

mccarthy
tétrault

Labour & Employment Breakfast Seminar

Firing Right - How to Deliver the Message

December 12, 2013



Why sweat it?



Why sweat it?

Firing wrong can cost you:

- Administrative Costs
- Legal Costs
- Damages
 - General Damages
 - Aggravated Damages
 - Punitive Damages
 - Damages for intentional or negligent infliction of mental distress, deceit, interference with contractual relations, etc...



Aggravated/Punitive Damages

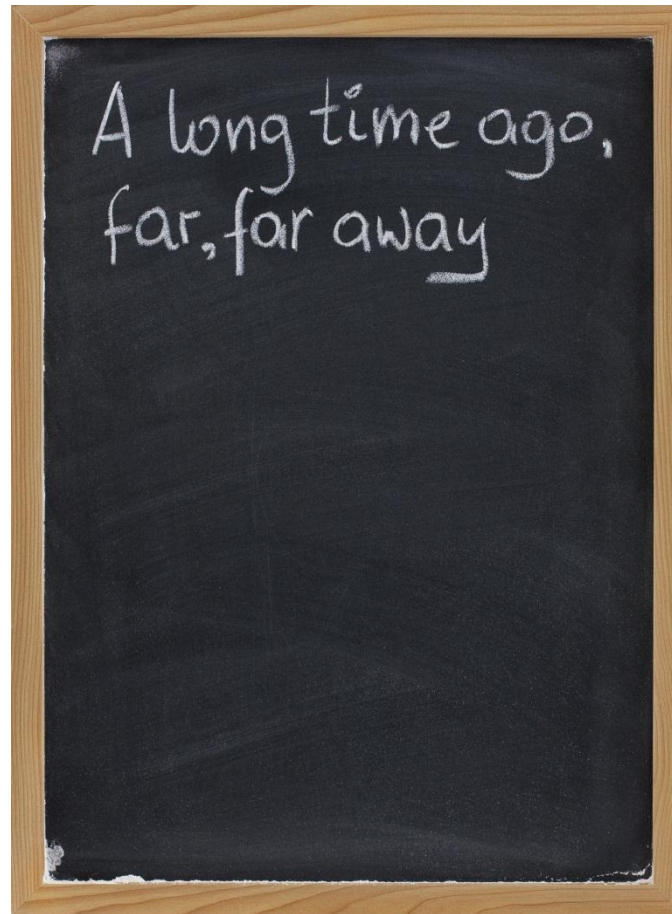
Aggravated Damages or Punitive Damages could be awarded in the following situations:

- The termination was communicated in an unreasonably cold and callous manner.
- The termination occurred in front of the employee's colleagues causing the employee unnecessary humiliation.
- The employer persisted in false allegations against the employee despite knowing accusations were baseless.

Aggravated/Punitive Damages

- The employer refused to cooperate with the employee regarding amounts owing to the employee.
- The employer claimed just cause, but failed to undertake an investigation to actually determine cause.
- The employee was escorted out of the building in a public display without justification.

Story time!

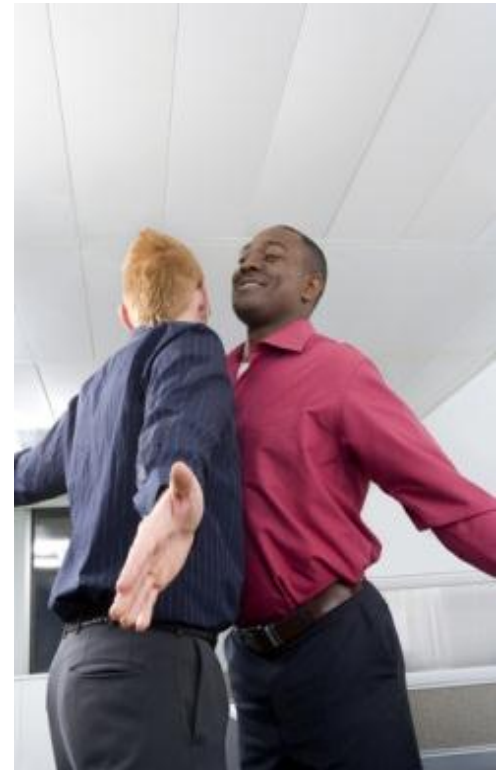


Elgert v. Home Hardware Stores Limited

- Employer dismissed employee based on unfounded allegation of sexual harassment.
- Investigation was conducted by someone with very little experience in sexual harassment. The particulars of the investigation was never provided to the employee.
- Jury concluded employer's manner of dismissal was harsh, vindictive, reprehensible, malicious, extreme in nature.
- Court awarded 24 months' salary, \$75,000 in punitive damages, and a total of \$60,000 for defamation.

Elgert v. Home Hardware Stores Limited

“There was trial evidence about belly bumping, including Bernier’s testimony that “belly bumping” was a silly thing Elgert did when he was in a hyper sort of silly mood. Fontaine testified it was something that they (usually men) would do when they were in a good mood, everything was working right, or perhaps when they went on holidays. He said it was a good mood kind of thing and three men at work (called the three musketeers by co-workers) did this often.”



Pate Estate v. Galway-Cavendish and Harvey

- John Pate terminated due to alleged building permit fee discrepancies.
- Town pushed police to lay charges, despite inconclusive investigation. It was later revealed that the town withheld evidence in Mr. Pate's favour.
- Mr. Pate was acquitted of the criminal charges.
- He then sued and was granted judgment for wrongful dismissal (\$100,000), punitive damages (\$550,000) and malicious prosecution (\$1) plus costs awards exceeding \$30,000.

Lists!



Before the Termination Meeting

- Review employee file.
- Review clients of employee with supervisor.
- Discuss with legal.
- Prepare termination letter and settlement offer (if applicable).
- Prepare talking points for termination meeting.
- Make arrangements with IT, Security, etc. as needed.

The Termination Meeting

- You may want to conduct the meeting towards the end of the day to avoid causing the employee any unnecessary embarrassment when vacating the premises.
- If possible, avoid terminating the employee on a birthday, wedding anniversary or other significant date.
- Pick a neutral site for the meeting, such as a conference room and not the manager's office.
- Conduct the meeting in a location away from other employees.
- Avoid terminating an employee in a different city or remote location where the employee doesn't have family, friends or professional advisors available for immediate support.

The Termination Meeting

- Have two members of the management or human resources at the termination meeting.
- Review the details of the termination letter with the employee.
- The meeting itself should not last longer than 5-10 minutes.
- In the event of mass dismissal, consider holding meetings with groups of employees.
- Consider having an out-placement counsellor, employee assistance program, or career counselling support available.

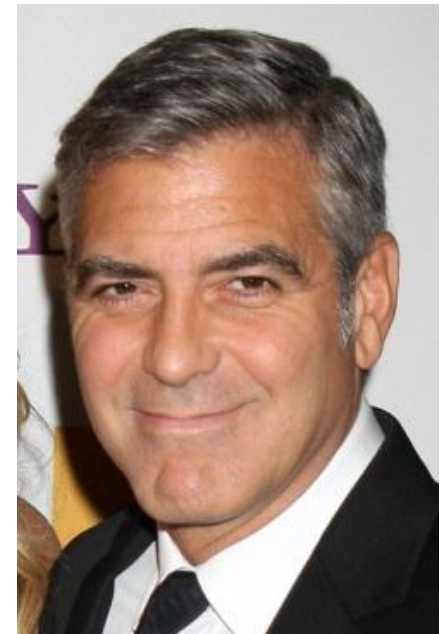
Statements to Avoid

- “How’s the family?”
- “I know how you feel” or “I’m sorry to have to do this.”
- “Let me know how I can help.”
- “Take all the time you need.”
- “Everything will be ok.”

These remarks may feed the employee’s resentment. They could also undermine the finality of the decision.

The Termination Meeting

- Do not negotiate with the employee or engage in a debate – the decision is made.
- Do not become angry or hostile (may increase the chances an employee will bring an action or complaint).
- Avoid interruptions during the termination meeting.
 - Close door.
 - Turn off phone.



After the Termination Meeting

- Require the employee to return any company property including credit cards, access cards and keys.
- Allow the employee to return to his or her office to retrieve personal belongings unless there is a legitimate concern regarding theft or damage.
- Do not have security staff accompany the employee unless a reasonable concern exists as this signals the employee is untrustworthy.

After the Termination Meeting

- Make notes of what transpired at the meeting in the employee's file, including all comments made by the employee during the meeting.
- Ensure that payroll staff has properly prepared and provided the employee with their Record of Employment.
- Ensure that employment benefits, are continued or discontinued in accordance with the termination letter.
- Ensure that the employee is advised in writing of conversion privileges for group insurance benefits.

Announcing an Employee Departure

- Any public announcement should be made shortly after the employee's departure.
- Issue a neutral announcement without stating reasons unless an announcement has been agreed to with the employee.
- Do not disclose any personal information beyond what is necessary.
- In response to questions from other employees, give answers that are consistent with the announcement.

Reference Letters:

- If the termination is without cause, it is in the employer's interest to help the employee to find other employment.
- Obtain agreement from the departing employee as to the contents of reference letter and the details of what will be communicated to potential employers.
- Reference letters should be truthful.
- Avoid defamatory statements or misrepresentations.

Reference Letters: Inconspicuously Ambiguous Recommendations

- “You would be very fortunate to get this person to work for you.”
- “I can assure you that no person would be better for the job.”
- “I urge you to waste no time in making this candidate an offer of employment.”
- “I cannot say enough to honestly recommend this person for employment.”
- “I am pleased to say this person is a former colleague of mine.”
- “She is one of the most discriminating people you will ever meet.”

Note: Do not actually use these statements on a reference letter.

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