

Table of Contents

Acknowledgements / iii
Introduction / v

CHAPTER 1 CULTURE AND POLICY CONSIDERATIONS

1.1	INTRODUCTION / 1-1
1.2	AUDITING TERMINATION PRACTICES / 1-2
	Part One: The Five W s of Root Cause Analysis / 1-2
	Part Two: Outcomes, Risks and Consequences / 1-5
	Part Three: Audit Deliverables / 1-6
	Part Four: Benchmarking Termination Policies and Practices / 1-7
1.3	TERMINATION DOCTRINE / 1-8
1.4	EMPLOYMENT POLICIES / 1-9
1.5	POLICIES VERSUS PROCEDURES / 1-10
1.6	ALIGNING POLICIES WITHIN THE ORGANIZATION / 1-10
1.7	THE NECESSITY OF EMPLOYMENT POLICIES AND PROCEDURES / 1-10
1.8	THE CONTRACTUAL FORCE OF POLICIES / 1-11
1.9	GENERAL AND SPECIFIC LEGAL REQUIREMENTS / 1-13
1.10	DECIDING WHAT POLICIES YOU NEED / 1-13
1.11	DISTRIBUTION OF POLICIES / 1-14
1.12	WORK STANDARDS / 1-14
1.13	PROBATION / 1-15
1.14	ANALYZING TERMINATION TRENDS / 1-16
	(1) Exit Interviews / 1-16
	(2) Conducting the Exit Interview / 1-17
	(3) Reviewing the Employment Cycle / 1-18
	(4) Performance Improvement Plan Guidelines / 1-19
	(a) Introduction / 1-19
	(b) Goals/Objectives / 1-20
	(c) Duration / 1-21
	(d) Steps / 1-21
	(e) Analysing Termination Trends — The Expected Results / 1-23
1.15	CULTURAL CONSIDERATIONS RELATING TO TERMINATION OF EMPLOYMENT / 1-23
	Terminating Employees for Lack of Fit / 1-25
	References / 1-26

FORMS

Form 1.01	Sample Termination Policy / 1-27
Form 1.02	Voluntary Termination of Employment Policy / 1-31
Form 1.03	Sample Policy on Gifts and Parties for Departing Employees / 1-32

CHAPTER 2 TERMINATION PROCEDURES

- 2.1 INTRODUCTION / 2-1
- 2.2 CREATING A TERMINATION PROCESS / 2-2
 - (1) Just Cause / 2-2
 - (2) Termination Clause / 2-3
 - (3) Other Process Requirements / 2-4
 - (4) Sample Termination Scripts / 2-5
 - (5) Process for Terminating an Employee / 2-10
- 2.3 COMMUNICATIONS ISSUES SURROUNDING TERMINATIONS / 2-11
 - (1) Documentation / 2-11
 - (2) Seeking the Authority to Terminate / 2-13
 - (3) Considering Alternatives / 2-15
 - (4) The Termination Interview / 2-16
 - (a) Timing / 2-16
 - (b) Location / 2-16.1
 - (c) Interruptions / 2-16.1
 - (d) Inviting the Employee / 2-16.1
 - (e) The Letter / 2-16.2
 - (f) Participants / 2-16.2
 - (g) The Opening / 2-16.2
 - (h) The Closing / 2-16.3
 - (i) Escorting the Employee off the Premises / 2-16.3
 - (5) Extreme Taboos / 2-16.4
 - (6) The Need to Know / 2-16.5
 - (7) Informing Coworkers / 2-16.6
 - (8) Informing External Clients and Vendors / 2-16.7
 - (9) Defamation, Libel and Slander / 2-16.7
 - (10) Social Media and Related Concerns / 2-16.9
- 2.4 COMMUNICATION SAMPLES / 2-16.12
- 2.5 NON-COMPETITION AND NON-SOLICITATION AGREEMENTS
(RESTRICTIVE COVENANTS) / 2-16.13
 - (1) Enforcing a Restrictive Covenant / 2-16.14
 - (2) Legislative Changes in Ontario Relating to Non-Competition Agreements / 2-16.15
- 2.6 REFERENCES / 2-16.15
 - (1) Policies on References / 2-16.20
- 2.7 MANAGING SENIOR EXECUTIVE TERMINATIONS / 2-16.23
- 2.8 TERMINATION: INSIGHTS WE CAN LEARN FROM / 2-16.29
 - (1) Increased Risk of Wrongful Dismissal Litigation / 2-16.30
 - (2) Taking Steps to Deter Litigation / 2-16.30
 - (3) Retaliation from the Employee / 2-16.31
 - (4) Preventing a Violent Response / 2-16.32
 - (5) Increased Potential of a Human Rights Claim / 2-16.34
 - (6) Reduced Loyalty from Existing Team Members / 2-16.35
- 2.9 FORMER EMPLOYEES / 2-16.37
 - (1) Visits / 2-16.37
- 2.10 REDEPLOYING EMPLOYEES INTERNALLY ELSEWHERE WITHIN THE
ORGANIZATION / 2-16.38

TABLE OF CONTENTS

FORMS AND CHARTS

Form 2.01	Termination Memorandum / 2-16.11
Form 2.01(a)	Termination Procedures Checklist / 2-16.25
Form 2.02	Separation Notice / 2-16.41
Form 2.03	Termination of Employment Record / 2-16.43
Form 2.04	Exit Interview Form to be Filled out by Employees who Voluntarily Terminate / 2-16.44
Form 2.05	Record of Exit Interview: Voluntary Resignation / 2-16.45
Form 2.05(a)	Exit Survey / 2-16.51
Form 2.05(b)	Sample Survey — Exit Interview Questionnaire / 2-16.56
Form 2.05(c)	ABC Company — Exit Questionnaire / 2-16.58
Form 2.06	Reference Release / 2-16.61
Form 2.07	Terminations Checklist - Revised / Suggested / 2-16.62
Chart 2.08	Employment Standards Rapid Reference Chart (Minimum Standards) / 2-16.65
Chart 2.09	Periods of Notice Awarded / 2-16.66
Chart 2.10	Employee Record Retention Requirements / 2-149
Chart 2.11	Ending Employment Relationships / 2-151

APPENDICES

Appendix 2.1	Alternative Dispute Resolution and Termination of Employment / 2-155
--------------	--

CHAPTER 3 LEGAL CONSIDERATIONS

3.1	INTRODUCTION / 3-1
3.2	UNJUST DISMISSAL PROCEDURES / 3-1
3.3	STATUTES LIMITING DISCHARGE / 3-4
	(1) Statutory Rights: Discrimination and Prohibited Discharge / 3-4
	(2) Whistleblower Laws / 3-8
	(3) How an Employee Can Address Concerns / 3-10
3.4	BREACH OF CONTRACT (THE EMPLOYMENT CONTRACT) / 3-11
	(1) What is an Employment Contract? / 3-11
	(2) Formal Contracts / 3-11
	(3) Purpose of the Employment / 3-12
	(3.1) Employment Contracts and Employment Standards Minimums / 3-13
	(a) Limiting Compensation on Termination in Employment Contract / 3-14
	(b) Termination Clause Failed To Include All Types of Remuneration / 3-16.1
	(c) New Employment Contract May be Offered During Tenure of Old Contract / 3-16.2
	(4) Duration of the Employment / 3-16.3
	(a) Termination of Temporary and Contract Workers / 3-16.4
	(i) Temps / 3-16.4
	(ii) Independent Contractors / 3-16.5
	(iii) Dependent Contractors / 3-16.8
	(iv) Recommendations / 3-16.12
	(5) Termination / 3-16.13
	(a) No “Rule of Thumb” for Wrongful Dismissal Damages / 3-16.14

BEST PRACTICES: TERMINATION

- (b) Aggravated Damages / 3-16.15
- (c) Extended Notice for “Bad Faith” Discharge: The “Wallace Bump” / 3-16.16
- (d) Applications of the *Wallace Bump* / 3-16.17
 - (i) Insisting on a Release in Exchange of Employment Standards Minimum Notice / 3-16.17
 - (ii) Dismissal While on Sick Leave / 3-16.18
 - (iii) Failure to Provide a Letter of Reference / 3-16.18
 - (iv) Alleging Cause / 3-16.19
- (6) Confidentiality / 3-16.24
- (7) Non-solicitation and Non-competition / 3-16.24
- (8) Injunctions to Stop Competition or Solicitation — The Legal Test / 3-16.24
 - (a) Introduction / 3-16.24
 - (b) When will Courts Grant Injunctions? / 3-16.25
 - (i) Strong Prima Facie Case / 3-16.26
 - (ii) Irreparable Harm / 3-16.28
 - (iii) Balance of Convenience / 3-16.29
- (9) Preparing Affidavits for an Injunction Motion / 3-16.30
 - (a) Introduction / 3-16.30
 - (i) There is a Non-competition or Non-solicitation Agreement in Place / 3-16.31
 - (ii) The Non-competition or Non-solicitation Agreement is Reasonable and Enforceable / 3-16.31
 - (iii) A Non-solicitation Covenant Would Not Protect the Employer / 3-16.32
 - (iv) The Employee has Breached the Non-competition or Non-solicitation Agreement / 3-16.33
 - (v) The Employer will Suffer Irreparable Harm if the Injunction is Not Granted / 3-16.34
 - (vi) The Balance of Convenience Favours Granting the Injunction / 3-16.35
- (10) Other Tips for Enforcing Non-competition and Non-solicitation Agreements / 3-16.35
 - (a) Introduction / 3-16.35
 - (b) Have the Agreement Kept in Safekeeping / 3-16.35
 - (c) Do Not Delay / 3-16.36
 - (d) Preserve the Evidence of Who Customers Are / 3-16.36
 - (e) Be Sure to Have the Employee Enter into the Non-competition Agreement and Non-solicitation Agreement Before the Employee Commences Work / 3-16.36
 - (f) Provide Consideration for Imposing a Restrictive Covenant During Employment / 3-16.36
 - (g) Conduct a Thorough Exit Interview / 3-16.37
 - (h) Be Consistent with Enforcement / 3-16.37
 - (i) Be Consistent when Drafting Non-competition and Non-solicitation Agreements for Employees Who Have Similar Positions / 3-16.37
 - (j) Pay the Employee’s Wages for the Length of the Non-competition Agreement / 3-16.38
- (11) Company Rules, Policies and Procedures / 3-16.38
- (12) Employment Contracts with Long-term Employees / 3-16.38
- (13) Resolving Termination Disputes / 3-16.38

TABLE OF CONTENTS

	(1)	Forums / 3-16.39
	(a)	Grievance Arbitration / 3-16.39
	(b)	Constructive Dismissal Cases / 3-16.42
	(c)	Rights Versus Interest Disputes / 3-16.43
	(d)	Wrongful Dismissal — Insufficient or Unjust Cause / 3-16.44
	(e)	Wrongful Dismissal — Disputes over Severance and Notice / 3-16.46
	(2)	Other Forums / 3-16.48
	(3)	Forum Shopping / 3-16.50
	(14)	Unconscionability, Duress, and Undue Influence / 3-16.50
	(a)	<i>Riskie v. Sony of Canada Ltd.</i> / 3-16.52
	(b)	<i>Woollacott v. Canadian Forest Products</i> / 3-16.52
	(c)	<i>Manak v Workers' Compensation Board of British Columbia</i> / 3-16.54
3.5		CONSTRUCTIVE DISMISSAL / 3-16.55
	(1)	Change in Remuneration / 3-16.56
	(a)	<i>Farber v. Royal Trust Co.</i> / 3-16.56
	(b)	Change to Bonuses / 3-16.57
	(i)	<i>Pathak v. Jannock Steel Fabricating Co.</i> / 3-16.57
	(ii)	<i>Johnston v. Household Financial Corp.</i> / 3-16.58
	(iii)	<i>Stea v. Kulwahy</i> / 3-16.59
	(iv)	<i>Hannigan v. Ikon Office Solutions Inc.</i> / 3-16.59
	(v)	<i>Schumacher v. Toronto Dominion Bank</i> / 3-60
	(2)	Change in Location / 3-16.61
	(3)	Change in Responsibilities / 3-18
	(4)	Forced Resignation / 3-18
	(5)	Change in Fundamental Term or Condition of Employment / 3-18
Appendix 3.1		Significant Employment Law (Termination) Cases / 3-18.1
		Bonuses / 3-18.1
		Breach Of Employment Contract / 3-18.3
		Clear And Cogent Evidence / 3-18.3
		Conflicts Of Interest / 3-18.3
		Constructive Dismissal / 3-18.4
		Damages / 3-18.8
		Aggravated Damages / 3-18.9
		Discrimination / 3-18.19
		Duty of Good Faith / 3-18.22
		Employee Misrepresentations / 3-18.25
		Employer Liable For Benefits / 3-18.26
		Fixed-Term Contracts / 3-18.27
		Health and Safety Violations / 3-18.27
		Improper Use Of The Internet Or Email / 3-18.29
		Independent Contractors And Employees / 3-18.30
		Infliction Of Emotional Stress / 3-18.30
		Issue Estoppel / 3-18.31
		Just Cause / 3-18.32
		Mandatory Retirement / 3-18.34
		Mitigation / 3-18.35
		Near Cause Doctrine / 3-18.40
		Negligent Misrepresentation / 3-18.40

BEST PRACTICES: TERMINATION

Non-Solicitation And Non-Competition Agreements / 3-18.42
Notice Of A Fundamental Change In The Employment Contract / 3-18.46
Onus / 3-18.47
Performance Issues / 3-18.48
Probationary Period (or Prior to Start Date) / 3-18.50
Termination Clauses / 3-18.51
Termination Under Ontario ESA / 3-18.57
Unjust Dismissal (Canada Labour Code) / 3-18.58

SAMPLE CONTRACTS

3.01: Formal Employment Contract / 3-19
3.02: Informal Employment Contract / 3-25
3.03: Casual Employment Contract / 3-26
3.04: Confidentiality Agreement / 3-27
3.05: Confidentiality and Non-Competition Agreement / 3-28
3.06: Employment Contract Precedents / 3-30
3.07: Termination Contract / 3-46

FORMS

3.01: Prohibited Grounds of Discrimination in Employment by Jurisdiction / 3-48
3.02: Letter Affirming Employment Contracts / 3-59
3.03: Warning Letter for Improper Conduct / 3-59
3.04: Warning Letter for Poor Performance / 3-60
3.05: Termination Letter — Just Cause / 3-61
3.06: Termination Letter — Without Cause / 3-62
3.07: Termination Letter — No Cause / 3-63
3.08: Termination Letter Reserving Ground for Just Cause / 3-64
3.09: Releases / 3-65
3.10: Employee Data Checklist for Legal Counsel / 3-68

CHAPTER 4 TERMINATION FOR CAUSE

- 4.1 INTRODUCTION / 4-1
- 4.2 JUST CAUSE TERMINATION CONSIDERATIONS / 4-2
 - (1) Common Law Just Cause vs. Statutory Just Cause / 4-2
 - (2) Employer and Employee Rights / 4-2
 - (3) Constructive Dismissal and False Disciplinary Discharge Allegations / 4-3
 - (4) Progressive Discipline Processes / 4-4
 - (5) Positive Discipline and the Mixed-consequences Approach to Performance Management / 4-6
 - (a) Overview / 4-6
 - (b) Application of Progressive Discipline Under a Positive Discipline Model / 4-10
 - (c) Inaction and the Vicious Cycle / 4-11
 - (d) Fixing the Process — Implementing a New Approach to Discipline / 4-12
 - (i) Management Buy-in / 4-12
 - (ii) Assessment and Determination of Readiness / 4-12
 - (iii) Program Design / 4-12.1

TABLE OF CONTENTS

	(iv)	Consultation with the Union / 4-12.2
	(e)	Non-union Environments and Positive Discipline / 4-12.3
	(6)	Justice and Dignity Clauses / 4-12.4
	(7)	Sample Justice and Dignity Provision / 4-12.4
4.3		ESTABLISHING JUST CAUSE / 4-12.4
	(1)	Violations of a Fundamental Term of the Employment Contract / 4-12.6
	(2)	Gross Misconduct / 4-12.7
	(3)	Gross Insubordination / 4-12.7
	(4)	Dishonesty / 4-12.8
	(5)	Culminating Incident / 4-12.9
	(6)	Endangering Health and Safety / 4-12.9
	(7)	Dereliction of Duty / 4-12.9
	(8)	Human Rights Violations / 4-12.10
	(a)	Harassment Based on a Prohibited Ground of Discrimination / 4-12.10
	(b)	Sexual Harassment / 4-12.11
	(c)	Personal Harassment / 4-12.11
	(d)	Zero Tolerance / 4-12.12
	(e)	False, Frivolous and Vexatious Complaints / 4-12.14
	(9)	Conflicts of Interest / 4-12.14
	(10)	Illegal Activities / 4-12.15
	(11)	Conduct Outside of Work/Off-Duty Conduct / 4-12.16
	(12)	Automatic Termination Policies / 4-12.17
	(13)	Revelation of Character / 4-12.17
	(14)	Condonation / 4-12.18
	(15)	Near Cause / 4-12.18
	(16)	Employee Terminations and Workplace Violence / 4-12.18
	(a)	Background / 4-12.19
	(b)	Bill 168 / 4-12.20
	(c)	Conclusions / 4-12.27
	(17)	Workplace Investigations / 4-12.28
	(a)	Process Steps / 4-12.31
	(b)	Confidentiality / 4-12.34
	(c)	Retaliation / 4-12.34(1)
	(d)	The Decision / 4-12.34(1)
	(18)	Sexual Harassment and Workplace Investigations in the #MeToo Era / 4-12.34(2)
		Appendix 4.1 Sample Harassment Policy / 4-12.34(3)
4.4		DISCIPLINARY DISCHARGE IN A UNIONIZED ENVIRONMENT / 4-12.41
	(1)	Whether to Consult the Union / 4-12.42
	(2)	Recent Developments / 4-12.42
4.5		BEFORE THE DISCIPLINARY DISCHARGE / 4-14.20
	(1)	Alternatives to Disciplinary Discharge / 4-14.20
	(2)	Documenting Events Leading to Discharge / 4-14.21
	(3)	Gathering Supporting Records / 4-14.21
4.6		DISCHARGE PROCEDURES / 4-14.22
	(1)	Discharge Review Policy / 4-14.22
	(a)	Review of the Termination / 4-14.22
	(b)	Authority of the Review / 4-14.22
	(c)	Scope of the Review / 4-14.23

BEST PRACTICES: TERMINATION

- (d) Actions Pending Review / 4-14.23
 - (e) Length of Review / 4-14.23
 - (2) Discharge Review Points / 4-14.23
 - (3) Mitigating Circumstances / 4-14.24
 - (a) Personal Factors / 4-14.25
 - (b) Company Rules / 4-14.30
 - (4) Forums for Appealing a Discharge for Just Cause / 4-14.36
- 4.7 TELLING THE EMPLOYEE / 4-14.41
 - (1) Before Meeting with the Employee / 4-14.42
 - (2) Breaking the News / 4-14.42
 - (3) Formalizing the Termination — the Termination Letter / 4-14.43
 - (4) Departure from the Employer's Premises / 4-14.44
 - (5) Informing Co-workers / 4-14.44
- 4.8 NON-DISCIPLINARY TERMINATION FOR CAUSE / 4-14.44
 - (1) Duty to Accommodate / 4-14.44
 - (2) Innocent Absenteeism / 4-14.45
 - (a) Innocent Absenteeism as Frustration / 4-14.45
 - (b) Establishing Innocent Absenteeism as Frustration / 4-14.46
 - (i) Can the Employer Demonstrate a History of Absenteeism? / 4-14.46
 - (ii) Can the Employer Establish that the Poor Attendance is Not Likely to Improve in Future? / 4-14.46
 - (iii) Do the Terms of the Employment Contract Include Provisions for Sick Pay? / 4-14.47
 - (iv) What was the Likely Duration of the Contract of Employment in the Absence of Sickness or Disability? / 4-14.47
 - (v) Is the Employee's Job "Key" to the Organization? / 4-14.47
 - (vi) What was the Length of Employment? / 4-14.47
 - (c) Frustration under Employment Standards Legislation / 4-14.48
 - (i) Impossibility / 4-14.50
 - (ii) Absence of Fault / 4-14.50
 - (iii) The Terms of the Contract / 4-14.51
 - (iv) The Provision of Sick Benefits / 4-14.51
 - (v) Workers' Compensation Benefits/Rights / 4-14.51
 - (vi) Miscellaneous Factors / 4-14.52
 - (d) Disability and Accommodation Requirements / 4-14.53
 - (e) What are "Essential Duties"? / 4-14.53
 - (f) Accommodation and Undue Hardship / 4-14.54
- (3) Poor Performance / 4-14.55

FORMS

- | | |
|-----------|--|
| Form 4.01 | Handbook Statement on Dismissal / 4-15 |
| Form 4.02 | Company Rules and Regulations / 4-15 |
| Form 4.03 | Discipline: Verbal Correction Report / 4-18 |
| Form 4.04 | Discipline: Written Warning Form / 4-19 |
| Form 4.05 | Disciplinary Memo / 4-20 |
| Form 4.06 | Discipline Record / 4-21 |
| Form 4.07 | Discipline: Record of Written Warning / 4-21 |
| Form 4.08 | Decision-making Leave Form / 4-22 |
| Form 4.09 | Discipline: Review Following Decision-making Leave Form / 4-23 |

TABLE OF CONTENTS

Form 4.10	Notice of Dismissal / 4-24
Form 4.11	Discipline: Notice of Summary Dismissal / 4-25
Form 4.12	Termination Notice for Unexplained Absence / 4-25
Form 4.13	Discipline Checklist: Questions to Consider before Disciplining Employees / 4-26
Form 4.14	Guidelines for Reviewing a Disciplinary Action Checklist / 4-27
Form 4.15	Delivering Warnings to Employees — Suggested Checklist / 4-28
Form 4.16	Dismissal Checklist / 4-29
Form 4.16A	Investigation Checklist for the Unionized Workplace / 4-29
Form 4.16B	Discipline Checklist for the Unionized Workplace / 4-30
Form 4.16C	Hearing Preparation Checklist for the Unionized Workplace / 4-30.1
Form 4.17	Absenteeism Policies / 4-30.2
Form 4.18	Sample Disciplinary Letters — Absenteeism / 4-31
Form 4.19	Employment Terminations / 4-34
Form 4.20	Just Cause Checklist / 4-35
Form 4.21	Termination Considerations for Line Managers / 4-36
Form 4.22	Performance Improvement Plan (PIP) / 4-38

CHAPTER 5 RESIGNATION AND RETIREMENT

5.1	RESIGNATION / 5-1
	(1) Notice of Resignation / 5-2
	(a) Selected Case Law: Notice of Resignation / 5-3
	(i) <i>Engineered Sound Systems Ltd. v. Klampfer</i> / 5-3
	(ii) <i>Systems Engineering & Automation Ltd. v. Power</i> / 5-4
	(iii) <i>Beninger v. Kuschmierz</i> / 5-4
	(iv) <i>Tree Savers International Ltd. v. Savoy</i> / 5-4.1
	(v) <i>Bradley v. Carleton Electric Ltd.</i> / 5-4.1
	(vi) <i>RBC Dominion Securities Inc. v. Merrill Lynch Canada</i> / 5-4.1
	(vii) <i>Bru v. AGM Enterprises Inc</i> / 5-4.1
	(viii) <i>GasTOPS v. Forsyth</i> / 5-4.2
	(ix) <i>Oliver v. Sure Grip Controls Inc.</i> / 5-4.3
	(x) <i>Avalon Ford Sales (1996) Limited v Evans</i> / 5-4.3
	(xi) <i>Consbec Inc. v. Walker</i> / 5-4.4
	(2) Dismissing Employees who Give Notice / 5-4.6
	(3) When Employees Choose to Leave — Issues to Consider / 5-4.6
	(4) Constructive Dismissal / 5-4.6
	(5) Constructive Resignation / 5-4.7
	(a) Selected Case Law: Constructive Resignation / 5-4.7
	(ii) <i>Beggs v. Westport Foods Ltd</i> / 5-4.7
5.2	THE EXIT INTERVIEW / 5-4.9
	(1) Confidentiality and Anonymity / 5-4.9
	(2) Exit Interview Preparation / 5-4.10
	(3) Exit Interview Techniques / 5-4.10
	(4) After the Exit Interview / 5-4.10
5.3	RETIREMENT / 5-4.11
	(1) Early Retirement / 5-4.11
	(a) Pension Plan Provisions / 5-4.13
	(b) Communication Strategy / 5-4.14

BEST PRACTICES: TERMINATION

- (2) Mandatory Retirement / 5-4.14
- (3) *Bona Fide* Occupational Requirement for Mandatory Retirement / 5-4.15
 - (a) Rational Connection / 5-4.22
 - (b) Honest and Good Faith Belief / 5-4.22
 - (c) Reasonably Necessary, Accommodation and Undue Hardship / 5-4.23
- 5.4 PHASED RETIREMENT / 5-4.24
 - (1) Gradual Retirement (Pre-retirement) / 5-5
 - (2) Post-Retirement-Age Work Options / 5-5
- 5.5 PRE-RETIREMENT PLANNING PROGRAMS / 5-6
 - (1) Program Design / 5-6
 - (2) Retirement Counsellors / 5-7
 - (3) Financial Planning / 5-7
 - (4) Quality of Life / 5-8
- 5.6 PLANNING FOR RETIREMENT / 5-8
 - (1) Introduction / 5-9
 - (2) Common Themes Surrounding Retirement / 5-9
 - (3) Myths and Misconceptions About Retirement / 5-10
 - (4) Personal Attitude Towards Retirement / 5-12
 - (5) Retirement Now or Later / 5-14
 - (6) Three Trial Period Options / 5-14
 - (7) Different Levels of Retirement Income / 5-15
 - (8) Selecting a Financial Consultant / 5-16
 - (9) Transition to the Retirement Picture / 5-17
 - (10) Steps to a Successful Passage / 5-18
 - (11) How To Tell When Your Passage is Over / 5-19
- 5.7 EMPLOYEE DEATH / 5-19
- 5.8 REHIRING FORMER EMPLOYEES / 5-20

FORMS

- Form 5.01 Voluntary Resignation / 5-20.1
- Form 5.01(a) Communicating the Resignation to Others / 5-20.2
- Form 5.01(b) Communicating the Retirement to Others / 5-20.3
- Form 5.02 Letter Approving Employee's Application to Retire / 5-21
- Form 5.03 Voluntary Early Option Survey / 5-22
- Form 5.04 General Guidelines for Conducting and Documenting an Exit Interview / 5-24
- Chart 5.05 Provincial Statutory Notice of Resignation / 5-25
- Form 5.06 Retirement Planning Checklist / 5-25
- Form 5.07 Retirement Living Expense Summary / 5-27
- Worksheet 5.08 Attitude Assessment/ 5-30
- Worksheet 5.09 Early Retirement Determination Scale / 5-31

CHAPTER 6 SEVERANCE

- 6.1 PLAN DESIGN / 6-1
 - (1) Types of Severance Plans / 6-1
 - (2) Payment Calculation Options / 6-3
 - (3) Severance Policy Provisions / 6-4
- 6.2 PAYMENT OF SEVERANCE / 6-4

TABLE OF CONTENTS

	(1)	Release Agreements / 6-6
	(2)	Release Requirements / 6-6
	(3)	Release Validity / 6-8
6.3		TAX ISSUES / 6-9
	(1)	Taxation of Payments Made in Lieu of Notice / 6-10
6.4		SEVERANCE PRACTICES IN CANADIAN ORGANIZATIONS / 6-12
	(1)	Introduction / 6-12
	(a)	Employee Issues / 6-12
6.5		FRUSTRATION OF CONTRACT / 6-17
	(1)	What is Frustration of Contract Under Employment Law? / 6-14
	(2)	The “Two-Year” Rule / 6-16
	(3)	Frustration and Long-Term Disability Benefits / 6-17
	(4)	Application Under Workers’ Compensation Statutes / 6-20
	(5)	Assessing Damages for the Wrongful Dismissal of Disabled Employees / 6-24
	(6)	Duty to Accommodate / 6-22
	(7)	Frustration of the Employment Contract Due to COVID-19 / 6-23

FORMS

Form 6.01	Sample: Final Release and Indemnity / 6-24
Form 6.02	Sample: Termination/Severance Payment Confirmation Form / 6-25

CHAPTER 7 DOWNSIZING/OUTSOURCING

7.1	INTRODUCTION / 7-1
7.2	REASONS FOR DOWNSIZING / 7-1
	(1) Potential Concerns / 7-2
7.3	KEY PEOPLE ISSUES / 7-3
	(1) Good People May Leave / 7-3
	(2) Allocation of Work and Job Design / 7-3
	(3) Overload / 7-3
	(4) Loss of Confidence and Drive / 7-4
	(5) Disruptive Stress Levels / 7-4
	(6) Communication Breakdown / 7-4
7.4	ALTERNATIVES TO DOWNSIZING / 7-3
	(1) Supplemental Unemployment Benefit / 7-6
	(2) Work-Sharing Program / 7-7
7.5	PLANNING FOR DOWNSIZING — MANAGEMENT’S ROLE / 7-8
	(1) Planning Preparation / 7-8
7.6	MANAGING DOWNSIZING / 7-11
	(1) Change Strategies / 7-11
	(2) Workload Management / 7-11
	(3) Change Skills / 7-12
	(4) Communication / 7-12
	(5) Change Measurement / 7-12
7.7	WHERE TO DOWNSIZE / 7-13
	(1) Skill-based Selection / 7-13
	(2) Retaining Full-time Staff / 7-13
	(3) Seniority-based Selection / 7-13

BEST PRACTICES: TERMINATION

- (4) Merit-based Selection / 7-14
- (5) Project- or Client-based Selection / 7-14
- (6) Equity-based Selection / 7-14
- (7) Combined Criteria Selection / 7-14
- 7.8 IMPLEMENTING LAYOFFS — UNIONIZED WORKFORCES / 7-14
 - (1) Giving Notice / 7-15
 - (2) Termination Meetings / 7-15
 - (3) Motivating Survivors / 7-16
 - (4) Recall Policy / 7-16
- 7.9 RETAINING PEOPLE — RETENTION BONUSES THROUGH RESTRUCTURING / 7-16.2
- 7.10 SAMPLE DOWNSIZING PLAN / 7-16.3
 - (1) Communicating the Need for Restructuring / 7-16.3
 - (2) Communications Strategy / 7-16.5
 - (3) Target Audiences / 7-16.5
 - (a) Management Team / 7-16.5
 - (b) Bargaining Agent / 7-16.5
 - (c) Affected Employees / 7-16.6
 - (d) Other Employees (Survivors) / 7-16.7
 - (e) The Media / 7-16.8
 - (f) Customers / 7-16.8
 - (g) Suppliers / 7-16.9
- 7.11 OUTSOURCING, OFFSHORING OR DIVESTING DEPARTMENTS OR FUNCTIONS / 7-35
 - (1) Introduction / 7-35
 - (2) Outsourcing / 7-35
 - (3) Offshoring / 7-42
 - (4) Divestitures / 7-44
 - (5) Termination of Employment in an Outsourcing Agreement / 7-45
 - (6) Transfer of Employment — Legal Considerations / 7-46
 - (7) Change Management in an Outsourcing Context / 7-48
 - (8) References / 7-50
- 7.12 MASS/GROUP TERMINATION LEGAL CONSIDERATIONS / 7-52
 - (1) Background / 7-52
 - (2) Court Findings / 7-53
 - (3) Key Takeaways for Employers / 7-54

Sample Downsizing Strategy / 7-17

FORMS

- Form 7.01 Policy Statement on Workforce Reductions / 7-27
- Form 7.02 Sample Policy Statement on Temporary Workforce Reductions / 7-27
- Form 7.03 Sample Policy Statement on Reductions in Workforce / 7-27
- Form 7.04 Sample Policy Statement on Order of Layoff and Notice / 7-27
- Form 7.05 Sample Union Layoff or Outplacement Worksheet / 7-27
- Form 7.06 Schedule of Critical Activities in Group Reductions/ Downsizing / 7-31
- Form 7.07 Statement to Employees - Closure of Plant / 7-33
- Form 7.08 Statement to Employees Personally Impacted by Downsizing – Closure of Plant / 7-33

CHAPTER 8 LIFE AFTER CHANGE — SURVIVORS AND REENGINEERING

8.1	INTRODUCTION / 8-1
8.2	CHANGE MANAGEMENT / 8-2
8.2.1	RESTRUCTURING THE WORKPLACE / 8-3
	(1) The Reengineering Process / 8-3
	(2) The Employee Factor / 8-3
	(3) Staffing the Reengineering Process / 8-4
	(4) Technology / 8-4
	(5) Human Effects of Reengineering / 8-4
	(6) Transition Teams / 8-4
	(7) Self-directed Work Teams / 8-5
	(8) Training / 8-5
	(a) Skills Training / 8-5
	(b) Leadership Training / 8-5
	(c) Team Building / 8-5
	(d) Career Management Training / 8-6
	(9) Suggestion Programs / 8-6
8.2.2	COMMUNICATION / 8-6
	(1) Explaining Restructuring / 8-6
	(2) Selling the New Mission / 8-7
	(3) Job Security / 8-7
	(4) Culture of Security / 8-7
8.3	REACTIONS TO CHANGE / 8-7
8.3.1	UNDERSTANDING REACTIONS TO CHANGE / 8-7
	(1) Loss = Fear / 8-8
	(2) Letting Go / 8-9
	(a) Denial / 8-9
	(b) Resistance / 8-9
	(c) Exploration / 8-9
	(d) Recommitment / 8-9
	(3) Resistance and Change / 8-9
	(4) Personal Strategies to Change / 8-10
	(5) Strategies for Coping with Stress / 8-10
8.3.2	SURVIVORS / 8-10
	(1) Survivor Guilt / 8-11
	(2) Keeping Survivors Informed / 8-12
8.3.3	COUNSELLING AND EAPs / 8-12
	(1) Treatment and Referrals / 8-12
	(2) Hotlines / 8-12
8.3.4	RESPONSIBILITY OF LEADERS / 8-13
	(1) Leadership Strategies / 8-13
8.4	NEWS OF TERMINATIONS / 8-13
8.4.1	SOCIAL MEDIA / 8-14
8.4.2	GOING VIRAL / 8-14
8.5	THE PUBLIC PERCEPTION / 8-15
8.5.1	CORPORATE SOCIAL RESPONSIBILITY / 8-15
8.5.2	EMPLOYER BRANDING / 8-17
8.5.3	NEGATIVE PUBLICITY / 8-17

- 8.6 PUBLIC RELATIONS / 8-19
REFERENCES AND ADDITIONAL READING / 8-20

CHAPTER 9 OUTPLACEMENT SERVICES

- 9.1 INTRODUCTION / 9-1
9.2 TYPES OF OUTPLACEMENT SERVICES / 9-2
9.3 JOB-SEARCH STRATEGIES / 9-5
9.4 CHOOSING AN OUTPLACEMENT CONSULTANT OR FIRM / 9-7
9.5 JOB SEARCH, CLAWBACK PROVISIONS AND THE DUTY TO
MITIGATE / 9-12.2
9.6 OTHER CONSIDERATIONS / 9-12.5
Appendix 9.1 Creating a Resume / 9-13

FORMS

- Form 9.01 Resume Review Checklist / 9-23
Form 9.02 Letter Writing Tip Sheet / 9-25
Form 9.03 Telephone Communications Tip Sheet / 9-26
Form 9.04 Tip Sheet for Successful Interviews / 9-27
Form 9.05 Resume Action Words / 9-35

CHAPTER 10 CANADIAN PRACTICES

EXAMPLE POLICIES

- 10.1 Corrective Action / 10-3
10.2 Discipline and Investigation Procedures / 10-7
10.3 Termination/Dismissal / 10-22
10.4 Demotion / 10-29
10.5 Severance / 10-31
10.6 Turnover Analysis / 10-35
10.7 Character of the Employment Relationship / 10-41
10.8 Layoffs and Recalls; Redundancy; Workforce
Reductions / 10-48
10.9 Probationary Termination / 10-64
10.10 Loss of Seniority, Frustration of the Contract / 10-66
10.11 Termination for Just Cause / 10-70
10.12 Termination Without Cause / 10-74
10.13 Resignation / 10-79
10.14 Retirement / 10-83
10.15 Death / 10-86
10.16 Exit Interviews / 10-96
10.17 Termination Procedure / 10-104

CHAPTER 11 PRESENTATIONS

- 11.1 CONDUCTING COMPASSIONATE TERMINATIONS / 11-1

TABLE OF CONTENTS

CHAPTER 12 ARTICLES

12.1	ARE THE COURTS BEGINNING TO CAST DOUBT ON THE NOTION OF A “ROUGH UPPER LIMIT” FOR WRONGFUL DISMISSAL DAMAGES? / 12-1
12.2	ALBERTA DISCRIMINATION CASES YIELD INTERESTING RESULTS / 12-8
12.3	CONSTRUCTIVE DISMISSAL: WHAT AMOUNTS TO A FUNDAMENTAL BREACH OF THE EMPLOYMENT CONTRACT? / 12-12
12.4	TERMINATIONS: HR, PAYROLL BOTH PLAY ROLE / 12-17
12.5	“WE’RE LIVE TWEETING FROM THE HR FIRING SESSION!” / 12-19
12.6	MASS LAYOFFS NO EASY TASK - IS BLACKBERRY DOING IT RIGHT? / 12-21
12.7	PRE-WORK DRINK NEVER A GOOD IDEA (LEGAL VIEW) / 12-24
12.8	VACATION DISPUTE NO REASON TO CHANGE RESIGNATION DATE / 12-27
12.9	IS THERE A DUTY TO ACCOMMODATE DISABILITIES AN EMPLOYER DOESN’T KNOW ABOUT? / 12-29
12.10	ARE THE COURTS RELAXING THE PRINCIPLE THAT EMPLOYMENT CONTRACTS CANNOT UNDERCUT EMPLOYMENT STANDARDS LEGISLATION / 12-35
12.11	ARE PENSION BENEFITS INCLUDED IN THE QUANTUM OF DAMAGES AWARDED FOR WRONGFUL DISMISSAL CLAIMS? / 12-45
12.12	FAILURE TO PROPERLY INVESTIGATE ALLEGED WRONGDOING CAN LEAD TO A FINDING OF WRONGFUL DISMISSAL / 12-48
12.13	EMPLOYEE TERMINATION BEST PRACTICES / 12-51
12.14	WHAT SHOULD AN ORGANIZATION DO WITH ITS LOW PERFORMERS? / 12-53
12.15	IS FIRING EMPLOYEES BY TEXT MESSAGE ACCEPTABLE? / 12-55
12.16	WHEN AN EMPLOYEE TRIES TO BUY WEED AT WORK / 12-57
12.17	WHAT REMEDIES ARE BEING AWARDED IN CASES OF AGE-BASED DISCRIMINATION IN EMPLOYMENT? / 12-59
12.18	IS THE “CHARACTER OF EMPLOYMENT” TEST LOSING ITS IMPORTANCE AS ONE OF THE <u>BARDAL</u> FACTORES IN DETERMINING REASONABLE NOTICE IN WRONGFUL DISMISSAL CASES? / 12-70
12.19	SIX-MONTH NOTICE OF RESIGNATION UPHOLD FOR BLACKBERRY EXECUTIVE / 12-76
12.20	SIX-MONTH LAST CHANCE AGREEMENT MUST BE RESPECTED: ARBITRATOR / 12-78
12.21	SUCCESSOR COMPANY RESPONSIBLE FOR 38-YEAR EMPLOYEE’S SEVERANCE AND PENSION: COURT / 12-80
12.22	[REMOVED] / 12-83
12.23	EMPLOYERS ARE ENTITLED TO RELY ON AFTER-ACQUIRED CAUSE FOR TERMINATION / 12-91
12.24	AVOIDING CONSTRUCTIVE DISMISSAL AS A RESULT OF CORPORATE RESTRUCTURING / 12-93
12.25	WHEN WILL COURTS UPHOLD “CREATIVE” NON-COMPETITION AND NON-SOLICITATION AGREEMENTS? / 12-95
12.26	JUST CAUSE FOR DISMISSAL AND THE DOCTRINES OF CUMULATIVE MISCONDUCT, PROGRESSIVE DISCIPLINE AND CULMINATING INCIDENT/ 12-98
12.27	MUST AN EMPLOYEE RESIGN IN ORDER TO CLAIM CONSTRUCTIVE DISMISSAL DAMAGES? / 12-102
12.28	DETERMINING AN EMPLOYER’S PAYROLL FOR THE PURPOSES OF DETERMINING ELIGIBILITY FOR STATUTORY SEVERANCE PAY IN ONTARIO/ 12-105

BEST PRACTICES: TERMINATION

- 12.29 PROBLEMS RELATING TO ROMANTIC RELATIONSHIPS IN THE WORKPLACE/ 12-108
- 12.30 REQUIRING AN EMPLOYEE TO PURCHASE SHARES IN THE ORGANIZATION COULD LEAD TO INDUCEMENT DAMAGES/ 12-114
- 12.31 FAILURE TO PROPERLY INVESTIGATE ALLEGED WRONGDOING CAN LEAD TO A FINDING OR WRONGFUL DISMISSAL/ 12-117
- 12.32 ARE EMPLOYERS ENTITLED TO PAY DEVELOPMENTALLY DISABLED WORKERS LESS THAN THE MINIMUM WAGE?/ 12-120
- 12.33 IS AN EMPLOYEE REQUIRED TO PROVIDE NOTICE OF RESIGNATION/ 12-123
- 12.34 COURT AWARDS BASE SALARY INCREASES DURING THE COMMON LAW NOTICE PERIOD/ 12-126
- 12.35 RESCINDING AN OFFER OF EMPLOYMENT BEFORE AN EMPLOYEE STARTS WORK/ 12-129
- 12.36 SUPREME COURT OF CANADA INTRODUCES THE GENERAL DUTY OF HONESTY AND GOOD FAITH IN THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS/ 12-132
- 12.37 APPEAL COURT UPHOLDS THE RIGHT OF FEDERALLY REGULATED EMPLOYERS TO TERMINATE NON-UNION EMPLOYEES WITHOUT CAUSE/ 12-136
- 12.38 CAN INAPPROPRIATE OFF-DUTY COMMENTS ON SOCIAL MEDIA GIVE RISE TO EMPLOYEE DISCIPLINE?/ 12-139
- 12.39 WHAT ARE FIDUCIARY DUTIES IN AN EMPLOYMENT CONTEXT?/ 12-143
- 12.40 IS IT REALLY IMPOSSIBLE TO FIRE A UNIONIZED EMPLOYEE?/ 12-146
- 12.41 DEALING WITH A BAD APPLE (TOUGHEST HR QUESTION)/ 12-148
- 12.42 EMPLOYERS HAVE THE RIGHT TO REQUEST MORE SPECIFIC MEDICAL NOTES FROM EMPLOYEES/ 12-150
- 12.43 SUPREME COURT OF CANADA CLARIFIES THE LAW ON CONSTRUCTIVE DISMISSAL/ 12-155
- 12.44 BRITISH COLUMBIA COURT OF APPEAL REVERSES DECISION OF TRIAL COURT ON CUMULATIVE MISCONDUCT AND CULMINATING INCIDENT/ 12-164
- 12.44A THE MEANING OF “SEVERANCE PAY” AND THE ONTARIO *EMPLOYMENT STANDARDS ACT, 2000* / 12-166
- 12.44B CHIPOTLE LAWSUIT SHOWCASES TRIALS OF SOCIAL MEDIA POLICIES / 12-166.3
- 12.44C DESPITE ASSAULTING HIS MANAGER, EMPLOYEE GIVEN \$25,000, REINSTATEMENT / 12-166.6
- 12.44D MANAGER’S DRINK AT LUNCH NOT A BREACH OF VAGUE ZERO TOLERANCE POLICY: COURT / 12-166.10
- 12.44E ALBERTA SALESPERSON’S POCKET DIAL REVEALS MOONLIGHTING ON COMPANY TIME (LEGAL VIEW) / 12-166.13
- 12.44F ENFORCING EMPLOYEE HANDBOOKS (TOUGHEST HR QUESTION) / 12-166.16
- 12.44G IS CAUSE REQUIRED TO DISMISS FEDERALLY REGULATED NON-UNIONIZED EMPLOYEES? / 12-166.18
- 12.44H DAMAGES FOR DEPENDENT CONTRACTORS ON TERMINATION / 12-166.23
- 12.44I TERMINATION NOTICE FOR PROBATIONARY EMPLOYEES / 12-166.26
- 12.44J REINSTATEMENT AS A REMEDY UNDER HUMAN RIGHTS LEGISLATION / 12-166.29
- 12.44K TERMINATION SHOULD NEVER BE A FOREGONE CONCLUSION / 12-166.33
- 12.44L OVERWORKED, SICK EMPLOYEE IN ALBERTA WRONGFULLY DISMISSED FOR NOT DOING JOB / 12-166.35
- 12.44M DISMISSAL OF INJURED EMPLOYEE NOT DISCRIMINATORY: ONTARIO TRIBUNAL / 12-166.38

TABLE OF CONTENTS

12.44N	B.C. CASE HIGHLIGHTS DOWNSIDES OF PROBATION / 12-166.41
12.44O	What Constitutes Just Cause / 12-166.45
12.44P	Terminating a Probationary Employee / 12-166.57
12.44Q	Recruiting ‘Boomerang’ Employees / 12-166.59
12.44R	Terminating Termination Clauses / 12-166.61
12.44S	Supreme Court Confirms Employers Can Terminate Workers with Disabilities / 12-166.63
12.44T	The Importance of Careful Drafting of Termination Provisions in Employment Contracts / 166.67
12.44U	The #METOO Movement / 166.77
12.44V	Firefighter’s Off-Duty Driving Suspension Doesn’t Warrant Termination Contracts / 166.86
12.44W	Fighting the Final Act / 166.88
12.44X	Act with Class, Decency When Firing a Worker / 166.90
12.44Y	Working Notice of Termination No Good if Employee Unable to Work: Court / 166.92
12.44Z	Terminating a Probationary Employee / 166.95
12.45	Assessing the Effect of a Final Release After Termination on the Ability to Bring a Human Rights Complaint/ 12-166.97
12.45A	Privacy in the Workplace — Part 1/ 12-166.104
12.45B	Job Abandonment/ 12-166.113
12.45C	Duty to Accommodate and Frustration of Contract/ 12-166.116
12.45D	Termination/Hiring a Replacement During Long-Term Disability/ 12-166.120
12.45E	Ontario Court of Appeal Overturns Motion Judge’s Decision Regarding Employee’s Rescission of Notice of Resignation/ 12-166.124
12.45F	Court Holds Employer Liable for Nine Years’ Salary for Constructive Dismissal After One Year of a Ten Year Contract/ 12-166.127
12.45G	Court of Appeal Upholds Decision that Refusal of Offer of a Non-Comparable Position Does Not Constitute a Failure to Mitigate/ 12-166.128
12.45H	Ontario Court of Appeal Holds That the Rights of an Employee Who is a Shareholder Regarding His or Her Shares are Distinct from His or Her Rights as an Employee and are Determined According to the Provisions of the Shareholders’ Agreement/ 12-166.130
12.45I	Ontario Court of Appeal Clarifies the Requirements for Dependent Contractor Status/ 12-166.133
12.45J	Alberta Court of Queen’s Bench Holds that a Dismissed Employee Receiving Disability Benefits During the Notice Period is Not Entitled to Damages for Lost Wages/ 12-166.135
12.45K	Ontario Court of Appeal Rules on Another Termination Provision/ 12-166.137
12.45L	Nova Scotia Court of Appeal Overturns Finding that Employee was Constructively Dismissed/ 12-166.142
12.45M	Ontario Court Includes Length of Service with Predecessor Company When Assessing Reasonable Notice for Terminated Employee/ 12-166.145
12.45N	Motion Judge Finds “Termination with Notice” Provision in Employment Agreement Distinct from and Not Affected by Invalid “Termination for Cause” Provision/ 12-166.147
12.45O	Probationary Employees/ 12-166.149
12.45P	Termination of Employment Relating to COVID-19/ 12-167
12.45Q	Employer’s Failure to Bring Contractual Provisions to Employee’s Notice Terminating Stock Option Vesting Rights During Notice Period Leaves Employer Liable for Damages/ 12-172
12.45R	Who Should Conduct Workplace Investigations?/ 12-174
12.45S	The Supreme Court of Canada Speaks Up for Workers in the Gig Economy/ 12-176
12.45T	Termination of Probationary Employees/ 12-185

BEST PRACTICES: TERMINATION

- 12.45U Ontario Court Holds That Infectious Disease Emergency Leave Regulation under the *Employment Standards Act, 2000* Does Not Affect an Employee's Right to Bring a Claim for Constructive Dismissal at Common Law/ 12-193
- 12.45V Ontario Court Finds Employer's Attempt to Impose an Additional Requirement for Employee to Receive Her Contractual Entitlements on Termination Constitutes Repudiation of the Employment Contract/ 12-196
- 12.45W Ontario Court Refuses Injunctive Relief to Employer Alleging Breach of Fiduciary Duty and a Restrictive Covenant/ 12-198
- 12.45X Ontario Court Sets Reasonable Notice Period at 26 Months in Wrongful Dismissal Case/ 12-201
- 12.46 Should I Rehire My Boomerang Employee?/ 12-203
- 12.47 Could My Off-Duty Behaviour Impact My Employment?/ 12-205
- 12.48 Important Employment Law Decisions from 2021/ 12-211
- 12.49 Reorg 101 — What You Need to Know Before Your Next Reorganization/ 12-224
- 12.50 The Impact of the COVID-19 Pandemic on Determining Reasonable Notice Periods in Wrongful or Constructive Dismissal Cases/ 12-226
- 12.51 The Role of Human Resources in Terminations/ 12-231
- 12.52 Retention Strategies During the Great Resignation/ 12-234
- 12.53 Top Termination Cases of 2022/ 12-237
- 12.54 Ontario's IDEL and Constructive Dismissal/ 12-252
- 12.55 Alberta Court of Appeal Overturns Finding that Sole Director and Shareholder of a Corporation was an Employee of Another Contracting Party/ 12-259
- 12.56 Alberta Court of Queen's Bench Finds Wrongfully Terminated Employee Can Sue Employer and Company Directors Personally Under the Alberta *Business Corporations Act*/ 12-262
- 12.57 Ontario Court of Appeal Upholds Decision on 26 Month Reasonable Notice Period and No Break in Service for Employee Who Joined the Company Pension Plan Prior to Retirement/ 12-264
- 12.58 Ontario Court Finds Termination Provision in Employment Agreement Unenforceable/ 12-266
- 12.59 Ontario Court Voids Termination Clause that Gave Employer "Sole Discretion" to Terminate Employment at "Any Time"/ 12-269
- 12.60 Aggravated and Punitive Damages in Wrongful Dismissal Cases/ 12-273
- 12.61 Ontario Appeal Court Confirms Frustration of Employment Contract After Employee Refuses to Comply With Mandatory Vaccination Policy/ 12-278
- 12.62 Ontario Court Finds Termination Provision in Employment Agreement Unenforceable/ 12-282

LEGAL MEMORANDA

- 12.125 9896 — When will a Court or Human Rights Tribunal Decline to Enforce a Release Executed by a Dismissed Employee?/ 12-501
- 12.126 Can Public Criticism of his or her Employer by a Private Sector Employee Justify his or her Summary Dismissal by the Employer?/ 12-511
- 12.127 What are the General Principles Regarding Insubordination as "Just Cause" in the Context of Wrongful Dismissal?/ 12-515
- 12.128 Can an Employee's Refusal to do Something in the Course of Employment that is Contrary to Law Amount to a Valid Resignation? And Can Coercion of the Employee by the Employer to Participate in an Illegal Act Amount to Constructive Dismissal?/ 12-521
- 12.129 Does an employee's failure to attend a meeting or event scheduled or requested by his or her employer constitute just cause for dismissal?/ 12-525

ARTICLES

- 12.130 Is the existence of a consensual sexual relationship with a co-worker sufficient grounds for the termination of an employee's employment?/ 12-532
- 12.131 Is a prior warning required where an employer dismisses an employee for just cause?/ 12-537
- 12.132 Is it wrongful dismissal when an employer summarily dismisses an employee who proves unable to adapt to substantial changes in the workplace, such as, e.g., the introduction of a new computer system?/ 12-542
- 12.133 When does poor performance constitute just cause for termination of employment?/ 12-549
- 12.134 When may After-acquired Cause be Used in a Wrongful Dismissal Case?/ 12-573
- 12.135 What are the general principles pertaining to condonation by an employer where the employer has fundamentally breached the contract of employment? / 12-583
- 12.136 Does just cause for dismissal nullify a termination provision in an employment contract, which provides that the employee will receive a very substantial payout upon termination?/ 12-590
- 12.137 Can an employee be justifiably dismissed because he is seriously ill and unable to work?/ 12-595
- 12.138 Does an employer have to state what the grounds for termination are in case of employee dismissal?/ 12-607
- 12.139 What are the distinguishing characteristics of management employees for the purpose of defining the type of employment in a wrongful dismissal action? And is the character of a job declining in importance when assessing the appropriate reasonable notice to be awarded?/ 12-612
- 12.140 Whether taking a vacation immediately after termination amounts to a failure to mitigate in a wrongful dismissal action./ 12-621

INDEX / I-1