

Policy

The objective of this administrative policy is to clarify the employer's roles, responsibilities and procedures with respect to just cause employment termination decisions under section 22(2) of the *Public Service Act*, which states "*The agency head, a deputy minister or an individual delegated authority under section 6 (c) may dismiss an employee for just cause.*" This policy applies to both included and excluded employees covered by the *Public Service Act*.

The employer is committed to ensuring the principles of natural justice and procedural fairness apply to all just cause termination decisions. Fair and just decisions are important not only to the individuals affected by the decision, but also to the larger interest in the proper and fair administration of public services. As leaders in the BC Public Service, Deputy Ministers are accountable for making just cause employment termination decisions under section 22(2). This policy defines the role and responsibility of Deputy Ministers related to just cause termination decisions and prescribes the procedures that must be followed in making these decisions. Fair and just decisions are important not only to the individuals affected by a decision, but also serve the broader public interest by enhancing citizen's trust and confidence in the BC Public Service.

Prior to making a just cause disciplinary termination decision for an excluded employee, a Deputy Minister must first receive and consider a written opinion from legal counsel. In the case of an included employee, a Deputy Minister must receive and consider the written advice from either a Senior Labour Relations Specialist from the Public Service Agency or legal counsel.

Just cause terminations cannot be actioned unless due process is confirmed by the Deputy Minister, BC Public Service Agency.

Definitions

"just cause" – termination without notice or pay in lieu of notice; the onus of proof is on the employer to show on a balance of probabilities that an employee breached an employment contract in a fundamental way or has committed misconduct that has irreparably damaged the employment relationship.

"legal counsel" – a lawyer with the Legal Services Branch (LSB) at the Ministry of the Attorney General or an external lawyer retained by the LSB.

"natural justice" – a set of rules that provides due process to individuals involved in legal actions, including the duty of the employer to act in good faith and without bias and the right of the affected parties to be heard.

"procedural fairness" – process rights that one party provides to another to protect individuals' rights and interests.

Deputy Minister Accountability

Deputy Ministers are accountable for ensuring that human resource management responsibilities in their organization are carried out in a manner consistent with the advice provided by the BC Public Service Agency (the Agency), applicable legislation, HR policies, collective agreements, and terms and conditions of employment.

Deputy Ministers are accountable for ensuring the principles of natural justice and procedural fairness are

applied in all just cause termination decisions. Their judgement and decision making must be above reproach.

Deputy Ministers will only make just cause termination decisions under Section 22(2) of the *Public Service Act* after reviewing and considering the written advice provided by either legal counsel or a Senior Labour Relations Specialist in the Agency on the appropriateness of the disciplinary termination decision.

Deputy Ministers can only exercise their duties and terminate an employee for just cause once the Deputy Minister of the Agency has confirmed that due process has been followed in relation to the termination decision.

Mandatory Procedures

The Agency has established administrative due process checklists outlining the process and requirements for just cause termination decisions under section 22(2) of the Act. There are separate checklists for bargaining unit and excluded employees attached in Appendices 1 and 2. Appendix 3 contains an investigation best-practice protocols checklist that must also be completed for all investigations into allegations of employee misconduct that result in a termination for cause.

These checklists must be completed by both the appropriate Employee Relations Specialist in the Agency and the Ministry representative who is supporting the Deputy Minister's disciplinary termination decision. The Assistant Deputy Minister (ADM), Employee Relations Division, of the Agency must also review the checklists to confirm that due process was followed.

After the checklists have been completed, the following steps must be completed prior to the Ministry proceeding with a just cause termination:

1. The Employee Relations Branch representative provides the due process briefing package to the ADM, Employee Relations, including the completed administrative due process and investigation best-practice protocol checklists and the written senior labour relations/legal advice. Notification also includes the employee's name, Ministry, a brief summary of the case and the basis for termination.
2. The ADM, Employee Relations, reviews the file and notifies the Deputy Minister of the Agency that due process has been followed and provides the Deputy Minister with copies of completed disciplinary termination and investigation best-practice protocol checklists and the written senior labour relations/legal advice.
3. The Deputy Minister of the Agency formally confirms in writing to the Deputy Minister of the Ministry that she or he has been advised that due process has been followed.
4. The Deputy Minister of the Ministry confirms in writing to the Deputy Minister of the Agency that she or he has reviewed and considered the briefing materials regarding the termination decision, including key investigation findings, labour relations considerations and the written senior labour relations/legal advice.
5. The Deputy Minister of the Ministry signs the termination letter and the Ministry proceeds with the termination.

As part of the Deputy Minister of the Agency's review of the recommended just cause termination, she or he may also assess whether the termination is a recommended course of action, notwithstanding that due process has been followed. In the event that there is a disagreement between the Ministry and the Agency on whether a termination for just cause should proceed when due process has been followed, the matter will be resolved by the two Deputy Ministers and escalated to the Deputy Minister to the Premier, if

necessary.

In the event that the Agency concludes that due process has not been followed, the termination for just cause will not proceed.

Appendix 4 includes a summary of the various roles and responsibilities required to properly administer this policy.

Mandatory Requirements

Deputy Ministers must be provided with and consider the following briefing materials:

- Briefing/Decision Note or Record of Briefing for the Deputy Minister
- Employee Employment History
- Chronology of Events Related to the Termination Decision
- Relevant Records on File (e.g. performance appraisals, performance plans, letters of expectation, disciplinary letters)
- Copies of Relevant Documents (e.g. policies, standards of conduct, legislation)
- Investigation Report
- Labour Relations Analysis and/or Legal Opinion/Senior LR Specialist advice
- Letter of suspension pending the recommendation for termination (if applicable)
- Draft termination letter for the Deputy Minister

References and Links

- [Public Service Act](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Information Management Act](#)
- [HR Policy Termination of Excluded Employees](#)
- Accountability Framework for Human Resource Management
- Collective Agreements

Appendices

- Administrative Due Process Checklist for Just Cause Terminations of Included Employees
- Administrative Due Process Checklist for Just Cause Terminations of Excluded Employees
- Investigation Best-Practice Protocols Checklist
- Just Cause Terminations Roles and Responsibilities

Effective Date: June 30, 2017

ADMINISTRATIVE DUE PROCESS CHECKLIST FOR JUST CAUSE TERMINATIONS OF INCLUDED EMPLOYEES

The following checklist must be completed prior to terminating an included employee for just cause under section 22(2) of the *Public Service Act*.

Employee name: _____ Date: _____

1. Did the Ministry notify the BC Public Service Agency promptly after being made aware of the allegation(s) of employee misconduct?
YES NO Notes: _____
2. Was the investigator(s) assigned to conduct the investigation appropriate considering the nature of the matters being reviewed?
YES NO Notes: _____
3. Has the investigator(s) confirmed that the investigation was conducted in accordance with the Agency's investigation best-practice protocols?
YES NO Notes: _____
4. Has the investigation report been reviewed by the Ministry representative responsible for making the recommendation to the Deputy Minister?
YES NO Notes: _____
5. Has the PSA representative confirmed that Senior Labour Relations Specialist or legal counsel was provided with sufficient background and file material to assess the evidentiary strength of the government's just cause position?
YES NO Notes: _____
6. Has the Senior Labour Relations Specialist or legal counsel provided advice in writing about the strength of the employer's just cause position in relation to the termination?
YES NO Notes: _____
7. Has the written advice from the Senior Labour Relations Specialist or legal counsel, as well as the background and file material supporting the termination decision been properly documented?
YES NO Notes: _____
8. Has the Ministry prepared detailed briefing materials regarding the termination decision, including key investigation findings, labour relations considerations and the written senior labour relations/legal advice for the Deputy Minister to review and consider prior to making the decision?
YES NO Notes: _____

9. Has the PSA representative confirmed that the briefing materials that have been provided to the Deputy Minister of the Ministry provide sufficient background and file material for the Deputy Minister to make an informed decision?

YES NO Notes: _____

The following individuals confirm, to the best of their knowledge, the above information to be accurate:

PSA Representative

Ministry Representative

PSA Management

After the checklists have been completed, the following steps must be completed prior to the Ministry proceeding with a just cause termination:

1. The Employee Relations Branch representative provides the due process briefing package to the ADM, Employee Relations, including the completed administrative due process and investigation best-practice protocol checklists and the written senior labour relations/legal advice. Notification also includes the employee's name, Ministry, a brief summary of the case and the basis for termination.
2. The ADM, Employee Relations, reviews the file and notifies the Deputy Minister of the Agency that due process has been followed and provides the Deputy Minister with copies of completed disciplinary termination and investigation best-practice protocol checklists and the written senior labour relations/legal advice.
3. The Deputy Minister of the Agency formally confirms in writing to the Deputy Minister of the Ministry that she or he has been advised that due process has been followed.
4. The Deputy Minister of the Ministry confirms in writing to the Deputy Minister of the Agency that she or he has reviewed and considered the briefing materials regarding the termination decision, including key investigation findings, labour relations considerations and the written senior labour relations/legal advice.

5. The Deputy Minister of the Ministry signs the termination letter and the Ministry proceeds with the termination.

As part of the Deputy Minister of the Agency's review of the recommended just cause termination, she or he may also assess whether the termination is a recommended course of action, notwithstanding that due process has been followed. In the event that there is a disagreement between the Ministry and the Agency on whether a termination for just cause should proceed when due process has been followed, the matter will be resolved by the two Deputy Ministers and escalated to the Deputy Minister to the Premier, if necessary.

In the event that the Agency concludes that due process has not been followed, the termination for just cause will not proceed.

ADMINISTRATIVE DUE PROCESS CHECKLIST FOR JUST CAUSE TERMINATIONS OF EXCLUDED EMPLOYEES

The following checklist must be completed prior to terminating an excluded employee for just cause under section 22(2) of the *Public Service Act*.

Employee name: _____

Date: _____

1. Did the Ministry notify the BC Public Service Agency promptly after being made aware of the allegation(s) of employee misconduct?
YES NO Notes: _____
2. Was the investigator(s) assigned to conduct the investigation appropriate considering the nature of the matters being reviewed?
YES NO Notes: _____
3. Has the investigator(s) confirmed that the investigation was conducted in accordance with the Agency's investigation best-practice protocols?
YES NO Notes: _____
4. Has the investigation report been reviewed by the Ministry representative responsible for making the recommendation to the Deputy Minister?
YES NO Notes: _____
5. Has the PSA representative confirmed that legal counsel was provided with sufficient background and file material to assess the evidentiary strength of the government's just cause position?
YES NO Notes: _____
6. On behalf of the Ministry, has the PSA obtained a written legal opinion confirming that there are sufficient grounds to support the termination?
YES NO Notes: _____
7. Has the legal opinion, background and file material supporting the termination decision been properly documented?
YES NO Notes: _____
8. Has the Ministry prepared detailed briefing materials regarding the termination decision, including key investigation findings, labour relations considerations and the legal opinion for the Deputy Minister to review and consider prior to making the decision?
YES NO Notes: _____

9. Has the PSA representative confirmed that the briefing materials that have been provided to the Deputy Minister of the Ministry provide sufficient background and file material for the Deputy Minister to make an informed decision?

YES NO Notes: _____

The following individuals confirm, to the best of their knowledge, the above information to be accurate:

PSA Representative

Ministry Representative

PSA Management

After the checklists have been completed, the following steps must be completed prior to the Ministry proceeding with a just cause termination:

1. The Employee Relations Branch representative provides the due process briefing package to the ADM, Employee Relations, including the completed administrative due process and investigation best-practice protocol checklists and the written senior labour relations/legal advice. Notification also includes the employee's name, Ministry, a brief summary of the case and the basis for termination.
2. The ADM, Employee Relations, reviews the file and notifies the Deputy Minister of the Agency that due process has been followed and provides the Deputy Minister with copies of completed disciplinary termination and investigation best-practice protocol checklists and the written senior labour relations/legal advice.
3. The Deputy Minister of the Agency formally confirms in writing to the Deputy Minister of the Ministry that she or he has been advised that due process has been followed.
4. The Deputy Minister of the Ministry confirms in writing to the Deputy Minister of the Agency that she or he has reviewed and considered the briefing materials regarding the termination

decision, including key investigation findings, labour relations considerations and the written senior labour relations/legal advice.

5. The Deputy Minister of the Ministry signs the termination letter and the Ministry proceeds with the termination.

As part of the Deputy Minister of the Agency's review of the recommended just cause termination, she or he may also assess whether the termination is a recommended course of action, notwithstanding that due process has been followed. In the event that there is a disagreement between the Ministry and the Agency on whether a termination for just cause should proceed when due process has been followed, the matter will be resolved by the two Deputy Ministers and escalated to the Deputy Minister to the Premier, if necessary.

In the event that the Agency concludes that due process has not been followed, the termination for just cause will not proceed.

INVESTIGATION BEST-PRACTICE PROTOCOLS CHECKLIST

This checklist must be completed and submitted with the administrative due process checklist for just cause terminations.

Employee name: _____

Date: _____

1. Was the investigation conducted in an impartial manner by someone who is neutral?

YES NO

Notes: _____

2. Was the investigation conducted objectively without having a pre-determined hypothesis or outcome in mind?

YES NO

Notes: _____

3. Were respondents provided with the opportunity to have representation, e.g. a union shop steward, or an analogous representative for management respondents, during interviews?

YES NO

Notes: _____

4. Were the parties and witnesses properly informed of their rights and responsibilities during the investigation process, including expectations surrounding confidentiality and retaliation?

YES NO

Notes: _____

5. Was the respondent given sufficient details about the nature of the allegations prior to being asked to respond?

YES NO

Notes: _____

6. Did the interviews include a sufficient level of open-ended questions to encourage full disclosure?

YES NO

Notes: _____

7. Was the respondent given a full opportunity to respond to all allegations that could form the basis of disciplinary action?

YES NO

Notes: _____

8. Did the investigator examine and assess all the relevant evidence that was uncovered or disclosed during the investigation, including potential alibis, alternate explanations, and/or mitigating circumstances?

YES NO

Notes: _____

9. Were all relevant witnesses (as identified by the parties, other witnesses or the investigator) interviewed?

YES NO

Notes: _____

10. Based on all of the evidence, has the investigator determined that all or some of the allegations made against the respondent have been proven on a balance of probabilities (51% or greater)?

YES NO

Notes: _____

Termination for Just Cause - Roles and Responsibilities

The following table describes the key roles and responsibilities required to ensure administration of this policy results in transparent, consistent, well-documented and defensible just cause termination decisions and that employees that are terminated for just cause are always subject to a process that is administratively fair and complies with natural justice.

Role	Responsibilities
Deputy Minister to the Premier	<ul style="list-style-type: none"> • Approve the employer’s policy and procedures for the administration of just cause termination decisions under section 22(2) of the <i>Public Service Act</i> and ensure that Deputy Ministers are accountable for adhering to the policy. • Resolve any disagreements between the Deputy Minister of a Ministry and the Deputy Minister of the Agency where due process has been followed in relation to the just cause termination decision but the Deputy Minister of the Agency recommends against the termination decision.
Deputy Minister of employee	<ul style="list-style-type: none"> • Confirm in writing that she or he has reviewed and considered the briefing materials regarding the termination decision, including the written advice of legal counsel or Senior Labour Relations Specialist. • Ensure the Deputy Minister of the Agency has confirmed that due process has been followed prior to terminating an employee for just cause. • Sign the termination letter for the impacted employee outlining the reasons for termination. • Ensure that the briefing materials in support of the termination decision are properly documented. • Delegate any or all of these responsibilities to senior officials within the ministry in accordance with the <i>Public Service Act</i>. • Ensure that management employees in the Ministry are aware of and follow the Termination for Just Cause policy and procedures.

<p>Deputy Minister of the Agency</p>	<ul style="list-style-type: none"> • Upon being advised by the ADM of Employee Relations that due process has been followed, formally confirm to the Deputy Minister of the Ministry that due process has been followed and that the termination may proceed once the Deputy Minister has reviewed and considered the briefing materials regarding the termination decision. • If due process has been followed on a specific file, consider, when necessary, whether the termination is a recommended course of action. • Ensure the quality and timeliness of human resources advice provided to Deputy Ministers related to just cause termination decisions. • Oversee and monitor the administrative system to ensure just cause termination decisions are made according to principles of natural justice and administrative fairness, and report out to stakeholders on any emerging issues.
<p>Assistant Deputy Minister, Employee Relations</p>	<ul style="list-style-type: none"> • Assesses the process followed to support each just cause termination decision, advises the DM of the Agency when due process has been followed and provides the Deputy Minister with copies of completed disciplinary termination and investigation best-practice protocol checklists and the written senior labour relations/legal advice. • Provides direction to Employee Relations Specialists and Senior Labour Relations Specialists in the performance of their duties. • Determines, on a case by case basis, whether legal advice will be sought for disciplinary decisions involving included employees beyond advice provided by Senior Labour Relations Specialist. • Assists the Deputy Minister of the Agency with oversight, monitoring and reporting in relation to just cause termination decisions.
<p>Senior Labour Relations Specialist</p>	<ul style="list-style-type: none"> • Provides written advice to the Ministry on termination decisions of included employees assessing the evidentiary strength of the employer's just cause position. • Provides assistance and guidance to Employee Relations Specialists in advising Ministry clients on managing included employee issues that may result in discipline, including termination. • Advises Employee Relations Specialist when consultation with legal counsel is appropriate.

<p>Employee Relations Specialist</p>	<ul style="list-style-type: none"> • Provides Ministry clients with advice on managing employee issues that may result in discipline. • Consults with Senior Labour Relations Specialist and/or legal counsel on files involving included employees when appropriate and secures written senior labour relations/legal advice on the strength of the employer's just cause position in relation to a termination. • Consults with legal counsel on files involving excluded employees when appropriate and secures a written legal opinion assessing whether there is sufficient grounds to support a termination. • Completes the administrative due process and investigation best-practice protocol checklists for just cause termination decisions with the assistance of Ministry representative and prepares the due process briefing package for review by the ADM, Employee Relations. • Provides guidance to assist the Ministry Management Representative in preparing a detailed briefing binder regarding a disciplinary termination decision that includes key investigation findings, labour relations considerations and senior labour relations/legal advice. • Draft the suspension pending recommendation for termination letter (if applicable) and the termination letter.
<p>Ministry Management Representative</p>	<ul style="list-style-type: none"> • Deputy Ministers are responsible for delegating authority for to recommend termination decisions within their organization. Consistent with that delegation, a Ministry Management Representative with the requisite delegated authority will recommend to their Deputy Minister the termination of the employee. • A Ministry Management Representative is also responsible for the detailed briefing binder for their Deputy Minister, with the assistance of the Employee Relations Specialist from the Agency. • The briefing binder is held by the Ministry in accordance with <i>Freedom of Information and Protection of Privacy Act</i> and the <i>Information Management Act</i>.