



WRONGFUL DISMISSAL LIABILITY

Terminating employment with one of your employees is never a pleasant experience. It can be more difficult when you are informed the employee is now seeking compensation by filing a civil action for what they feel was a wrongful termination. Fortunately NORCIX provides liability coverage for communities who follow the warranty conditions which are expressed in the insurance policy. Your insurance policy will pay on behalf of the community any sums which the community becomes legally obligated to pay for compensation as well as agreeing to defend the community for any civil action that is brought against the community arising out of an alleged wrongful dismissal.

Wrongful dismissal insurance coverage is not common in the insurance industry. While coverage is provided within our wording there are conditions that the community government must comply with in order to be covered. These conditions are:

1. The Community Government must receive *in writing* a legal opinion from an independent lawyer who specializes in employment law or a lawyer chosen by NORCIX. The legal opinion needs to set out how the change or changes desired should be carried out by the Community Government; and
2. The Community Government must implement the approved change or changes in employment conditions in the manor prescribed by the independent lawyer.
3. Both these conditions also apply to all employment contracts and fixed term contracts in excess of five (5) years or a series of consecutive employment fixed term contracts with the combined total being in excess of five (5) years.

There are other conditions and exclusions within the policy but these three conditions in particular must absolutely be met before your insurer will respond to any claim.

Using a lawyer who does not specialize in employment law is not acceptable. Once you have been provided advice and a written legal opinion, you must follow the advice and steps the lawyer has set out with respect to any changes in the employment conditions of the employee.

In most situations it would be best to contact our office so we can put you in touch with an approved lawyer who specializes in this this field of law.

Your lawyer should also assist you with the termination letter being provided to the employee.



WHAT SHOULD YOUR LEGAL OPINION CONTAIN?

All of the relevant facts should be set out in the opinion to ensure that the information upon which the lawyer is relying is consistent with the actual employment history of the employee. The letter should include:

- ✓ the position held by the employee
- ✓ the employee's age
- ✓ rate of pay
- ✓ history of employment
- ✓ the existence and relevant terms of an employment agreement
- ✓ the rationale being considered for termination
- ✓ disciplinary history
- ✓ whether the employee has had an absence from the workplace
- ✓ whether you are in a position to dismiss for cause or without cause
- ✓ a process that you must follow for the termination
- ✓ review of any potential Human Rights issues

DISMISSAL FOR JUST CAUSE

Within Employment Law, the definition of Just Cause is very narrow.

The rationale for a just cause dismissal would require review of the Facts and a determination as to whether or not the Facts provide a basis for a just cause dismissal. When dismissing for cause it is intended that there would be no severance package. If the lawyer is in agreement, the opinion should provide the reasons for termination for cause. The lawyer should also be able to assist with the termination letter being provided to the employee. If a civil action is commenced by the employee after the dismissal, the deductible in this case will be the \$25,000 or the first two years of wages, whichever is the lesser. In most cases, the deductible is \$25,000.

DISMISSAL WITHOUT CAUSE

If a determination is made that the circumstances do not provide a basis for a just cause dismissal, the opinion will provide a range of what would most likely be required to pay the employee as compensation in lieu of notice. The range of notice which may be required will depend upon whether an employment agreement or letter of offer has limited the range of notice to that of a contractual amount or if reliance may be placed upon statutory minimum payment. In the absence of an employment agreement, a range of would be provided by the lawyer. This is important because it has a bearing on the deductible that would be applicable in the event it becomes a civil action. If the employee ultimately does not accept the offered severance package and commences a civil action, the deductible will be the median of the range which was provided in the legal opinion prior to dismissal subject to a minimum of \$25,000.

In the event the employee files a civil action and a claim is opened with NORCIX, the deductible that would apply to the claim does not apply to adjusting or legal expense incurred by NORCIX to investigate or defend the community.