search. Where the letter of reference is part of the terms of settlement, you may wish to wait until you've received the signed settlement agreement and release before delivering it.

Be clear with the individual about what type of information the letter will contain. You also need to be clear in your own mind about the differences between letters of employment, letters of reference and letters of recommendation. A letter of employment confirms the employee's dates of employment, positions, duties, and perhaps who they reported to, but does not go much further. Some lawyers refer to these as "tombstone letters", given their rather cold and brief nature. They are often used in situations where the employer has a policy not to recommend employees to other employers or where the employee was a less-than-satisfactory performer.

A letter of reference provides the same information as a letter of employment but also discusses the employee's qualifications, skills and achievements. Such letters are appropriate where the reason for termination is not performance-related or where your concerns do not nullify positive aspects of the person's performance.

A letter of recommendation is the strongest form of letter you can provide. It includes the same information as a letter of employment and reference letter but

also expressly recommends the employee to other employers. These letters are often written where the employee's departure is due to financial reasons and you have no complaints about the employee's performance. When recommending an employee, however, you should be clear about exactly what type of job you think the employee is best suited for. If you misstate or overstate the person's abilities or past experience, you run the risk of being sued by another employer for any losses caused by reliance on your inaccurate information.

RESPONDING TO REFERENCE CHECKS

Be ready to respond to reference checks from prospective employers who are considering hiring the individual. You may decide to assign the task to someone who is familiar with the former employee's job performance and duties. That person should also be familiar with the contents of the employee's personnel file and any agreement made with the employee regarding what information can be disclosed.

When you get a request for a reference check, the first step is to be clear about whether or not the employee has consented to their personnel information being disclosed. If you don't have this consent, do not disclose any information until you do have consent. Some employers as a matter of policy do not disclose *any* information other than the person's dates of employment and position. If you do not wish to provide any reference information, simply say that you are not in a position to provide the requested information.

When giving a reference, ask that the information you provide be kept confidential. Any information provided to persons conducting reference checks should be consistent with the contents of any letter of reference that you might have written for that employee. As with letters of reference, be careful not to overstate the person's abilities or experience. As well, if you make a false statement about an employee that prevents them from being offered a job, you may be liable for damages. Take notes of your conversations during reference checks in case a former employee later takes issue with what was said.

HOW CAN YOU *REDUCE THE NEED* TO TERMINATE EMPLOYEES?

Be proactive in dealing with performance issues or concerns as they occur - take responsibility for giving honest, direct and timely feedback.

If you have managers who report to you, coach them on how to manage performance issues on a day-to-day basis, as well as how to communicate effectively with team members. Ensure that they know the organization's policies and processes and their role regarding all aspects of the termination process, before during and after.

NOTE

The contents of this document and its Appendices are focused on the interpersonal and organizational dynamics involved in termination of employment. Any forms or letters are general guidelines only.

The legal aspects of termination of employment are governed by legislation and are subject to change. For definitive rules on employment standards and legal aspects of terminations, consult a labour lawyer or human resources specialist, and refer to the appropriate provincial legislation. *Appendix I* contains links to provincial and federal websites.

Labour/Employment Standards

Provincial Government Websites:

Alberta

[Ministry of Human Resources and Employment](http://www.gov.ab.ca/home) (www.gov.ab.ca/home)

British Columbia

[Ministry of Labour](http://www.labour.gov.bc.ca/esb) (www.labour.gov.bc.ca/esb)

Manitoba

[Department of Labour](http://www.gov.mb.ca/labour/standards/index.html) (www.gov.mb.ca/labour/standards/index.html)

New Brunswick

[Department of Training and Employment Development](http://www.gov.nb.ca/0308/0001e.htm) (www.gov.nb.ca/0308/0001e.htm)

Newfoundland & Labrador

[Department of Environment and Labour, Newfoundland and Labrador](http://www.gov.nf.ca/labour) (www.gov.nf.ca/labour)

Northwest Territories

[North West Territories](http://www.gov.nt.ca) (www.gov.nt.ca)

Nova Scotia

[Department of Environment and Labour](http://www.gov.ns.ca/enla/labrstd.htm) (www.gov.ns.ca/enla/labrstd.htm)

Nunavut

[Nunavut](http://www.gov.nu.ca) (www.gov.nu.ca)

Ontario

[Ontario Ministry of Labour](http://www.gov.on.ca/lab/english/es/index.html) (www.gov.on.ca/lab/english/es/index.html)

Prince Edward Island

[Prince Edward Island Department of Community Affairs and Attorney General, Labour and Industrial Relations Division](http://www.gov.pe.ca/commucul/lair-info/index.php3) (www.gov.pe.ca/commucul/lair-info/index.php3)

Quebec

[Ministère du Travail](http://www.cnt.gouv.qc.ca/en/index.asp) (www.cnt.gouv.qc.ca/en/index.asp)

Saskatchewan

[Saskatchewan Labour](http://www.labour.gov.sk.ca/standards/index.htm) (www.labour.gov.sk.ca/standards/index.htm)

Yukon

[Department of Justice, Labour Services](http://www.gov.yk.ca/depts/community/labour) (www.gov.yk.ca/depts/community/labour)

Federal Government Website:

[Human Resources Development Canada](http://info.load-otea.hrdc-drhc.gc.ca/publications/labour_standards/termination.shtml)

(info.load-otea.hrdc-drhc.gc.ca/publications/labour_standards/termination.shtml)

Termination for Reasons Other Than Just Cause

[Name]
[Address]

[Date]

Delivered by Hand

Without Prejudice

Dear [Name],

Re: Termination of Employment

As discussed, this letter represents formal notice that your employment with [Organization] is terminated effective immediately.

You will receive your regular pay up to and including today, [Date].

(IF APPLICABLE) You will receive an additional [number] weeks pay in lieu of notice of termination as per our obligations under the Employment Standards Act of [Province].

(IF APPLICABLE) Your entitlement to our group health benefits program will continue during your notice period, with the exception of [depends on the plan], which ceases effective immediately.

You will receive a further payment which will represent your accrued and owing vacation pay.

These payments together with your record of employment will be delivered to you within [number] days of today's date.

(IF APPLICABLE) We wish to amicably and completely bring closure to your employment and to assist you in this transition. We are therefore prepared to offer you an additional [number] weeks of termination pay, to be paid to you in a lump sum, less applicable statutory withholdings. Please note that this offer is conditional upon you keeping its terms strictly confidential, with the exception of your legal counsel. This offer will remain in force for your consideration until [Date].

If the terms of this separation offer are acceptable to you, please sign below and attach a signed and witnessed copy of the attached Release. When you have signed, the terms of this letter will become a binding agreement upon you and [Organization].

On behalf of the team at [Organization], I wish you well in your future endeavours.

Yours truly,

[Your name]

[Title]

Signed:

[Employee name] _____

Date: _____

Termination for Just Cause

[Name]
[Address]

[Date]

Delivered by Hand

Without Prejudice

Dear [Name],

Re: Termination of Employment

As discussed, this letter represents formal notice that your employment with [Organization] is terminated effective immediately [date] for just cause, due to [type of misconduct].

[optional summary of misconduct, or poor performance reviews and warnings]

In view of these circumstances, we have no alternative but to dismiss you immediately for just cause, without notice or pay in lieu of notice. A cheque for outstanding salary and vacation pay in the amount of [\$\$\$] is enclosed [**OR**, will be forwarded to you on within the next x days].

Yours truly,

[Your name]

[Title]

RELEASE

I, *[employee's name]*, in exchange for the consideration set out in the letter dated *[date]* from *[your name]*, *[your title]* of *[organization]* (the "Company"), release the Company, and their respective affiliates and all of their respective officers, directors, employees and agents of the Company (collectively, the "Releasees") from all actions, causes of action, suits, debts, demands, covenants, complaints, contracts, claims and torts (both intentional and unintentional) arising in any way, directly or indirectly, from my employment with the Company or any other representation, arrangement or agreement whatsoever between the Releasees and myself. I also agree not to make any claim or take any proceedings in respect of the claims released against any person, corporation or other entity who or which might claim contribution or indemnity from the Releasees.

Without limitation, I specifically covenant, represent and warrant to the Releasees that I have no further claim against the Releasees arising out of my employment or the termination of such employment including, without limitation, any claims for pay, notice of termination, pay in lieu of such notice, severance pay, expenses, overtime pay, benefits, vacation pay and specifically including any claim under the Employment Standards Act of (*province*), or any other similar legislation. I further represent that the Releasees have complied with the Human Rights Code of (*province*) in respect of my employment and/or the termination of such employment. If I should hereafter make any claim or demand or commence or threaten to commence any action, claim, complaint, application or proceeding against the Releasees or any one or more of them for or by reason of any cause, matter or thing, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

I have read the above Release and have obtained independent legal advice with respect thereto from my own independent legal counsel. I understand that this Release contains a full and final release of all claims that I have or may have against the Releasees relating to my employment or the termination of such employment and that there is no admission of liability on the part of the Releasees and that any such liability is denied.

All of the foregoing shall enure to the benefit of the Releasees, their successors and assigns, and be binding upon me and my respective heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, I have duly executed this Release,
this _____ day of _____, 20____.

Witness

[employee name]

Following is a checklist of key considerations for managers when developing termination procedures or terminating an employee:

Involuntary Departures

1. *Potential security and safety problems.* Determine whether the termination poses any special security problems or threats. Be prepared to have someone accompany the employee from the building if necessary. Caution is required but should not be seen as intimidating or harassing the employee. Be considerate of the individual's self-respect and dignity.
2. *Computer password, privileges.* Ensure that the employee's computer and/or voicemail passwords are invalidated at the appropriate time. Identify any other privileges that may need to be ended immediately.
3. *Think about the employee's likely reaction to the termination.* Do they drive to work? Do you need to arrange alternative transportation if they are too upset to drive, such as a taxi or someone on the employee's contact list? Do *not* ask another employee to drive the person home in his or her own vehicle.
4. *Return of property.*
5. *Notice to payroll.* Notify the payroll administrator to remove the employee from the payroll, settle the account, and prepare a final paycheque. Ensure that the payroll administrator takes into account any expense or salary advances that may have been given to the employee.
6. *Vacation.* Notify payroll of any money due for any earned but unused vacation time.
7. *Outstanding expense vouchers.*
8. *Severance pay.* Decide if the employee is entitled to severance pay and notify the payroll administrator.
9. *Final paycheque.* Make sure the employee receives his or her final cheque. Most provinces require employers to pay all wages due either within five days of the dismissal or by no later than the regular pay period.
10. *(if applicable) Notice to outside plan administrators (i.e. benefits, pension).* Inform plan administrators of the employee's change in status.
11. *Record of Employment.* Issue the employee's Record of Employment so that he or she may apply for Employment Insurance benefits. This is due in most cases with five calendar days.

12. *Release*. If the employee is to receive any benefit greater than the minimum entitlement under the applicable employment standards legislation (or if the employee's contract of employment provides for the execution of a release), then you should ask the employee to sign a full Release before any such payments are made.
13. *Employment record*. Make sure the employee's record is up to date before placing it in inactive status. Do not remove any materials from the file until record keeping requirements under federal and provincial law have been satisfied.
14. *Directories*. Remove the employee's name from e-mail listings and telephone directories. Have business mail rerouted to the person who will handle the terminated employee's duties.

Voluntary Departures

Conduct the exit interview. Meet the employee to determine the reasons for leaving and gather other information.

Written notice. Obtain the employee's resignation in writing. Make sure notice is adequate. In the unusual event that the resignation is done over the phone, ask for written confirmation. If you don't receive it, courier a letter as soon as possible, confirming the verbal resignation with details of the call.