

Human Resource Policy 23 - Termination for Just Cause Excluded & Included Employees

Appendix 2 - Administrative Due Process Checklist for Just Cause Terminations of Excluded Employees

Last updated November 3, 2017

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.