

The Dentons logo, consisting of the word "DENTONS" in a white, sans-serif font inside a white arrow-shaped box pointing to the right. The background of the slide is a purple gradient with a faint, repeating pattern of a tree's branches, and a large, curved purple shape on the right side. The bottom right corner features a photograph of a forest with trees in vibrant autumn colors (yellow, orange, red) against a dark background.

DENTONS

How to say goodbye:

Do's and don'ts of termination meetings

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November 14, 2024

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Legal risks when termination meetings go wrong

- Employers have a duty to act in good faith when dismissing an employee.
- Recent rise in bad faith allegations related to the employer's manner of termination
 - Did the employer's conduct, during the course of termination, amount to a breach of their duty of honest performance; and if so, whether the employee suffered harm – beyond the normal distress and hurt feelings arising from dismissal - as a result of that breach.
- No requirement for expert medical or psychological evidence from employee to establish mental distress damages (*Krmpotic v Thunder Bay Electronics Limited*, 2024 ONCA 332)

Objectives of a termination meeting

What do we hope to achieve through the separation process?

The goals and objectives of each termination meeting will vary based on the facts of the situation.

Basic goals of every termination meeting:

1. Clearly inform the affected employee that the decision is non-negotiable and will not be revisited.
2. Communicate details about end of employment (e.g. return of company property; benefits issues, ROE).
3. Where applicable, introduce the outplacement process, where applicable.

Logistics of the termination meeting

Location

Time/day

Documentation

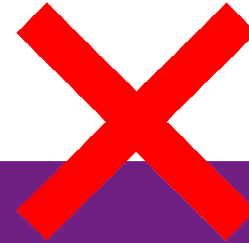
Company
property

Employee
property

Responding to the employee



- Display empathy and show you care
- Emphasize the following:
 - the decision is final and irrevocable
 - management concurred with the decision
 - all relevant factors were carefully reviewed



- Provide extensive justification of the separation
- Rely on “corporate speak”
- Criticism of “higher authority” for the decision or for forcing you to make it
- Discussing past performance, old grudges, etc.
- Exchanging hostilities
- Derailing the conversation by a discussion of side issues (i.e. other terminations, other poor performing employees)
- Participating or sharing in negative emotions

How would you respond?

An irate employee says:

“I’m going to sue the company. You can’t get away with this.”

Which of the following options would be the best response?

Option A: I’m sorry you feel that way. Ultimately, that’s an action you’ll have to decide for yourself; however, I hope you’ll give yourself some time to review the severance package and outplacement services that we are making available to you. We really want to help you through this difficult time.

Option B: Thank you for letting me know. I don’t think that is a good idea, and you likely won’t have much success in that claim. I would strongly advise you not to waste time and money. You will find another job soon, and you were offered a very reasonable package.

Post-termination considerations

- Time to consider any separation offer conditional on signing a release.
- Collection of employees' belongings.
- Announcing the termination on a need-to-know basis or neutral company-wide email.
- Discussions with Service Canada regarding EI benefits entitlements.

Pohl v. Hudson's Bay Company

Pohl worked for the Hudson's Bay Company for 28 years before his employment was terminated without cause.

Court awarded Pohl \$45,000 in moral damages on the basis that:

1. HBC walked Mr. Pohl out the door after his termination meeting. Given that he had committed no misconduct, the Court held that this was unduly insensitive.
2. HBC offered Pohl continued employment as a sales associate (he was a Sales Manager at the time of his termination). The Court held that this offer was misleading and a breach of the duty of good faith and fair dealing.
3. HBC did not pay out the wages it owed to Mr. Pohl in a lump sum within the required period of time.
4. HBC did not issue a ROE to Mr. Pohl within five days after the interruption of his employment, as required.

Teljeur v. Aurora Hotel Group

Teljeur was a 56-year-old employee who was dismissed without cause after just over three years in a senior management role. The employee secretly recorded the termination meeting.

The court awarded Teljeur \$15,000 in moral damages because the employer acted in bad faith in the course of termination because:

1. The company failed to provide a written notice of termination to the employee, contrary to the *Employment Standards Act, 2000*.
2. The employer failed to pay the employee's ESA entitlements within seven days of the day employment ended or the employee's next regular payday, contrary to the ESA.
3. It failed to reimburse the employee \$16,680 for his incurred business expenses.
4. In the termination meeting, the employer assured the employee he would receive eight weeks of pay but instead only paid his statutory entitlement.
5. The employer encouraged the employee to resign from his employment, indicating "it is better off for you to do it". The court considered the possibility that this was intended to limit the employer's exposure in a wrongful dismissal claim.

Lessons for employers

- Be aware of company's behaviour and representations made to employees during termination meetings.
- Ensure termination practices comply with the employment standards legislation, including the payment of unpaid wages, termination pay and severance pay within stipulated time periods.
- Show your empathy and reduce risks by preparing for termination meetings.