

The logo for "The Healthy Business Bookmark" consists of a teal square containing a white line graph with an upward-pointing arrow. To the right of this icon is the text "The Healthy Business Bookmark™" in a bold, sans-serif font.

# The Healthy Business Bookmark™

## Blueprint for Terminations and Workforce Reduction

Carrying out employee terminations or other forms of workforce reduction are some of the most difficult functions business owners or managers will have to perform. “Termination” refers to the permanent ending of one’s employment relationship with a company, while “workforce reduction” is in reference to the various options that could be considered when an employer must reduce their staffing levels to meet business demands. Workforce reduction methods could include layoffs, modified work hours, job sharing, or other tactics. This Blueprint will explore these topics in more detail and address some of the actions that should be considered when preparing for, and carrying out, these actions.

## Table of Contents

<b>Table of Contents</b> .....	<b>1</b>
<b>Terminations and Workforce Reduction at-a-Glance</b> .....	<b>2</b>
An Important Note About the “What” and the “How” .....	2
<b>Terminations and Other Workforce Reduction Options</b> .....	<b>3</b>
<b>Legislative and Legal Considerations</b> .....	<b>4</b>
Notifications, Letters and Documentation .....	4
Terminations—What You Need to Know .....	5
Other Types of Workforce Reduction—What You Need to Know .....	5
<b>Conclusion</b> .....	<b>6</b>

## Terminations and Workforce Reduction at-a-Glance

At some point in every organization, large or small, during times of growth or decline, employers must make the difficult decision to terminate an employee or otherwise adjust their workforce to meet business demands. These decisions may arise as a result of changes in the business's strategic direction, the economy, demand for its products or services, employee performance or competence, or simply to right-size the organization as it shifts focus, alters processes or maximizes efficiency in order to meet expected profit margins.

So while ending an employee's relationship with a company or temporarily laying off or adjusting some of its workforce may not be what an employer wants to do, sometimes it needs to occur, and owners and managers must be properly prepared to perform these actions if, and when, the time comes.

This Blueprint will explore the principles, options, techniques and considerations involved in terminating an employee or otherwise reducing your workforce. The terms "workforce reduction" or "workforce adjustment," when used throughout this Blueprint, will include both terminations and other forms of workforce reduction.

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### An Important Note About the "What" and the "How"

During times of workforce reduction, employers (and those affected) may experience personal stress, anxiety, confusion or fear. It is important that these elements be anticipated as potential outcomes and that employers take measures to manage them. In addition to supplemental support from human resources professionals or employer-sponsored benefit programs such as an Employee Assistance Program (EAP), preparation for, and having a plan on how, the workforce reduction is carried out and messaged to those affected will go a long way to reduce those feelings.

While employers often spend time to prepare what will be done, it is critical to also prepare for how it will be carried out.

The "what" refers to things like making the decision to reduce the number of people affected, from which part of the organization will be affected, what paperwork and/or renumeration will be required, associated dates and timelines, who will carry out the conversation and what will be said, etc. The "how" refers to the manner in which it is all done, and whether affected employees are left feeling respected, treated with dignity and have the necessary clarity to understand fully what has happened to them. Know that other employees—even those not affected by the decision—are witness to how you, as the employer, treat and act towards those affected during and after the change. It is a reflection of how you may treat them one day, and whether they wish to remain part of your team going forward.

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## Terminations and Other Workforce Reduction Options

The decision to end someone's employment is never easy. In cases related to perpetual poor performance, repeated poor behaviours, gross misconduct, theft, violence, etc., the decision is perhaps less difficult, however in other cases, the decision may not be so clear. Perhaps you have a long-standing employee who has traditionally performed well, but because you added a new system or process, they are found to be struggling. Perhaps you promote an employee to become a supervisor because of their stellar service record yet, as a supervisor of others, they lack the same enthusiasm they used to have. In such cases, there may other options to a termination—including managing their performance and/or offering development—to help them succeed.

- *For more for tips and techniques to help employees succeed, see our HBB Blueprint for Managing Employee Performance.*

In some cases, the decision to adjust your workforce may not be a matter of termination of employment, but rather a need to temporarily reduce your staff size to adjust to match business needs. This can include:

- Temporarily laying off employees
- Reducing or modifying an employee's work schedule/shorter work week
- Offering employees the option to take vacation time or other forms of paid or unpaid time off
- Job/work sharing
- Retraining/reassigning employees to other functions
- Reducing cost areas in other parts of the business and shift funds to the payroll budget
- Slight wage cuts
- Working from home
- Swapping employees with another employer, etc.

While these are just a few options to consider instead of ending employment, there may be many others unique to your business or industry that can be brainstormed together with employees. Employees facing possible workforce reductions have a vested interest in helping their employer retain them, and as they are the ones performing the work, they may have creative solutions you have not considered.

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## Legislative and Legal Considerations

Terminating an employee's relationship with the business, layoffs, work-sharing and other options may have legislative and/or legal implications that need to be considered.

Each jurisdiction across Canada (provinces and territories) has a range of labour/employment codes, acts and laws that specify provisions, standards, conditions and rules that must be considered and/or adhered to when carrying out actions that change an employee's employment status. For federally regulated organizations, the Canada Labour Code would apply.

It is strongly recommended that you review the codes, acts and laws that apply to your jurisdiction prior to deciding what action you will take to adjust your workforce. Under some circumstances, it may be advantageous to seek advice from a firm specializing in these areas or legal counsel.

Businesses also need to consider if they have employment agreements or contracts, collective agreements, or policies that may specify how terminations or other workforce adjustment measures are applied. In some jurisdictions in Canada, there is no common law right to lay off employees if it is not specifically indicated as part of an employment agreement, contract or collective agreement, even if the provisions are outlined in a code or act.

It is also important to recognize that some jurisdictions have exemptions or special rules for certain worker-types or industries. This is often seen in agriculture, construction, medical, police, fire and even retail and hospitality, among others—offering another important reason why you should reference your jurisdictional legislation before taking any action.

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## Notifications, Letters and Documentation

As noted above, many pieces of legislation clearly dictate the manner and timing for which employees are to be notified of terminations, layoffs or other forms of workforce adjustments. While some require very specific notification in writing, and the notifications must contain certain elements, many do not require decisions in writing, however it may still be advantageous to do so to contribute to clarity and support "how-related" outcomes.

- *See the sample – Termination Without Cause Letter.*

Internal documentation (not to be provided to the employee) should always be kept that demonstrates the decisions that led to a termination or workforce reduction. This will help to ensure that any challenges to your decision (legal or otherwise) can be defended, if needed.

## Terminations—What You Need to Know

In the case of termination of employment, in most jurisdictions, employers can terminate an employee for “with cause” or “without cause.” With cause terminations typically relate to employees being terminated for actions that an employer considers being grave misconduct, and this can often be done without notice and without pay. Without cause terminations would be all other types of termination, including those related to shortage of work, performance or fit, among others.

Notice of termination for both with and without cause terminations should always be provided in writing.

For without cause terminations, employers may be able to give an employee working notice, pay in lieu of notice or a combination of both.

Employers may also need to provide other forms of payment to terminated employees, including severance pay. Severance pay is a term often used to describe all types of termination-related pay. While this is a generally accepted reference to termination pay, in actuality, in many jurisdictions it specifically speaks to payments of a certain type and may be above and beyond notice pay or other legislated payment requirements.

Benefits, if offered by the employer, are typically extended for the duration of any statutory notice period.

It is important to consult your jurisdictional employment legislation to determine your rights, obligations and limitations on what you can, and cannot, do.

In some cases, an employer may wish to provide gratuitous payments that exceed amounts specified by legislation to an employee to assist them with transitioning to new employment. This may be offered without any conditions or may be offered with a condition that the employee signs a release. A release is a legal document outlining that the employee forgoes any future action against the company, and others, in return for the gratuitous payment. This release should be provided along with the termination letter and the termination letter amended to reference the release. In these cases, legal counsel or a firm specializing in such documents should always be consulted.

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## Other Types of Workforce Reduction—What You Need to Know

Considerations on how other workforce reduction actions are carried out largely depend on the nature of the reduction and the jurisdiction you are in. Legislation that governs these actions vary from region to region.

Layoffs are the second most common form of workforce reduction next to terminations. Layoffs are temporary in nature and typically have a specific return date associated with them. While the intended return date may be

reduced or extended to meet business needs, each jurisdiction has particular conditions that must be met to do so.

While frequently referred to, there is no such thing as “permanent layoff” in Canada. Permanent layoffs are actually terminations for the reason of shortage of work. They are treated exactly like terminations. Some temporary layoffs that go beyond legislated maximum periods can become terminations, and again, should be treated as such following legislated guidelines.

While a written notice of a temporary layoff is not required in most jurisdictions, providing the notification in writing is a positive step to help ensure clarity for affected employees and, as much as possible, retain goodwill. Remember, these employees still work for your organization and how they are treated during this time will make a big difference in whether they choose to return to the workplace at the end of the layoff period.

- *See the sample – Lay off Letter (COVID-19).*
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## Conclusion

This guide was designed to help get you underway in understanding the principles, options, techniques and considerations involved in terminating an employee or otherwise reducing your workforce—not just the what, but also the how.

Remember, requesting support from an HR professional can be an excellent investment of your time. They can give the guidance and advice you need to help you develop tools specific to your organization—useful for years to come.