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## Overview

Involuntarily terminating an employee's employment is never easy. But involuntary terminations must also follow a legal protocol, or they can be further complicated by not having the proper formal documentation in place or obtaining required signatures.

Involuntary terminations of office staff can only be conducted with HR's input and must be accompanied by formal written communication to the affected employee.

Also refer to the [Process Guide for Managers – Involuntary Terminations](#).

## Instructions

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1. Determine if our employment lawyer should be consulted to advise on the particulars of an involuntary termination
2. Save a copy of this letter template. Include the employee's name and date of termination in the file name.
3. Select the appropriate sample letter script and modify it for the employee:
  - If required, you can copy and paste to add additional sections to the scripts. The scripts provided are examples only and components of each letter can be combined as needed.
  - Gray shaded form fields are input placeholders. To replace the text in these form fields, click ONCE on the field and type your new content.
4. Complete the letter:
  - Delete the remaining sample scripts and headings, and the table of contents.
  - Insert the appropriate Company letterhead and footer components.
  - or -
  - Copy and paste the modified letter component onto Company letterhead.
5. Print and sign two copies of the document(s).
6. The rest of the procedures for HR and the manager are outlined in the [Process Guide for Managers – Involuntary Terminations](#).

## “Without Prejudice” – What is it? How and when is it used?

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### DEFINITION

The “without prejudice” principle means statements the Company makes in a document marked “without prejudice” or made verbally on a “without prejudice” basis, in a genuine attempt to **settle a dispute** with an employee, will generally not be admissible in court as evidence against the Company.

The rationale for this principle is that it is in the public interest to encourage the Company and an employee to settle a dispute and avoid litigation wherever possible. Therefore, if the Company tries to settle a dispute under the cloak of without prejudice privilege, such communication cannot be used against the Company when the matter becomes before the courts.

### WHEN NOT TO USE IT

If the Company relies on the “without prejudice” privilege, we must show that the dispute existed at the time of the “without prejudice” communication and that either legal proceedings had commenced or that the communication was in contemplation of litigation.

It is not enough that the communication concerns the matter in dispute for the privilege to be upheld - **the communication must attempt to settle the dispute**. This is very important. Just marking something “without prejudice” does not necessarily afford it protection. It is the substance of the document or correspondence that determines whether privilege attaches to it and so there has to be a genuine attempt to resolve a dispute.

### WHEN TO USE IT

Labelling a document or discussion “without prejudice” should be used when such communication is putting forward terms to try to settle a dispute or shows a genuine willingness to negotiate. If communications are labelled “without prejudice” but have nothing to do with settlement negotiations, such communications will not necessarily be treated by the courts as privileged (i.e. they may be admitted as evidence in court).

### HOW TO USE IT

If labelling a document “Without Prejudice” is warranted, include it in capital letters at the top of the document as shown in the following example:

January 15, 2020

WITHOUT PREJUDICE

Larry Seinfeld

<Company address or employee address>

<Hand Delivered>

# Termination Letters

## When to Use Each Type of Termination Letter

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### 1. Paid Notice for Termination Without Cause or Permanent Lay-Off

Used for immediate terminations where a signed release needs to be obtained

### 2. Working & Paid Notice for Termination Without Cause or Permanent Lay-Off

Used when the Company wants the employee to work during a portion of the notice period and be provided with an incentive to remain with the Company until the end of the working notice. May also be used for working notice only with minor adjustments to the letter.

This option is used when a group of employees are being affected.

Working notice is not recommended for most individual involuntary terminations but may be feasible given the manner in which this letter is written that combines both working and paid notice.

### 3. Termination with Cause with No Severance

Used when the Company can defend the position that there was just cause for immediate termination of an employee. I.e.:

- The employee exhibited gross misconduct or insubordination
- Breached a fundamental clause in employment contract or employee handbook
- Detailed solid written documentation providing the employee with warnings about poor performance is available
- After a failed formal performance improvement plan.

### 4. Termination with Cause with Severance (Consideration)

Used in the same circumstances as (3) above, but the Company wants to obtain a release from the employee in exchange for some consideration to manage risk.

### 5. Temporary Lay-Off

Used when an employee is terminated due to business performance but is expected to be recalled to work.

### 6. Failure to Successfully Complete Probationary Period

Used when an employee's probationary period was not successfully completed, and the Company does not anticipate improved performance by the employee.

Note that the no-notice provision during the probationary period must be included in the employment contract and signed prior to the employee's first day of work.

## **Paid Notice for Termination Without Cause or Permanent Lay-Off**

date

WITHOUT PREJUDICE

Employee Full Name

Company Address

Hand Delivered

Dear employee first name,

We regret to inform you that your employment with Formal Company Name (the "Company") will terminate effective immediately.

### **Final Pay**

The Company will pay any final wages and outstanding accrued vacation.

### **Severance Payment**

On a without prejudice basis and in order to assist your transition to new employment, we are prepared to provide you with a lump sum payment equal to # of weeks weeks of your base salary plus an amount in respect to RRSP contribution at percentage%, less required statutory deductions; (the "Severance Payment"):

In order to receive the Severance Payment you must satisfy the following conditions:

1. You must sign and return to us a copy of this letter and the enclosed Release by Minimum 5 business days;
2. You must keep the financial terms of the offer confidential, except that you may disclose them to your spouse and professional advisors, including legal counsel. A breach of this confidence will render this offer void.

### **Record of Employment**

Your ROE will be available to you after your final payroll is run, with a paper copy of your ROE being mailed out to your home address.

### **RRSP**

Your RRSP contribution will be calculated up to and including your last day of work. Name of Bank or Institution will contact you directly to discuss transfer options. If you have any questions concerning your RRSP, please contact contact name at Name of Bank or Institution.

### **Benefits**

All of your benefits (Basic AD&D, Life, Short-term and Long-term Disability, Extended Health, Dental, other benefits if applicable) will end immediately.

For more information on your benefits and/or conversion of benefits please contact Benefits Provider phone number as soon as possible if you wish to seek individual coverage as there is often short deadlines by which benefits must be converted.

### **Outplacement Services**

The Company is committed to help you transition to a new job. As such we have engaged an outplacement consultant, Benefits Provider to assist you with resume writing and interview skills workshops.

### **Confirmation of Employment**

To help you transition to a new job, upon request, we would be pleased to provide you with an employment verification letter.

### **Company Property**

Please return any Company property to the Company immediately. This includes but is not exclusive to your door pass, office/desk keys, computer hardware, software and telecommunications equipment and accessories, files (both electronic and hard copies), credit cards, and documents belonging to and/or paid for by the Company that are in your possession or control other than such property as the Company has specifically advised you in writing that you may retain. Electronic copies of Company documents should be permanently erased and deleted from your personal computer systems.

### **Confidentiality**

We also remind you that even once your employment ends you will continue to owe a duty of confidence to the Company, and that the Name of Agreement - if applicable Agreement which you previously signed remains in place. That means you must not use or disclose, for your benefit or the benefit of another, information that is unique and confidential to the Company and not in the public domain such as intellectual property, financial information, actual or prospective transactions or business strategies.

We very much regret that we had to make this decision and have not done so lightly.

Sincerely,

Name of authorized manager or HR, Title

**CUSTOMIZER: Insert Company Name**

Copy: Payroll, HR

I have received a copy of the above letter.

Signature - Employee Name

Date

## Termination Without Cause or Permanent Lay-Off with Working Notice

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date

Employee Full Name

Company Address

Hand Delivered

Dear employee first name,

We regret to inform you that your employment with Formal Company Name (the “Company”) will terminate effective date (the “Departure Date”).

This decision should not be in anyway viewed as a reflection of your work quality or performance. Unfortunately, economic conditions have forced us to make this decision.

### Working Notice

Between now and the Departure Date will be your period of working notice (the “Working Notice Period”). This Working Notice Period meets or exceeds your entitlement to notice of termination pursuant to the Insert relevant employment standards act. During the Working Notice Period, the Company expects you to continue performing your duties as expected and to assist as needed with any transition or closure related duties assigned to you by the Company. All of your remuneration and benefits will be continued until your Departure Date.

### Final Pay

On or shortly after the Departure Date, (or your last day worked, if you resign or are dismissed during the Working Notice Period), the Company will pay any final wages and outstanding accrued vacation.

### Severance Payment

Although the working notice we are providing to you satisfies our obligations to you under the **Insert** relevant employment standards act, on a without prejudice basis and in order to assist your transition to new employment, we are prepared to provide you with the following additional severance payment (the “Severance Payment”):

1. We will pay you a lump sum payment equal to # of weeks weeks of your base salary plus an amount in respect to RRSP contribution at percentage%, less required statutory deductions;
2. We will continue your coverage under Company’s Provincial Medical Plan group plan and Name of Insurer Extended Health and Dental Plan, subject to Name of Insurer approval and the terms of the benefit plans, for # of weeks weeks following the Departure Date; and
3. We will continue your coverage under the Company’s Employee Assistance Program (EAP), for # of weeks weeks following the Departure Date, subject to provider approval.

Please note that due to the terms of our benefit plans, we are unable to continue your Basic AD&D, Life, or Short-term and Long-term Disability benefits beyond the ending of your employment. These benefits will end on the Departure Date.

In order to receive the Severance Payment you must satisfy the following conditions:

4. You must sign and return to us a copy of this letter and the enclosed Release in your last week of work;
5. You must remain working diligently until the Departure Date. If you resign or are terminated for cause prior to that date, you will not receive the Severance Payment; and
6. You must keep the financial terms of the offer confidential, except that you may disclose them to your spouse and professional advisors, including legal counsel. A breach of this confidence will render this offer void.

### **Resignation or Termination before Departure Date**

We are hopeful that you will continue your employment with the Company until your Departure Date. Should you choose, however, to resign during the Working Notice Period, your employment with the Company will end immediately and you will be provided with any wages owing to that date. No further payments will be made to you.

Further, during the Working Notice Period, the Company retains the right to terminate your employment. If you are dismissed for just cause during the Working Notice Period, your employment with the Company will end immediately and you will be provided with any wages owing to that date. No further payments will be made to you. If during the Working Notice Period, the Company determines that it no longer requires your services until the Departure Date, it will advise you of same in which case your employment will end at an earlier date and the Company will provide you with:

7. payment equivalent to your remuneration had you worked until the Departure Date; and
8. the Severance Payment, subject to the conditions noted above, including your execution of the enclosed Release.

### **Record of Employment**



Your ROE will be available to you after your final payroll is run, with a paper copy of your ROE being mailed out to your home address.

### **RRSP**

Your RRSP contribution will be calculated up to and including the Departure Date (or your last day worked, if you resign or are dismissed during the Working Notice Period). Name of Bank or Institution will contact you directly to discuss transfer options. If you have any questions concerning your RRSP, please contact contact name at Name of Bank or Institution.

### **Benefits**

All of your benefits (Extended Health, Dental, other benefits if applicable) will terminate on the Departure Date (or your last day worked, if you resign or are dismissed during your Working Notice Period). For more information on your benefits and/or conversion of benefits please contact Benefits Provider phone number as soon as possible if you wish to seek individual coverage as there is often short deadlines by which benefits must be converted.

### **Employee Assistance Program**

While you remain employed, our benefits program includes an Employee Assistance Program (EAP), delivered by Benefits Provider. Further information is provided with this letter for ease of reference.

### **Outplacement Services**

The Company is committed to help you transition to a new job. As such we have engaged an outplacement consultant, Benefits Provider to assist you in the last three months of your employment with resume writing and interview skills workshops.

### **Confirmation of Employment**

To help you transition to a new job, upon request, we would be pleased to provide you with an employment verification letter.

### **Company Property**

Please return any Company property to the Company on or before the Departure Date (or your last day worked, if you resign or are dismissed during the Working Notice Period). This includes but is not exclusive to your door pass, office/desk keys, computer hardware, software and telecommunications equipment and accessories, files (both electronic and hard copies), credit cards, and documents belonging to and/or paid for by the Company that are in your possession or control other than such property as the Company has specifically advised you in writing that you may retain. Electronic copies of Company documents should be permanently erased and deleted from your personal computer systems.

### **Confidentiality**

We also remind you that even once your employment ends you will continue to owe a duty of confidence to the Company, and that the Name of Agreement - if applicable Agreement which you previously signed remains in place. That means you must not use or disclose, for your benefit or the benefit of another, information that is unique and confidential to the Company and not in the public domain such as intellectual property, financial information, actual or prospective transactions or business strategies.

We look forward to working with you until your Departure Date. On behalf of **Company Name**, we wish to thank you for your service and dedication and wish you every success in the future. Please contact me if you have any questions or concerns.

Sincerely,

Name of authorized manager or HR, Title

**CUSTOMIZER: Insert Company Name**

Copy: Payroll, HR

I have received a copy of the above letter.

Signature - **Employee Name**

Date

## Termination with Cause with No Severance

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date

Employee Full Name

Company Address

Hand Delivered

Dear **employee first name**,

As discussed in today's meeting, we once again received a serious complaint about **EXAMPLE: your interaction with a customer**. As you are the first level of our customer service, how you interact with customers is a critical component of their satisfaction and retention.

You have been warned about **EXAMPLE: your behavior** on a number of occasions. Unfortunately, you have done nothing to correct this issue.

We cannot continue to put our business in jeopardy. As a result, your employment is terminated effective immediately. You will receive your pay until the end of today as well as any outstanding vacation pay.

Please indicate receipt of this letter by signing both copies and returning one copy to **contact name**. You may retain the other copy for your records.

We very much regret that we had to make this decision and have not done so lightly.

Sincerely,

Name of authorized manager or HR, Title

**CUSTOMIZER: Insert Company Name**

Copy: Payroll, HR

**I have received a copy of the above letter.**

Signature - Employee Name

Date

## Termination with Cause with Severance (Consideration)

---

date

Employee Full Name

Company Address

Hand Delivered

Dear employee first name,

**Describe issue. Example**

As you are aware we once again received a serious complaint about your interaction with one of our most important customers. Given that you are at the front desk and represent the first level of our customer service, the manner in which you conduct yourself with customers is a critical component to their satisfaction and retention.

We were completely dismayed to hear from Customer A this past Friday about your unacceptable interaction with them including the raising of your voice. Our documentation shows that you have been warned on a number of occasions that we require you to interact with our customers in a respectful and considerate manner and that your negative approach towards this most critical position must be improved. Yet nothing has changed and once again, we are faced with a very unhappy customer. We cannot continue to put our business in jeopardy.

However, notwithstanding that we believe we have just cause for the termination of your employment, we are prepared to offer you the following <in light of your long service with the Company>:

1. Lump sum payment of \$ [REDACTED].00 gross, all or part of which can be paid into your RRSP, upon proof of room;

2. We will also forgive the outstanding **loan, allowance, etc** placed on the **date** Promissory Note in the amount of \$ **\_\_\_\_\_**.00, which would likely result in a more favorable tax withholding than increasing the severance offered, which would first be subject to income tax withholdings.

If you are prepared to accept this offer, you will be required to sign the attached release by **at least 4-5 days from the date of the letter**.

We very much regret that we had to make this decision and have not done so lightly.

Yours truly,

Name of authorized manager or HR, Title

**Insert Legal Company/Business Unit Name - Name on T4 and Pay stub**

Copy: Payroll, HR

**I have received a copy of the above letter.**

Signature - **Employee Name**

Date

## Temporary Lay-Off

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**date**

**Employee Full Name**

**Company Address**

Hand Delivered

Dear **employee first name**,

Unfortunately, due to the current economic conditions and its negative impact on our business, this letter is to notify you of the temporary layoff of your employment with **Formal Company Name** (the "Company") effect today.

- ◆ As per the **Insert Province** Employment Standards Act, this temporary layoff may extend to a maximum of **number of** weeks.
- ◆ Your Company benefits will be maintained during this temporary layoff.

- ◆ In consideration of our regularly scheduled payroll deposit, your outstanding wages and a Record of Employment will be processed on [REDACTED].
- ◆ You are asked to make arrangements with our Payroll department to continue payments to any other Company-sponsored programs or automatic payroll deductions.

Please indicate receipt of this letter by signing both copies and returning one copy to [REDACTED] by date - 3 business days from letter date. You may retain the other copy for your records.

[REDACTED] Employee first name, we very much regret that we had to make this decision and have not done so lightly. At this point, it is our expectation that you will be recalled to work in the near future.

Sincerely,

[REDACTED] Name of authorized manager or HR, [REDACTED] Title

**CUSTOMIZER: Insert Company Name**

Copy: Payroll, HR

I have received a copy of the above letter.

Signature - [REDACTED] Employee Name

Date

## Failure to Successfully Complete Probationary Period

[REDACTED] date

[REDACTED] Employee Full Name

[REDACTED] Company Address

Hand Delivered

Dear [REDACTED] employee first name,

As you know, your employment was subject to a probationary period of [REDACTED] EXAMPLE: 3 months. During this period, your performance and skills were assessed against the position duties and success traits.

As you are also aware, we extended your probationary period in the hope that the additional time would allow you to meet the criteria required to be successful in your position as [REDACTED] CUSTOMIZER: insert position title.

Unfortunately, we regret to inform you that your performance did not meet the performance standards. As a result, your employment is terminated effective immediately. You will receive your pay until the end of today as well as any outstanding vacation pay.

Please indicate receipt of this letter by signing both copies and returning one copy to **contact name** by **date - 3 business days from letter date**. You may retain the other copy for your records.

We very much regret that we had to make this decision and have not done so lightly.

Sincerely,

**Name of authorized manager or HR, Title**

**CUSTOMIZER: Insert Company Name**

Copy: Payroll, HR

**I have received a copy of the above letter.**

Signature - **Employee Name**

Date

## RELEASE

**FOR AND IN CONSIDERATION** of the terms contained in the letter dated **date** and attached hereto (the “**Letter**”), and other good and valuable consideration, the receipt and sufficiency of which I acknowledge, I, **Employee Name**, HEREBY REMISE, RELEASE AND FOREVER DISCHARGE **Formal Company Name** including its past, present and future related and affiliated entities, predecessors, successors, assigns, partners, offices, board members, directors, contractors, employees, insurers and agents and each of their respective past, present, and future predecessors, successors, assigns, partners, offices, board members, directors, contractors, employees, insurers and agents (collectively, the “**Releasees**”) from any and all manner of actions, causes of action, complaints, suits, debts, damages, covenants, contracts, bonuses, costs, expenses, compensation, rights, claims, and demands whatsoever, whether in law or in equity, relating to my employment with the Releasees or the cessation of that employment, and without limiting the generality of the foregoing, any claims or rights under the **Insert relevant employment standards act**, the **Insert relevant Human Rights Code**, and any other applicable provincial or federal legislation, any claims or rights for reinstatement, any claims or rights for severance pay or pay in lieu of notice of termination, damages for loss of reputation, loss of position, loss of status, loss of future job opportunities, and constructive termination, any claims or rights arising from the manner and timing of the termination, and any claims or rights under the weekly indemnity, short and long term disability, incentive and other benefit plans of the Releasees.

**IT IS UNDERSTOOD AND AGREED** that:

1. By virtue of the terms of settlement contained in the Letter, I will have received all wages including, without limiting the generality of the foregoing, overtime pay, vacation pay, statutory holiday pay and pay in respect of termination of employment to which I am entitled under the **Insert relevant employment standards act**;
2. the Releasees have satisfied all obligations to me under the **Insert relevant employment standards act**, and **Insert relevant Human Rights Code** in relation to my employment and the cessation of my employment, and there is no factual or legal basis for any claim or entitlement against the Releasees under any of those statutes;
3. the payment or payments to me by or on behalf of the Releasees are not to be construed as an admission of liability on the part of any of the Releasees, which liability is expressly denied;
4. this Release is executed by me and the said consideration is accepted by me for the purpose of making a full, final and irrevocable settlement of any and all claims or rights whatsoever and howsoever arising against the Releasees relating to my employment or the cessation thereof;
5. I will not make any further claim or take any proceedings whatsoever against the Releasees or any other person, company, or other legal entity who might claim contribution or indemnity from the Releasees in respect of matters that are the subject matter of this Release;
6. the facts in respect of which the Release is made may prove to be other than or different from the facts now known or believed to be true, and I expressly accept and assume the risk of the facts being different, and agree that this Release will be in all respects enforceable and not subject to termination, rescission, or variation by discovery of any different facts;

7. I will indemnify and hold harmless the Releasees from all liability, if any, for any tax, penalty, interest or any other amount of any kind whatsoever arising under any one or more of the *Income Tax Act (Canada)*, the *Employment Insurance Act (Canada)*, the *Canada Pension Plan Act (Canada)*, and any other similar statute of Canada or a province or territory thereof, that arises in consequence of the performance of the obligations to me by or on behalf of the Releasees;
8. the existence and terms of the settlement between me and the Releasees contained in the Letter and the existence and terms of this Release are confidential and I will not disclose, except as required by law, either the whole or part of the Letter or this Release to anyone, but disclosure may be made by me to my spouse and legal or financial advisors on the condition that they agree to maintain that confidentiality;
9. I will at no time make, or encourage others to make, any negative, disparaging or derogatory comments or inferences about the Releasees, and any comments or inferences that I make about the Releasees will be consistent with the position that I was treated fairly by the Releasees at all times;
10. this Release is voluntarily executed and it and the Letter contain the entire agreement between me and the Releasees, and the terms of the Release are contractual and not a mere recital; and
11. I have read and understand this Release and have, prior to the execution hereof, had the opportunity to receive independent legal advice in respect hereof.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
20\_\_ IN **INSERT PROVINCE**.

SIGNED, SEALED, AND DELIVERED by

<b>Employee Name</b> per:	
Signature	Date

in the presence of:

<b>Witness Name, Address, &amp; Phone Number</b> (Please print legibly)	
Witness Signature	Date