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TOP 10 “DO’S” AND “DON’TS” IN PLANNING AN EMPLOYEE DISMISSAL

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Often the hard decisions regarding employee lay-offs and dismissals are postponed until after the holidays. If you are an employer contemplating such a decision, then here are some tips to make this process go as smoothly as possible and to avoid some of the legal pitfalls that could arise from dismissing an employee.

1. **Do Consider Carefully the Reason for Dismissal:** If the employee is being dismissed for poor performance, then you should carefully consider the reasons before making a decision to fire the employee “for cause”. Generally speaking, only very serious wrongdoing (e.g. a theft or an assault while at work) by an employee will justify immediate dismissal without notice or severance. If the employee’s performance has simply been poor, then in most cases a series of warnings (preferably in writing) will be required before the employee can be dismissed “for cause”.
2. **Do Read the Employment Contract:** If you have a written employment contract, then this contract should be reviewed before dismissing the employee. If the contract is well drafted, it should contain a termination clause which defines and limits your liability for severance to the dismissed employee. If you don’t have a written employment contract, then you may want to obtain some further legal advice on the severance owed to the dismissed employee. You may also want to call us to ask for an employment agreement template that can be adapted to the needs of your business.
3. **Do Prepare a Termination Letter:** Under the BC Employment Standards Act “working notice” of termination must be in writing. Even if you are not giving “working notice”, it is still a very good idea to have a simple termination letter that confirms the basic terms of the dismissal: e.g. the reason for the dismissal, the final payments being made for wages, vacation pay and severance, the termination of any benefits and the obligations on the departing employee to return all company property.
4. **Don’t Simply Rely On the BC Employment Standards Act:** Before dismissing an employee you will want to review the Employment Standards Act to determine the wages, vacation pay and basic severance owed to the employee. However, don’t rely on the Employment Standards Act to determine all your legal obligations to a dismissed employee. In many cases (particularly for long



serving employees or employees in senior positions) your liability for severance to the employee may be much higher than the minimum severance prescribed under the Employment Standards Act.

5. **Do Get a Release:** If you are offering the employee any severance over and above the minimum severance prescribed under the BC Employment Standards Act, then it is generally a good idea to require the employee to sign a "Release of Claims" before paying any additional severance. A signed Release will help to bar any further legal claims against you by the employee.
6. **Don't Dismiss an Employee on Medical Leave:** An employee away on a medical leave (or one who has recently returned from such a leave) should generally not be dismissed. In addition to a wrongful dismissal claim, dismissing such an employee could result in a discrimination claim under the BC Human Rights Code and a claim for loss of disability benefits under your short or long term disability benefits plan.
7. **Don't Dismiss an Employee on Parental Leave:** The BC Employment Standards Act and the BC Human Rights Code both protect employees from termination of their employment while they are on parental (i.e. maternity or paternity) leave. In fact employers are required to reinstate the employee to their previous position (or a comparable position) on completion of their parental leave.
8. **Do Consider Providing a Reference Letter:** Providing an employee with a good reference letter may greatly assist the employee in finding new employment. Ensuring that the employee finds new employment quickly is not only good for the employee, but will also benefit the former employer as it will significantly diminish the risk of the employee bringing any legal claims against you. Unless an employee has been dismissed "for cause" you should therefore always consider providing some form of reference letter to the departing employee.
9. **Do Consider Outplacement Counselling:** Many employers provide outplacement counselling services to their departing employees. These services help guide the employee through the stress of a termination and assist the employee in making a transition to a new career. As noted above, helping the employee find new employment will benefit both you and the employee.
10. **Do Consider Legal Advice:** In many cases getting some basic legal advice before a dismissal can truly be the "ounce of prevention that prevents a pound of cure". If you call us before dismissing the employee, we can assist you in avoiding some of the common pitfalls, and guide you through the dismissal process. In particular, we can advise you on the severance that may be required (and the strategies available for minimizing the severance payable) as well as provide you with the necessary documentation, including templates for a termination letter and a legally enforceable Release. Obtaining such advice early on, will in many cases avoid the high cost and frustration associated with defending Court actions for wrongful dismissal, claims of discrimination before the Human Rights Tribunal and possible claims under the Employment Standards Act.



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