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Terminations Tips & Traps

Understanding how to properly implement a termination of employment is relevant to businesses of all sizes operating across all sectors. There are significant risks to employers in every termination situation as it presents a ripe opportunity for angry, disgruntled ex-employees to exact their revenge against a former employer. Here is a list of tips and traps that suggest ways employers can mitigate exposures to liability when terminating employment:

- TIP:** Enter into a written employment agreement with every employee which include contractual termination clauses.
- TRAP:** Avoid termination clauses in employment agreements which do not properly restrict entitlements upon termination.
- TIP:** Be reasonable and considerate during the termination process, taking into account the unpleasantness of the situation (i.e. consider the day of the week, time of year).
- TRAP:** Avoid making statements during the termination meeting which may exacerbate the situation or infuriate the employee as this may lead to an allegation of bad faith.
- TIP:** Employees on leaves of absences should receive special consideration, particularly statutorily protected leaves (disability, pregnancy, parental) because there may be human rights exposure.
- TRAP:** Avoid spending too much time on the reason for dismissal in the termination meeting as it should be kept as brief as possible to avoid conflict with the individual being terminated.
- TIP:** Calculate an employee's minimum entitlements pursuant to the Employment Standards Act ("ESA") first to ensure compliance and then determine the enhanced amount to be offered in exchange for an executed final release.
- TRAP:** Do not request a signed release in instances where the employee is only being offered their minimum ESA termination/severance pay.
- TIP:** Give the terminated employee reasonable time to review the termination package offer, and to obtain and consider legal advice.
- TRAP:** Avoid pressuring the terminated employee to sign any documents during the termination meeting as the signed document may be unenforceable if the employee can show duress.
- TIP:** If asserting just cause for termination, ensure that a proper investigation has been conducted and that the allegations of misconduct have been independently corroborated and proven.
- TRAP:** Avoid knee-jerk emotional reactions (e.g. terminating for cause without a proper analysis and investigation) in for cause terminations as the cost may be significant.

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