

Employment Standards Branch
&
Navy & Sage Benefits

Hiring & Firing

Requirements & Best Practices

Fortify Conference

November 7, 2018



Navy & Sage
B E N E F I T S

Top 8 Focus Areas for HR Best Practices

1. Recruitment & Selection
2. Training & Development
3. Transparency & Expectations
4. Employee Benefits
5. Employee Incentives
6. Compensation
7. Compliance Issues
8. Terminations



Scope of the Employment Standards Act (“Act”)

- Must be an “employee” as defined by the Act
- Must be covered by provincial jurisdiction
- Must not be a profession excluded by the Act
- Must not be covered by a collective agreement
- 6 months to file a complaint



Verbal & Written Agreements

- Any agreement entered into by an employer and an employee must comply with the Act.
- The requirements of the Act and Regulation are minimum requirements and any agreement to waive those requirements has no effect.



Hiring Employees – Employment Standards Act

- No False Representations:

An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting:

- the availability of a position, or
- the type of work, or
- the wages, or
- the conditions of employment



Employment Agreement / Contract

- Position Title
- Start date
- Duration of Probation
- Rate of pay
- Hours of work (and the appropriate overtime structure, if applicable)
- Vacation entitlement
- Employee's duties and responsibilities
- Employee's and Employer's responsibilities on resignation
- Termination clause



Employee Handbook

The handbook should be more detailed as to what is expected of all employees, at all times.

- Employment Policies
- Standards of Conduct
- Compensation & Performance
- Benefits
- Other Policies



Part 8 of the Act – Employer's Right to Terminate

- An Employer has the legal right to terminate an employee
- The Act requires an employer to give the employee written working notice, wages for compensation for length of service (Termination Pay) , or a combination of the two
- The amount of notice or Termination Pay is determined by the employees length of service
- Termination is any end of the employment relationship – quitting, retirement, firing, layoff other than a temporary layoff, may be deemed the by Director in specified circumstances



Compensation for Length of Service/Written Notice - How much?

Upon termination of employment, an employee is entitled to the following amounts of written working notice or pay in lieu, based on years of service:

- 3 months' employment– 1 week
- 12 months' employment – 2 weeks
- 3 years' employment– 3 weeks
- 1 extra week per extra year of employment to a maximum of 8 weeks



Part 8 of the Act – Compensation for Length of Service

How to Calculate Compensation for Length of Service

- Compensation for length of service is calculated by totalling the employee's regular wages over the eight week period prior to termination, dividing the total by eight, and multiplying by the number of weeks payable
- The Act limits wages for compensation for length of service to the statutory entitlement only



Compensation for length of service

- Compensation for length of service is wages and an earned statutory benefit conferred upon employees
- It is a statutory obligation of the employer and the onus is on the employer to show it has met its liability to discharge that onus
- Compensation for length of service is different than damages in a claim for wrongful dismissal



Part 8 of the Act – Notice of Termination

- Notice of termination must be given in writing – verbal notice is of no effect
- Notice must be working notice – it is of no effect where the employee is on vacation, a temporary layoff, or medically unavailable for work
- If the employee works beyond the notice period, the notice is of no effect
- Conditions of employment may not be changed during a notice period except with the employee's written authorization



Termination of Employment Checklist

1. The Decision to Terminate
2. Preparing for Termination
3. During the Termination Meeting
4. After the Termination Meeting



The Decision to Terminate

- Are you ready to terminate?
- Determine the type of termination
- Seek advice before terminating



Preparing for the Termination

- Gather all relevant documentation
- The termination letter
- The termination package support



The Termination Letter

- Prepare a termination letter that sets out very clearly that the employment relationship will be over on a specified date.
- Including:
 - Effective date
 - Final pay date and amount
 - Benefit conversion and GRS transfer options
 - Vacation payout
 - Reminder of confidentiality
 - Recovery of company property
 - Best wishes for future success



During the Termination Meeting

- Script the meeting
- Communicate effectively



The Termination Meeting

- Schedule the meeting on a day early in the week
- Never inform an employee over the phone
- Allow up to 15 minutes for the termination
- Avoid Fridays, pre-holidays, and vacation times if at all possible
- Use a neutral site, never your office (to minimize the employee's embarrassment)
- Have employment agreements, human resources file, and release announcement (internal and external) prepared in advance



The Termination Meeting (2)

- Make yourself available at a time after the meeting in case questions or problems arise
- Have phone numbers ready for medical or security emergencies
- Ask for company equipment such as cell phones and access cards to be returned
- During your conversation:
 - Do have another manager, owner, or HR professional present for the meeting
 - Do treat the employee with respect
 - Don't apologize for your decision
 - Don't spend time debating your decision with the employee



After the Termination Meeting

- Remove employee access
- Update the rest of the company
- Employee transition



Part 8 of the Act – Termination

Compensation for length of service and/or written notice are not required if an employer can prove:

- Employee has not completed three consecutive months of employment
- Employee retires
- Employee quits
- Employer has just cause



Part 8 of the Act – Employee Quits

- No obligation under the Act for an employee to provide notice of resignation
- Liability to pay compensation for length of service or provide written notice is discharged where an employee quits their employment
- Decision to quit must be voluntarily made by the employee – the employer cannot decide that an employee has quit their employment



Part 8 of the Act – Just Cause

- The liability to pay compensation for length of service or provide notice is discharged where an employer has **just cause** to terminate the employee



Part 8 of the Act – Just Cause

Just Cause – Serious Misconduct

- A single serious act may justify summary dismissal where the act is inconsistent with continued employment
- Serious infractions such as:
 - Theft
 - Violence
 - Serious breaches of policy or safety rules
 - Insubordination
 - Conflict of Interest
 - Wilful misconduct



Part 8 of the Act – Just Cause

Just Cause – Minor Misconduct

Minor misconduct can include:

- Unsatisfactory performance
- Lateness
- Absenteeism
- Minor policy violations
- If an employer wants to rely on minor misconduct to prove just cause it must meet the test for progressive discipline (aka corrective discipline)



Part 8 of the Act – Just Cause

Progressive Discipline

- Employers will generally be required to attempt to correct an employee's behaviour before establishing just cause for minor misconduct

Employers must show the following:

- Establish a reasonable standard of performance for the employee to meet
- Clearly warn the employee that failing to meet the standard will result in termination
- Provide a reasonable period of time for the employee to meet the standard
- Demonstrate that the employee ultimately failed to meet the standard



Part 8 of the Act – Additional Exceptions

- Section 65 of the Act – exceptions to requirement to provide compensation for length of service or written notice
 - Casual employees who can accept or reject work
 - Definite term contracts
 - Employment for specific work to be completed within 12 months
 - Frustration of contract
 - Construction employees
 - Reasonable alternative employment



Part 8 of the Act – Section 66

- The Director may deem that an employee has been terminated under section 66 of the Act where an employer has made a **substantial** and unilateral change to the conditions of employment
- “Conditions of employment” includes anything affecting the employment relationship, and can include the wage rate, geographic location, duties, reporting relationships, job title, or just about anything else



Part 8 of the Act – Layoff

- Any layoff constitutes termination of employment unless the possibility of temporary layoff:
 - is expressly provided for in the contract of employment
 - is implied by well known and accepted practises in the industry (e.g. logging)
 - is agreed by the employee
- If there is no express or implied provision in the employment contract that allows temporary layoff, the Act alone does not give employers the general right to temporarily lay off employees.



Part 8 of the Act – Payment of Final Wages

- If an employee quits, an employer must pay all final wages including compensation for length of service, vacation pay, statutory holiday pay, banked hours, etc. **within 6 days** after the employee's last day of work
- If an employee is terminated, an employer must pay all final wages including compensation for length of service, vacation pay, statutory holiday pay, banked hours, etc. **within 48 hours** after the last day of work



Complaint Resolution Process

- No fees to use Employment Standards process
- “Self-help kit” – employee sends form letter and calculation directly to employer to try to resolve prior to filing formal complaint

Time Limits:

- Complaint filing period – must be filed within 6 months
- Maximum wage liability for employer – wages earned or payable in the last 6 months



Complaint Resolution Process

Process may include:

- Education
- Mediation (informal resolution agreed to by parties)
- Complaint Hearings (formal, results in written determination)
- Investigations (informal resolution or written determination)
- Determinations
 - Include mandatory penalties for contraventions of Act or Reg
 - Right of appeal to EST



Determination Penalties

If a Determination is issued that finds a contravention of the Act or Regulation, a mandatory penalty is imposed.

For each contravention:

- \$500 mandatory – 1st contravention
- \$2,500 mandatory – 2nd contravention
- \$10,000 mandatory – 3rd contravention



More Information on Employment Standards

- Web site: www.gov.bc.ca/employmentstandards
 - Policy interpretations, forms, factsheets, contact information
- Toll Free Info-line: 1-800-663-3316
- Branch offices (10 locations)



Resources for HR Support

Local Support

- CPHR BC & Yukon
 - Penticton Roundtable Meetings
 - HR Toolkit
 - Webinars
 - Legal Symposiums
- Navy & Sage Benefits



Resources for HR Support

Online Support

- BambooHR
 - Content Library
 - Webinar Library
 - HR Glossary
 - Infographics
- Cornerstone OnDemand
- PayScale
- HRdownloads
- Ceridian
- Thomson Reuters
- Canadian HR Reporter
- *NEW* TheCannabisChannel.ca



Resources for HR Support

Live Support with real-time support and training

- HRdownloads
- Ceridian



More Information & HR Support

- Website: www.navyandsagebenefits.ca
- Terri Eriksen: 1.250.469.3738
- HR support with severance and terminations, disability management and accommodations, as well as benefits continuation and other policy creation.



Thank you



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