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## LEAVING A JOB: LEGAL ISSUES

IF YOU HAVE VOLUNTARILY LEFT YOUR JOB, THERE WILL PROBABLY NOT BE ANY LEGAL IMPLICATIONS.

However, in situations where you have been laid off or dismissed, the situation can be more complicated and independent legal advice may be warranted.

Although I can certainly provide you with information and guidance, there can be employment, tort and contract law issues and you should always seek out competent legal advice to determine your rights and obligations. I will be pleased to refer a lawyer to you. Here is some general information you should consider when you leave your job:

### Nature of Employment

There are different employment relationships and this will have a direct bearing on what takes place when you leave an employer. For example, unionized workers will be working under a collective agreement negotiated between their union and the employer. Typically that agreement will dictate your rights upon loss of employment. Your union representative should certainly be consulted.

### Notice of Termination

In most provinces and at the federal level, the minimum amount of notice is established by statute and cannot be violated. A company can, however, choose to either formally or informally extend your notice period. Generally the notice period will be one month per year of service but the courts may make it longer. As well, a company might dismiss you without notice if it pays you in lieu of notice. On the other side of the employment contract, if you resign from a company you must give the employer proper notice.

### Dismissal With Cause

An employer can dismiss an employee without notice or pay if they can show 'cause'. Under contract law, cause is considered an action by the employee that was in contravention of that employment contract. Some of the causes can be disobedience, incompetence and misconduct, or with certain considerations, illness. There are provincial variations in what constitutes 'cause' and it may be difficult to prove.

### Adverse Economic Conditions

An employer can lay you off due to a business slowdown but this does not remove their obligation to provide proper notice or to pay you in lieu of notice.

### Wrongful Dismissal

To be successful in a wrongful dismissal action against an employer, an employee must show that the employer broke the employment contract; for example, not providing adequate notice of termination. If the action is successful, the court will award damages to the employee. Although each case will be decided on its merits, the underlying concept is that the employee should be compensated to the extent that they had been given proper notice. The courts may also consider other factors such as the former employee's efforts to find a new job or pain and suffering.

## Benefits

Most provincial legislation requires the employer to continue to provide benefits during the statutory notice period.

## 'Constructive Dismissal' and Other Termination Issues

There may be other factors that can have a bearing on the nature of the termination agreement which the courts would consider and order a more generous settlement.

Constructive dismissal is a fairly common cause for termination agreements to be challenged. This is the situation where the employer has substantially altered the terms of the employment contract without the employee's consent and to such an extent that the employee feels obligated to resign. Some other reasons for challenging the termination agreement are:

- Was the employee being terminated induced away from another job?
- Did the employee undergo a major lifestyle change when joining the company such as moving?
- Had the employee raised any issues about discrimination or harassment in the workplace?
- Had the employee received a recent raise or promotion?
- Had the employee recently returned from disability or pregnancy leave?

## References

Former employers are not legally required to provide a reference. However, if your former employer provides a negative reference, the company runs the risk of facing legal action. On the other hand, they also run the risk of legal action from a new employer if the reference provided is deemed to be unnecessarily positive.

Many companies have adopted the policy of responding to reference requests by providing only basic information such as the former employee's position and dates of employment.

The issue of references should be discussed as part of the departure process. If the job loss is due to uncontrollable circumstances, you may be able to negotiate a positive reference letter as part of your termination package.

Always speak to a good lawyer when you have been terminated from your job. Let's discuss how we can handle your various financial settlements.

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