

## **Human Resources Policy 23 – Termination for Just Cause Excluded & Included Employees**

**Last updated October 31, 2017**

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 Appendix 1 - Administrative Due Process Checklist for Just Cause Terminations of Included Employees and Appendix 2 - Administrative Due Process Checklist for Just Cause Terminations of Excluded Employees. Appendix 3 - Investigation Best-Practice Protocols Checklist 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 - Just Cause Terminations Roles and Responsibilities 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

- Appendix 1 - Administrative Due Process Checklist for Just Cause Terminations of Included Employees
- Appendix 2 - Administrative Due Process Checklist for Just Cause Terminations of Excluded Employees
- Appendix 3 - Investigation Best-Practice Protocols Checklist
- Appendix 4 - Just Cause Terminations Roles and Responsibilities

Effective Date: June 30, 2017