

The background features a large, stylized 'HR' in black and red. The 'H' is composed of two red vertical bars and a horizontal bar. The 'R' is a large black letter. The background is a light teal color. The HRPA logo is on the left, and the title and date are on the right.

**HR
PA**

**Human
Resources
Professionals
Association**

It's over: Terminations done the right way

February 1, 2023

Introductions



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HRPA



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Housekeeping

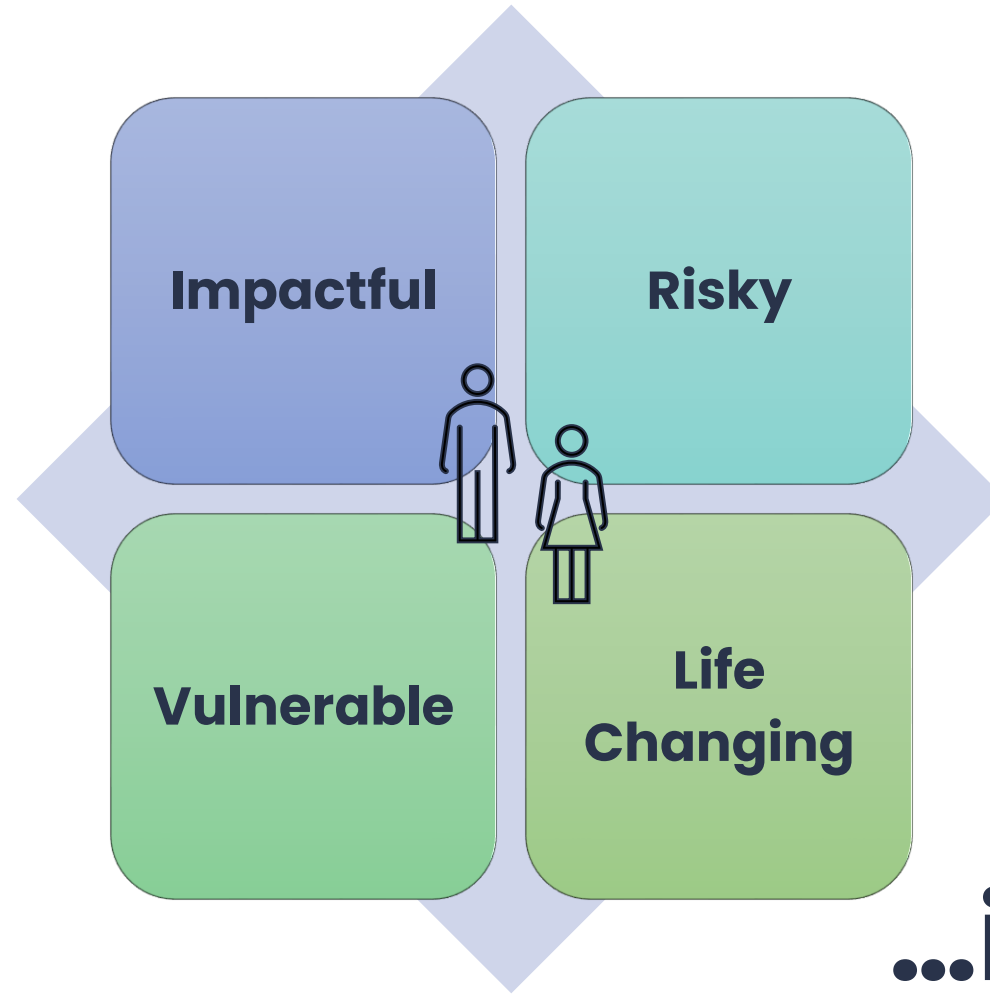
- This webinar is eligible for 1 CPD hour. You will receive the CPD code via email following completion of the webinar.
- This webinar will be recorded.
- The link to view the recording will be sent to you via email following the webcast.
- The recording, slides and Q&A will be posted on our website under Professional Development – eLearning & On Demand—on-demand webinars—Office of the Registrar.
- Time has been set aside for Q&A at the end, but please feel free to add your questions to the Q&A box at any time during the presentation.

We need to talk...



...it's over.

We need to talk...



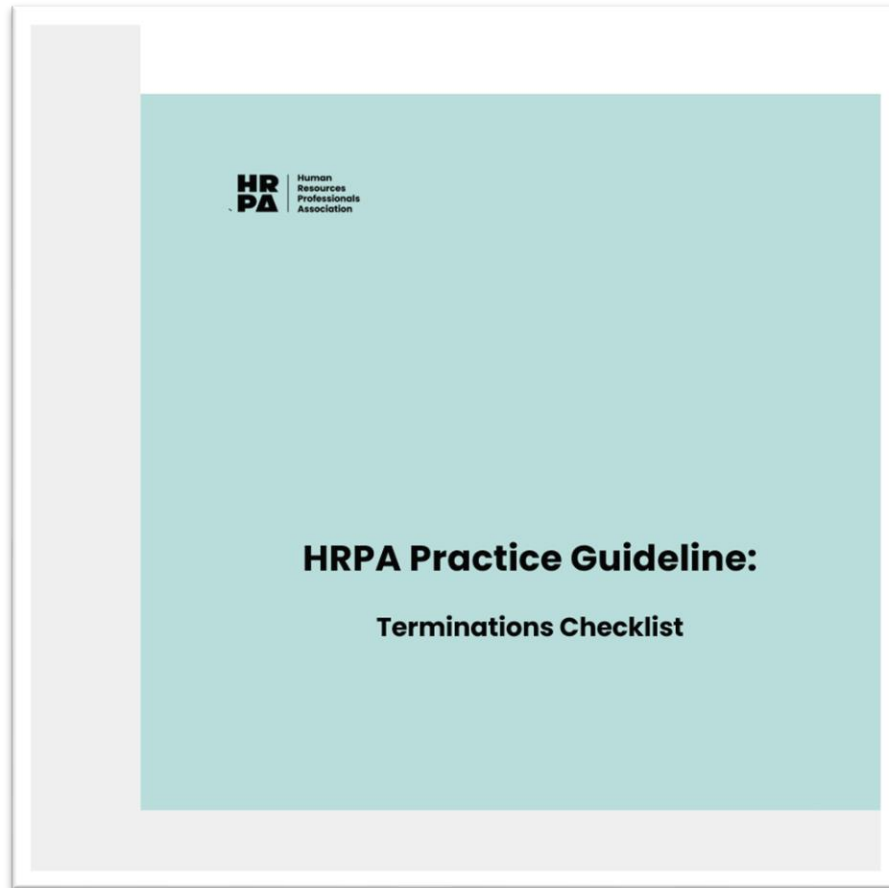
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Today's format

- HRPA has recently made available a new Practice Guideline on Terminations
- Review key elements from the Guideline
- Overlay the **human** element of terminations – “best” practices



HRPA's New Practice Guideline



- Topic identified as one of the highest-ranking risks of harm stemming from the practice of HR
- Meant to help you mitigate risks and avoid common pitfalls
- Helps supplement the **Code of Ethics and Rules of Professional Conduct**
- All HRPA members and students are expected to be familiar with the Guideline

Focus of Guidance

- In the form of a checklist, focuses on areas of high-risk for employer-initiated terminations of **non-executive, non-unionized employees**.
- Primarily relies on the Ontario *Employment Standards Act, 2000*, as amended and the *Canada Labour Code*, as amended.
- Given that terminations are complex, with many variables, this is not an exhaustive checklist but meant to be a guide.

Developed via extensive research from numerous sources

Subject-matter experts:

- legal counsel
- HRPA's Professional Standards Committee (PSC)
- HR professionals

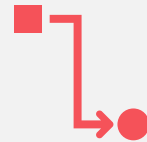
Thorough approvals process:

- Professional Standards Committee → Governance & Nominating Committee → Board of Directors



Defining Terminations

The two primary options for involuntary terminations:



Terminations for Just Cause



Terminations Without Cause

Terminations for Just Cause

- Rarely used in terminations and considered the “capital punishment” of employment law.
- Under Ontario’s *Employment Standards Act, 2000* (ESA), just cause is:
 - “Wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.”
- Notice of termination or a severance package is not required where the circumstances support a finding of just cause under the ESA.

Terminations Without Cause

- Most common option for dismissals
- Collective Agreements may have separate or additional provisions and procedures for dismissals
- Legal entitlements
- Employment Agreement (predefined terms)

Terminations Without Cause



- Most common option for dismissals
- Collective Agreements may have separate or additional provisions and procedures for dismissals
- Legal entitlements
- Employment Agreement (predefined terms)
- This is happening **to** someone
- Choose a private space
- Encourage the manager to rehearse
- Plan for the unexpected
- Emotional response
- Compassion



Impact of Termination Decisions

Risks of Harm

Improperly conducted terminations can result in harm to:

Employees:

- The dignity and rights of the employee(s) being dismissed,
- The dismissed employee(s) financial status (especially if any remuneration owed is incorrect/not paid), and
- The employee(s) mental health, including those dismissed, as well as though who “survive” the dismissal.

The Employer:

- The reputation and rights of the employer,
- “Bad Faith” damages,
- Wrongful dismissal claims > added costs, risk of litigation, loss of trust.

Case Commentary: Ontario Court of Appeal Delivers Stern Message to Employers Who Mistreat Employees with Disabilities

July 25, 2016

By Ken Prehogan

The Plaintiff was employed by the defendant for 15 years. She earned \$12.95 per hour. She was dismissed at the age of 56 after she became totally deaf, possibly due to a virus. The conduct of her employer is summarized by Epstein, J.A. at the outset and is startling, to say the least:

"In October 2010, Ms. Strudwick suddenly became completely deaf. While the cause is uncertain, her doctors believe it was a virus. At that time, Raymond Berta, the owner and manager of Applied Consumer, was away from his business dealing with a medical problem. The general manager of Applied Consumer, Andrew Hoffman, had taken over the operations of the company in Mr. Berta's absence. Almost immediately after Ms. Strudwick became deaf, Mr. Hoffman, together with Ms. Strudwick's immediate supervisor, Liz Camilleri, commenced a campaign of abuse against Ms. Strudwick designed to force her resignation. This abuse will be described in more detail later in these reasons. In summary, in addition to publically belittling, harassing and isolating Ms. Strudwick in ways relating to her disability, Applied Consumer not only denied Ms. Strudwick any accommodation of her disability but also took specific steps to increase the difficulties she faced as a result of her not being able to hear. The culmination of this abuse came on May 27, 2011 when Mr. Hoffman fired Ms. Strudwick for a "stunt [she] had [allegedly] pulled" at a company event."

The Court of Appeal awarded the plaintiff a total of \$246,049, more than double the amount awarded at trial, an unusual occurrence given the deference ordinarily accorded to the trial judge in assessing damages. The damages were awarded under various heads

Constructive Dismissal

“Describes situations where the employer has not directly fired the employee. Rather the employer has failed to comply with the contract of employment in a major respect, unilaterally changed the terms of employment or expressed a settled intention to do either thus forcing the employee to quit.”

– Government of Canada

Potential Examples:

- Demotion
- Forced Location Change
- Demand for an employee's resignation
- Material change to job responsibilities/duties

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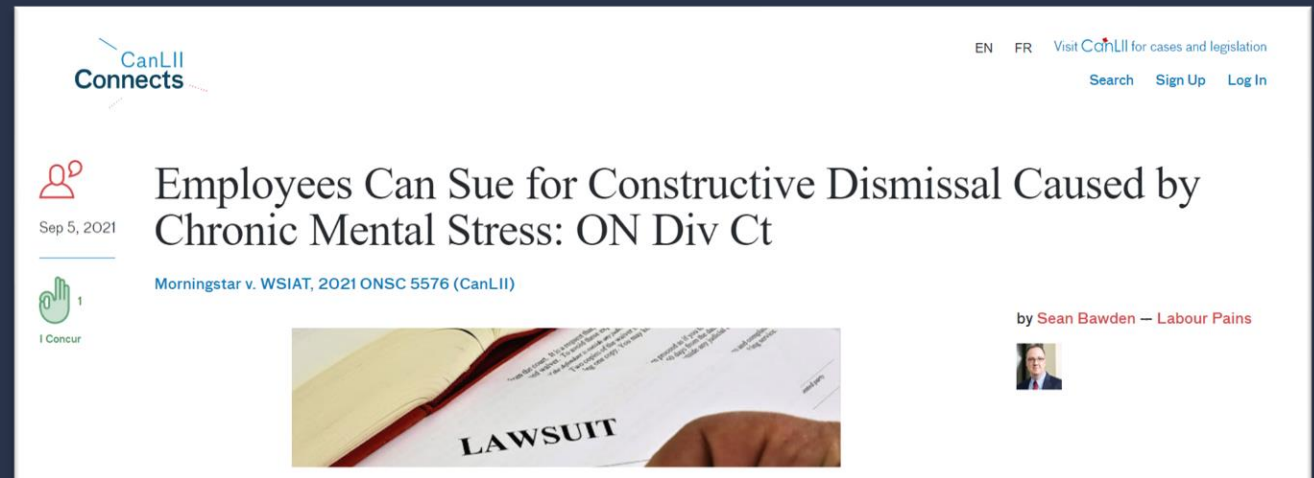


- Reasonable notice of the change
- Compensation for the change
- Termination settlement

Constructive Dismissal

Emerging Case
Law:

“Chronic Mental Stress”



Approaching Terminations through a Risk Lens & Protecting People



Using a Risk Lens and Protecting People

- Before planning a termination, a risk lens should always be used – meaning you think of all the various risks that are at play in relation to the termination and account for those risks through risk mitigation strategies
- Be proactive! Potential risks can be addressed by setting clear policies and protocols (more on next slide)
- A good start– use HRPAs Practice Guideline Terminations Checklist **before** you initiate a termination



Be Proactive



- Clear code of conduct/standards explaining potential consequences of breaches of company policies or procedures that are signed off on
- Regular staff performance reviews that are well documented
- Protocols in place that are followed for performance issues
- Regularly review of the code of conduct, handbooks, policies, etc. with updates as needed
- Compliance with current legal requirements in all policies and practices

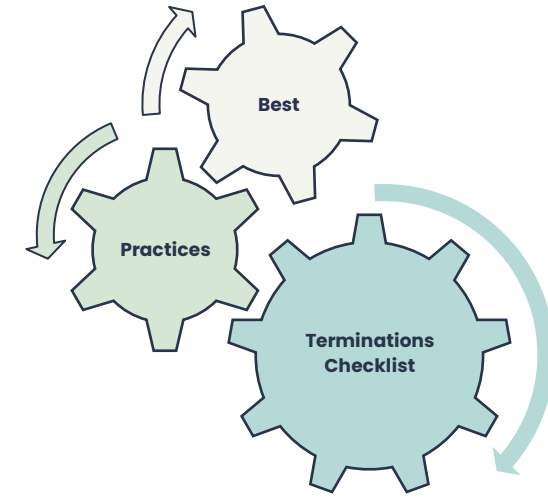
Risk Prevention at Every Step



Risk Prevention at Every Step



- Legal and valid
- Skilled and competent
- Employee rights
- Company policies
- Physical or security risks
- Statutory entitlements for notice, severance, and benefits
- Employment agreement terms
- Pay statements, ROE and tax slips
- Employee supports

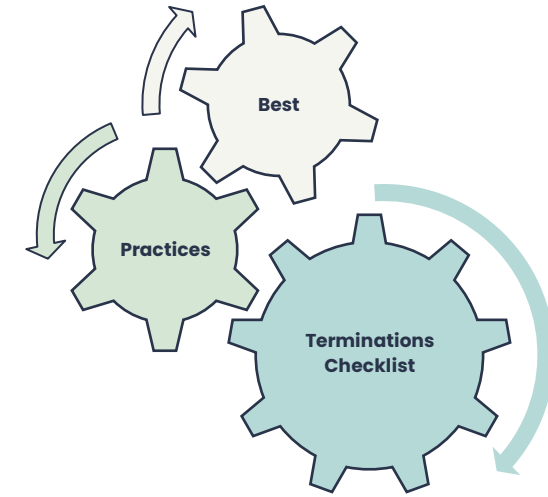


THROUGHOUT: The HRP A Code of Ethics and Rules of Professional Conduct

Risk Prevention at Every Step

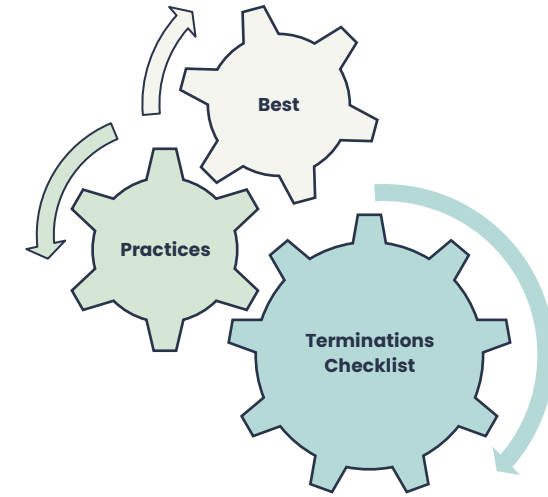


- Professional
- Return of personal property
- Return of company property
- Termination documentation
- Time to review before signing
- Right to independent legal advice
- Contact information for questions



THROUGHOUT: The HRP A Code of Ethics and Rules of Professional Conduct

Risk Prevention at Every Step




- Systems and workplace access removal
- Transition of work
- Communications and stakeholder notifications
- Return of company property
- ROE issued
- Ongoing support
- Confidentiality

THROUGHOUT: The HRP A Code of Ethics and Rules of Professional Conduct

A photograph showing a person's hand reaching out to shake another person's hand over a laptop keyboard. The background is blurred, showing a person in a suit. The image is overlaid with a dark blue diagonal shape and a red rectangular shape containing text.

**More than a
transaction:** *Building
empathy and compassion*

A person in a dark suit is seen from behind, standing in a modern office with large windows. They are looking out at a city skyline. In the foreground, there is a dark, reflective table and a black office chair. The text is overlaid on the right side of the image.

**How would you want to be
treated if you were being
terminated by your
employer?**

Empathy and compassion can be shown in the termination process by...

- Respect of the person
- Preserving dignity
- Privacy
- Day, time and place of the meeting
- Clear and succinct
- Competent and trained
- Arrangements to get home
- Psychological safety
- Returning personal property with urgency
- Exit plan



What if I Need Additional Help?

Know the limits of your capabilities.

If you have complex, complicated, unique or uncertain circumstances related to a dismissal in your workplace,
consult with a legal expert!

General questions:

- Contact HRPAs with any questions or feedback about guidance issued: guidance@hrpa.ca.
- If you prefer reaching out to us by phone, you can schedule a phone call appointment online, or call us at: 1-800-387-1311 or 416-923-2324.

Questions



A Note About Other Guidance + Webinars

Visit www.hrpa.ca/guidance to access professional guidance and webinars, including:

- ✓ HRPAs modernized Code of Ethics and Rules of Professional Conduct
- ✓ Practice Guideline on Addressing Racism and Racial Discrimination
- ✓ Practice Standard on Conducting Workplace Investigations
- ✓ Practice Guideline on Social Media Use
- ✓ Practice Guideline on Terminations
- ✓ Practice Guideline on Fostering Mental Health in the Workplace — ***Upcoming free webinar about the Guideline Feb. 8th, 2023, 12-1 pm, register now!***



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THANK YOU!