



**GROSMAN, GROSMAN & GALE LLP**  
BARRISTERS & SOLICITORS

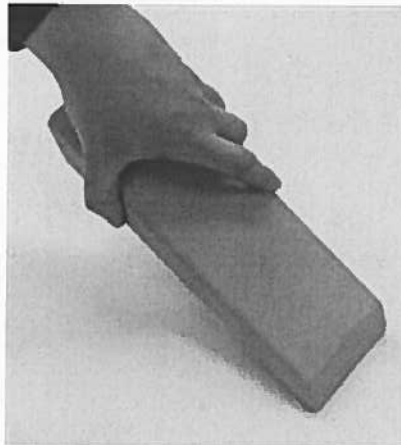
## Workplace Law E-ssentials

Friday, May 04, 2012

### Avoid These Common Mistakes When Terminating Employees

#### 1) Failing to accrue dismissed employees' vacation pay during the statutory notice period.

Many employers, governed by the Ontario *Employment Standards Act* ("ESA"), do not realize that they are required to continue to accrue a dismissed employee's vacation pay during the employee's statutory notice period. Sections 60 and 61 of the ESA requires that an employer must maintain a dismissed employee's terms and conditions of employment throughout the employees' statutory notice period (which is a maximum of 8 weeks). Therefore, the employer must continue to accrue the dismissed employee's vacation pay.



Employees who initiate litigation will often raise, in their statements of claim, the failure of their employer to comply with its minimum obligations pursuant to the ESA. The employees do this to discredit their employers in front of the Court. As a result, there is a practical reason, as well as a legal obligation, to ensure compliance with the ESA.

#### 2) Discontinuing employees' insurance benefits on the date of dismissal.

Many employers have a policy of discontinuing dismissed employees' benefits on the date the employees are dismissed. In particular, long-term disability ("LTD") insurance is often discontinued. Frequently this is done because insurance companies resist continuing dismissed employees' insurance benefits.

Employers who follow this policy often fail to realize that the dismissed employees' entitlements to benefits do not end simply because the employer has discontinued their benefits. Instead, the employer has made the decision to step into the shoes of the insurer. As a result, the employer may be liable for the dismissed employees' insurance claims.

The greatest risk an employer assumes when it discontinues an employee's benefits is that the employee will become permanently disabled during his or her notice period and without having reached a binding settlement with his or her employer. Under a worst case scenario, the employer may find itself liable for hundreds of thousands (and

### Meet Phil White

Philip R. White represents both employers and employees in all areas of employment and labour law.

The primary focus of his work is wrongful dismissal litigation, human rights in the workplace, and reviewing and interpreting employment contracts.

He is also a regular contributor to *Employment Bulletin*.

Prior to commencing a career in the practice of law, Phil worked in both human resources departments and as an agency recruiter focusing on information technology professionals. He also spent five years working for a large manufacturing company as a key account manager responsible for both automotive and industrial clients in Canada and the United States.

Phil's in-depth employment law knowledge and his background as a human resource and sales professional enable him to provide his clients with practical legal advice that takes into account the realities of the modern workplace.

potentially millions) of dollars in insurance payments if the disabled former employee is unable to re-enter the workforce.

Employers should consider purchasing private insurance for dismissed employees for the duration of their notice period. In addition, new employees can be asked to sign employment contracts that limit the duration of their entitlement to insurance benefits to the statutory notice period set out in the ESA.

### 3) Losing control of the termination process

Most human resource professionals are aware that an employer may be liable for "moral damages" if the manner in which an employee is dismissed is in bad faith and results in the employee suffering from mental distress that was reasonably foreseeable.

Employers often find themselves at risk of a moral damage award because of unchecked animosity between the terminated employee and his or her manager. Simply put, a manager's personal vendetta can quickly become a liability for the company. The root cause of the problem can be traced to the fact that the human resources department failed to take charge of the termination process and, instead, allowed a manager who lacked the training, professionalism and objectivity required to conduct a professional termination to taint the termination process.

Human resource professionals should ensure that they have the authority to lead the termination process. It is not enough to focus the termination process on the soon to be dismissed employee. Be aware that the employee's manager, as well as other employees, may also need to be actively managed.

## Norm Grosman's Ten Commandments of Contemplating Termination for Just Cause

1. Never prejudice a situation.
2. Investigate - ask before you leap.
3. Record and catalogue information gathered carefully.
4. Always attempt to be fair and objective.
5. Do not ignore or reject information which does not demonstrate guilt or misconduct.
6. Always provide the alleged wrongdoer with the opportunity to explain - finding out about critical or mitigating details later can be fatal and embarrassing.
7. Consider the involvement of an outside party - and if you want to maintain privilege over an investigation, you must proceed with caution.
8. Consider whether a form of discipline short of termination is a viable alternative.



## Speak Up!

On November 2, 2011, Natalie MacDonald, taught at The Osgoode Certificate in HR Law for HR Professionals - Module 5, Terminating the Employment Relationship: Minimizing Your Legal Exposure.

On December 12, 2011, Natalie MacDonald spoke at Osgoode's annual Employment Law Conference, on Misclassification of Employees.

On February 28, 2012, Mark Fletcher spoke at the Insight Disability Claims Management and Litigation Conference on the topic of Reviewing Employer and Employee Rights and Obligations in Disability Claims.

On April 23-24, 2012, Bill Gale spoke at the Insight Info - Employee Terminations, on the topic "A Tweet Too Far: Terminations Due to Perceived Improper Use of Social Media".

On May 14, 2012, Natalie MacDonald will be teaching at The Osgoode Certificate in HR Law for HR Professionals - Module 5, Terminating the Employment Relationship: Minimizing Your Legal Exposure.

On September 20, 2012, Natalie MacDonald will co-chair the Law Society of Upper Canada's Conference: New Lawyer Practice Series - Employment Law.

Norm Grosman writes regularly for Workopolis. To read Norm's latest article, click [HERE](#).

9. Make sure the punishment fits the crime.

10. Never allow thin or weak allegations to become a fortuitous opportunity to terminate someone you have wanted to fire for some time.

---

[www.grosman.com](http://www.grosman.com)

Grosman, Grosman and Gale LLP

390 Bay Street, Suite 1100

Toronto, Ontario

M5H 2Y2

This email was created and delivered using [Industry Mailout](#)