

Mandrake Puts its Heart on Ice for Kids

This year's Skate for Kids, held on May 9th, 1998, was an outstanding success. Along with the generous contribution of 20 companies from the communications, financial, software, and consumer goods industries that each iced a team, 30 pro NHLers came out to skate for the event. Dozens of companies donated resources towards this great event, all of whom contributed towards making this a great event. Altogether, in excess of \$20,000 was raised, with proceeds going towards the National Advertising Benevolent Society, the Children's Own Museum, Variety Village, and St. Michael's College.

Not only were we blessed with a gorgeous sunny day, many people stayed behind to bid on the silent auction, too. Stéfan Danis, Event Chairman and Managing Partner at Mandrake, invites all interested parties to get involved next February, the date of our 1999 event. So, a big thanks to everyone involved, and see you next year!

A Checklist for Termination Protocol

The following is a list of considerations when preparing to terminate an employee. We have organized them into three sections, pre-termination, during, and post-termination. Clip this section out for easy reference, and contact Mandrake for any additional assistance.

1. Pre-Termination
 - Know the Employment Standards Act
 - Document performance issues in writing
 - Give the employee the opportunity to improve
 - If restructuring, try to find valued employees a position elsewhere in the company or consider approaching a search firm to 'de-hire' the employee
 - Gather a list of all corporate benefits associated with the termination (pay, relocation counseling, benefits, bonus earned etc.)
2. Termination
 - Terminate the employee in a private place during non-peak hours
 - State the performance problem if relevant
 - State what the severance notice or pay 'in lieu' will be, and when the dismissal is effective.
 - Tell them what people and former colleagues will be told
 - Listen to the employee (this may serve as the exit interview).
3. Post-Termination
 - Provide the opportunity to collect personal belongings during non-peak hours.
 - Explain that someone will be in touch with them about benefits
 - Treat the fired employee with dignity, compassion and respect
 - Consider referring the employee to search firms to assist them in their relocation.
 - Initiate ongoing dialogue with remaining staff to pre-empt negative after effects
 - Facilitate an exit interview if the candidate is willing to participate.

CUT OUT

More Men In White

The White Ribbon Campaign, Men Working to End Violence Against Women, is now entering its eighth year, and it is looking to be a hallmark year for the organization. As the Founder and Chair of the National Business Advisory Committee, Mandrake's own Terence M. Donnelly plays a key role in encouraging involvement from across all business sectors, from the largest corporations to small business. Terence's involvement this year has ranged from organizing and hosting a formal dinner party for almost 100 guests at two leading Toronto restaurants, hosting a major benefit concert featuring rock stars from the Tea Party, Rush, Colin James, I Mother Earth, Wide Mouth Mason, and Glueleg. Terence is also co-hosting with Grey Canada the first ever White

Ribbon / Grey Canada Soccer Sixes Tournament. All of this activity has seen donations from the business community grow to over 70% of White Ribbon's annual budget from less than 5% in two years. This increased support resulted in White Ribbon fulfilling a long held dream of having enough funds left after running its own education and prevention programs to be able to provide direct funding to shelters and services for abused women, and this year's plans look like they will far surpass last year's results. Corporations and volunteers interested in getting involved are encouraged to do so by contacting Terence at Mandrake at (416) 922-5600 ext. 252. Membership is only a phone call away!



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VIEWS

Hire right from the Start

What the Law Has to Say about Hiring.

"If an employee is found to be guilty of misrepresentation, it may be grounds for dismissal without notice or pay."

Tackling the hiring process without understanding the laws governing hiring is like taking a leisurely stroll through a minefield. "An explosion will likely occur when you least expect and are ill-prepared to cope with the results", says attorney Norman Grosman in his book 'A Practical Guide to the Law of Hiring in Ontario'.

The first stop on Mandrake's tour of employment law is the Ontario Human Rights Code, which prohibits "discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offenses, marital status, family status or handicap".

Questions dealing with any of aforementioned at any phase of hiring is prohibited by law.

Failure to comply could result in compensation and damages, plus up to \$10,000 for mental anguish alone. You could also be ordered to attend educational programs.

Though popular, psychological and aptitude testing are permitted if - and only if - they are related to genuine job skills or performance. Watch out. Aptitude tests may appear neutral, but upon closer examination often contain inherent cultural, sexual or racial biases, which constitute a legal

basis for discrimination.

Under the Employment Equity Act of 1993, your workforce must reflect the representation of four protected groups within the community: aboriginal people, women, and members of racial minorities and people with disabilities.

Equal pay for equal work is the subject of section 32 of the Employment Standards Act, which prohibits wage differential based on gender. The only exceptions to this rule are seniority and job performance.

As an employer, you've probably tried to "sell" a position you were trying to fill, or omitted some less savory aspect of it. You may be surprised to learn that this constitutes employer misrepresentation.

However, the vast majority of misrepresentations today are made by employees. Things such as compensation, security of previous position and credentials are frequently exaggerated.

It is tempting to gloss over reference checks when you're in the home stretch of the hiring process - do not. It is during reference checks that misrepresentations are most likely to surface. Always put "contingent upon references" in the employment letter.

Confirm the position, discretionary bonuses, and reason for leaving. Probe for interpersonal, reporting and job performance issues. Be on the lookout for statements conspicuous by their absence. Often what people don't say reveals more than what they do.

Under the Ontario Consumer Reporting Act, an employer must inform a candidate when a negative reference was provided and what was said. It also prohibits employers from seeking a reference unless the candidate has provided written permission. Finally, Mandrake recommends an employment or contract letter to detail terms of probation, compensation, bonuses, restrictive and solicitation agreements and termination to avoid future complications.



"Never treat references as a formality."

WELCOME TO INTERVIEWS

Our goal is to deliver relevant points of view on recruiting and human resources. Please fax in your suggestions, topics of interest. Enjoy this edition.

Stéfan Danis, Managing Partner

Hire Right From the Start

Mandrake covers the legal basics in hiring.

In the Line of Fire

What to know when terminating an employee.

The Last Word

- Mandrake Puts Its Heart On Ice For Kids.
- A Checklist For Termination Protocol
- More Men In White

In the Line of Fire

What to know when letting go.

There are many terms for it, among them, 'being let go', 'discharged', 'dismissed', or the more clinical 'terminated'. If you're a visual thinker, perhaps you prefer being 'canned', 'shown the door', or the very theatrical 'given the axe'... you get the idea. These terms are simply elaborate (and sometimes morbid!) substitutions for the word 'fired'. And it's no wonder.

It is perhaps the most unenviable position in which to be. A once valued employee has, over a period of months, slipped in productivity. The once pristine employment record now marred by interpersonal conflicts, and characterized by under achievement, inertia and errors in judgment.

"It's not the people you fire who will make your life miserable. It's the people you don't."

Harvey Mackay

So, as an efficient manager AND a compassionate human being, what do you do? First of all, remember that the only thing worse than firing a problematic employee is not firing them. And no – that's not compartmentalizing or rationalizing your predicament.

In reality, the affected employee is not doing themselves or the company any good by remaining in a position where they are unhappy and are potentially causing a ripple effect among other employees. But still, you're human. You want to be compassionate, and give the employee in question a chance to change.

And then, if that fails to have the desired effect, you need to know the best way to go about firing them. Yes, that's right, firing them. It is important that at this point to deal with your instinct to avoid confrontation.

Now, get yourself a copy of the Employment Standards Act. (For an online version, go to

<http://www.gov.on.ca/LAB/es/introe.htm#intro>). This will help you to familiarize yourself with your rights as an employer. The following outlines the steps you should undertake BEFORE firing someone, the legal pitfalls to watch for, how to actually fire someone, and how to deal with the aftermath.

Everything you need to know, right? Not quite. Mandrake strongly suggests that while navigating these unknown waters (let's be honest, most of us don't know as much as we let on about firing), its best to seek competent legal counsel.

In fact, no employee is guaranteed a job for life, and as an employer, you have the right to terminate workers for reasons quite apart from performance. Today, corporations need to restructure and downsize in order to ensure their immediate and future survival. The law understands this, and requires that the employer need only provide the employee with proper notice of termination, or pay "in



lieu" of notice, under the Employment Standards Act. The same holds true for problem employees.

Under the Employment Standards Act, employers must provide reasonable notice, or pay "in lieu" of notice when an employee is fired. This can range from:

"The law understands the need for companies to restructure."

for more than one year but less than three,

- all the way up to eight weeks notice or termination or an employee who has been with the company for more than eight years.

Not surprisingly, many employers are reluctant to keep a fired employee on staff (also called "working notice"), and so many opt for pay "in lieu" of notice. Many are also reluctant to deal directly with an employee who is having personal problems. In cases where "just cause" exists, no notice is required. Following are some examples of "just cause":

- A pattern of willful disobedience
- Incompetence
- Absenteeism or lateness

- Dishonesty
- Intoxication
- Sexual harassment
- Conflict of interest
- Insolence or insubordination

Ron Walton, a partner with Walton Advocates explains: "where a gradual deterioration or the accumulation of a number of minor failings is relied upon as cause for dismissal, the employer has a duty to warn the employee and give the employee time to improve performance before dismissing. This is not the case where there is serious misconduct or prejudice to the employer's business." The onus is on the employer to prove that an unequivocal warning was given, that it was understood by the employee, and that the employee was given reasonable opportunity to improve.

It is extremely important to document employee warnings in writing. These should clearly state that the employee's job is in jeopardy. Standard clauses such as "up to and including dismissal" do NOT qualify as an effective warning, nor does the statement that "major changes may have to be made if performance does not improve".

If there is no significant turnaround, consider enlisting the help of a search firm to de-hire the employee before they are terminated. If this is done discreetly and effectively, the candidate will then leave on their own accord, saving you the time and hassle (and money) incurred in letting them go. Also, take that time to brief your search firm for a pro-active replacement.

Certain circumstances can provide an open door to wrongful

"Where "just cause" exists, no notice is required."

dismissal litigation. When an employee's position becomes redundant and the new position involves a substantial reduction in salary, a demotion, a location transfer, forced resignation or any combination thereof, a basis for litigation on the grounds of "constructive dismissal" exists.

"The onus is on the employer to prove that warning was given."

Should an employee successfully sue your company for wrongful dismissal, judgement requiring severance pay as high as two years salary is possible. The Supreme Court of Canada has passed a new law called the "of good faith" which requires that employers treat fired employees with "honesty, dignity and compassion". Failure to do so can cost additional damages.

"Did somebody say 'lawsuit'?"

So what's the best way to actually go about firing an employee? Tell them in a private place to avoid embarrassment. Get to the point quickly, stating the performance problem. Explain what their

severance will be and when the dismissal is effective. Talk about what people will be told. Expect an emotional reaction. Listen to what the employee has to say, and reassure him or her that someone will contact them about benefits. It's important that you allow them the opportunity to retrieve their personal belongings from the workplace with a non-threatening escort, unless the level of position makes this impossible.

Now, the fired employee has left the building, and you may think your job is over. Not so fast. After an employee has been fired, initiate immediate and ongoing communication with other staff to avoid low morale, miscommunication and decreased productivity. Be open to suggestions but firm in your resolve.

Staff opinions of management are often shaped and reshaped on the basis of a manager's ability to handle the firing of an employee. Ongoing dialogue will help manage the remaining staff through any doubt, tension and anxiety the firing has caused. And in the best of circumstances can foster a newfound respect and understanding of expectations.

There are few managerial tasks that make one feel quite so conflicted as the firing of an employee. Always remember this, there are no easy answers. But there are answers. For Mandrake's informal checklist on Firing, please see our back page.

"Staff opinions are shaped on the basis of how management handles the firing of an employee."