

Kent Employment Law's Sustainable Employment™ Guidelines for Ending the Employment Relationship



In our work as employment lawyers, we have witnessed countless examples of how not to fire someone – evasive conversations, perfunctory letters, a humiliating escort out of the building.

We know that many business owners want to do things differently. Even in the last moments of the employment relationship, they want to be kind and fair to their employees. They want to create a workplace culture that is transparent, cooperative, and respectful – from start to finish, hiring to firing. They desire Sustainable Employment™ practices for their business.

What is Sustainable Employment™? It's an *enduring, mutually-beneficial, and purposeful working engagement between employer and employee*. It involves a flexible, adaptive relationship where both parties' needs are clearly-defined, balanced and accommodated. At a minimum, Sustainable Employment™ meets the following ten needs, for both employer and employee:

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| <ol style="list-style-type: none">1. Mutual Benefit2. Clarity3. Transparency4. Fairness5. Respect | <ol style="list-style-type: none">6. Collaboration7. Accommodation8. Ownership9. Control10. Purpose |
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For employers who want to enable Sustainable Employment™ in the workplace we have developed guidelines for key moments in the employment relationship – the initial interview, the employment contract, benefits packages, performance reviews, and more. Here, we offer our *Guidelines for Ending the Employment Relationship*, which will not only support you in creating Sustainable Employment™ for your business, but also help you meet your legal obligations to your employees.

We created these *Guidelines* to assist organizations of all sizes, across a variety of industries. We realize, however, that you may wish to adapt certain of our suggestions to fit the unique nature of your business – if so, **ask us how**, we would be happy to help!

Guidelines for Ending the Employment Relationship

1. Communicate directly, respectfully, and transparently with the employee about the dismissal.

There's no way around it: firing someone (and getting fired) can be unpleasant, if not devastating. While you can't control how your employee will react to the news of his dismissal, you *can* control how you deliver the message. By communicating with him clearly, openly, and authentically about your decision to end your working relationship, you treat him with the respect that we all deserve, and you lay a positive foundation for his employment transition. Here are some suggestions for breaking the bad news in a sustainable way:

- a. **Setting up the meeting.** When you ask your employee to come to a meeting where you plan to fire her, be as direct as you can be about the purpose of the meeting, without being needlessly blunt. For example, you might say something as simple as "Sarah, I'd like to meet with you to talk about your employment." Avoid the temptation to make up a reason for the meeting, such as a performance review or new work assignment. The dismissal experience is hard enough on both of you; inviting the employee to meet under false pretences (even if you mean well) won't make it any easier.
- b. **Conducting the meeting.** Ideally, the person who meets with the employee should have a working relationship with him. While it may seem appropriate to have an HR staff member speak to the employee, the employee may experience this as insensitive and impersonal, particularly if he has had minimal previous contact with your Human Resources department. Of course, if you think the employee would benefit from HR support during the dismissal, it may make sense to take a team approach to the meeting.
- c. **Explaining the dismissal.** Make sure the employee understands why you are meeting and why she is being dismissed. Perhaps she didn't make her sales targets? Is she an unlucky casualty of a corporate reorg? Maybe she is just not a good "fit" for the organization. Whatever the reason, be honest about it, but also be brief, particularly if the firing is performance-related. The dismissal meeting is not the time for a prolonged job evaluation. If you practiced Sustainable Employment™ during the employee's tenure with the company, you will previously have shared with her your observations and any concerns about her work. Take the same approach to any questions the employee has about the firing, with answers that are as forthright and truthful as possible.
- d. **Inviting the employee's input.** Talk to the employee about how he would like to leave the company, including collecting his personal effects and materials from his company computer

(while also respecting the company's needs), saying goodbye to his co-workers, and having his departure communicated to the rest of the organization. After hearing him out, do your utmost to respect his wishes.

2. Give the employee a copy of her Record of Employment (ROE).

Make sure you have the employee's ROE on hand when you meet with her, since she will need it to make an employment insurance claim. If you issue ROEs electronically directly to Service Canada, let the employee know that she does *not* need to submit one herself. There are certain (short) legal deadlines for issuing an ROE, but your best, and fairest, practice is to do so immediately, or as soon as possible following the dismissal.

3. Give the employee a clear and comprehensive dismissal letter.

During the dismissal meeting, give the employee a letter confirming his dismissal, and the things you have discussed with him. The letter should be written in plain language and set out the reasons for his firing, as well as full details about how you will be supporting him in his transition to new employment.

4. Offer the employee post-employment support that is fair and respectful.

The dismissal letter should set out in detail the financial and other support you are offering her in connection with her dismissal, including:

- a. **Severance and/or working notice.** The amount offered should reflect her length of service, role within the company, and future job prospects (based on her age, education, experience and the job market). It should also incorporate all aspects of her compensation (salary, bonus, benefits, pension, etc.).
- b. **Outplacement counselling service or a retraining fund**, as appropriate to the employee and her particular circumstances.
- c. **References.** Offer to provide a mutually agreeable reference letter, and discuss with the employee how references will be handled. If you feel that you cannot, in good conscience, write the employee a reference letter, be honest about this and explain why.
- d. **Time.** Give the employee a reasonable amount of time to consider the offer, an opportunity to seek legal advice before accepting it, and some money towards a consultation with an employment lawyer.

5. Communicate directly, respectfully, and transparently with your remaining employees.

When a person gets fired, there can be significant confusion and anxiety among the employees who remain with the company. The best way for you to address this is to circulate an announcement to the remaining employees about his departure, and hold a small group meeting with his team members after he has left. The amount of detail you share about the dismissal will depend on the reasons for the employee's departure and should strike a balance between the departed employee's right to privacy and the remaining employees' entitlement to a transparent and respectful work environment.

6. Respond promptly to any of the ex-employee's outstanding issues or request.

Just because the employee is gone, this doesn't mean she should be immediately forgotten. Make sure that you provide any outstanding information or documentation she asked for during the dismissal meeting by the end of the next business day. It's to both of your benefit to do so, since she may need this in order to make a timely and informed decision about your severance offer.

7. Follow up with the departed employee again in a month or so.

Someone from your organization, likely in your HR department, should reach out to the departed employee again approximately 30 days after he leaves. Again, this follow-up benefits both you and the employee, since it will ensure that you have fulfilled the various commitments (legal and otherwise) you made to him. The only time that follow-up may *not* be appropriate is when you and the employee have engaged legal counsel to help you resolve the terms of his departure – in that case, it will be up to the lawyers (with your input, of course) to make sure that everyone's needs have been met.

8. Troubleshoot.

Even the best-laid plans do not ensure that things will go smoothly. Make sure you have a fair and transparent process in place, such as mediation, to deal with any potential (and possibly unforeseen) dispute that could arise between you and the departed employee, for example, regarding her severance entitlements.

9. Get legal advice before carrying out the dismissal.

Before you actually take any action regarding a planned dismissal, we strongly encourage you to contact an employment lawyer.

The reason we didn't put this item at the top of our list is that we think it's important for you to reflect on the above guidelines before you get legal advice. This allows you to create your ideal vision for the

dismissal process, which you can then discuss with a lawyer, who will help you tweak your plan so that it meets the needs of both the employee and your organization, as well as your obligations under the law.

While we think that our guidelines address all the key aspects of a dismissal from a Sustainable Employment™ perspective, it is important to remember that they are still *guidelines*. Because every employee, organization, and dismissal is unique, you may need to add to these best practices, or adapt them to fit your particular situation.

Summary

In developing these *Guidelines for Ending the Employment Relationship*, we stayed mindful of the **ten Sustainable Employment™ needs** described above. If you look closely, we believe you'll see their presence throughout the dismissal process:

- ⇒ The communication is *clear, transparent, purposeful and respectful*,
- ⇒ The support offered is *fair, mutually beneficial, and accommodating*, and
- ⇒ The approach to the employee's departure is *fair, collaborative*, and offers the employee a degree of *control and ownership* over the process.

What's Next?

- ❖ **Share** these guidelines with your colleagues.
- ❖ **Have questions** about a proposed dismissal?

Contact us at help@kentemploymentlaw.com or 604-266-7006

- ❖ **Want to stay current** on employment law issues that are key to your business?

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Sustainable Employment™ **Checklist: Ending the Employment Relationship**

1. Communicate directly, respectfully, and transparently with the employee about the dismissal.
 - a. Setting up the meeting.
 - b. Conducting the meeting.
 - c. Explaining the dismissal.
 - d. Inviting the employee's input.
2. Give the employee a copy of her Record of Employment (ROE).
3. Give the employee a clear and comprehensive dismissal letter.
4. Offer the employee post-employment support that is fair and respectful.
 - a. Severance and/or working notice.
 - b. Outplacement counselling service or a retraining fund.
 - c. References.
 - d. Time.
5. Communicate directly, respectfully, and transparently with your remaining employees.
6. Respond promptly to any of the ex-employee's outstanding issues or request.
7. Follow up with the departed employee again in a month or so.
8. Troubleshoot.
9. Get legal advice before carrying out the dismissal.

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