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| **Section: Human Resources HR129.01** |
| **Policy and Procedures: Employee Terminations** |

**Policy:**

Employee terminations must be handled consistently and fairly. Well-documented evidence of unsuitable conduct or performance in any relevant area must be gathered.

**Procedure:**

Waterston Centre will abide by The Salvation Army Territorial Policy on terminations as well as the current collective agreement.

See Operating Policy “3116 - Employees - Termination Policy” (attached HR129.01)

See Collective Agreement “Article 21”

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| Section: Human Resources | Policy number: HR129.01 |
| Policy and Procedure: Employee Terminations | Date Approved(original): June 1, 1993  Date Approved(revised): Sept. 26, 2000  Date Approved(revised): January 26, 2009  Date Approved(original): February 22, 2016 |
| Approved By. Executive Director/Department Manager |

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| **Section: Human Resources HR129.02** |
| **Policy and Procedures: Employee Terminations** |

The following constitutes the policy for terminating employees. This was approved by the Territorial Commander on the recommendation of the Territorial Finance Council on June 3, 1992.

**An employee may only be terminated with the permission of the appropriate supervising headquarters, which will verify that the proper procedure of warnings has been followed.**

The policy will not override provisions in collective agreements or established dismissal procedures in hospitals.

The most important issue in a termination is the reason for the employee's dismissal. Employment is considered an implied contract. Therefore, termination without a just cause is a breach of contract and holds legal implications.

1. **General**

The information contained is this document constitutes a broad summation of issues dealing with "termination". More detailed documentation is available from the Provincial Employment Standards Office and the Human Rights Commission.

The process is different when dealing with unionized employees. The employment relationship between The Salvation Army and the unionized employee is governed by the Collective Agreement. Before terminating an employee working under a collective agreement, the provisions of the agreement relating to termination and/or dismissal are to be checked carefully. The burden of proof in showing just cause rests with the employer and termination are always subject to grievance and arbitration procedures.

2. **Dismissal**

A dismissal is any change by the employer of a major term of the employment relationship, such as the following:

a. Forced resignation;

b. Demotion - cut in salary, benefits or job responsibilities constitute a constructive dismissal;

c. Downward change in reporting function;

d. Unilateral change in job responsibilities;

e. Forced transfer;

(If transfer is required, the employer is responsible for all relocation fees and must provide clearly-defined similar employment at the new location.)

f. Intolerable behaviour of employer;

g. Termination.

3. **Just Cause**

3.1. The valid reasons for termination are:

a. Serious misconduct not condoned by the employer:

(action must be taken immediately or condonation will be assumed.)

b. Habitual neglect of duty;

c. Serious incompetence which has not been condoned;

(Not just management dissatisfaction with performance. Adequate warnings with opportunity to improve must be granted by the employer.)

d. Conduct incompatible with duties or prejudicial to the employer's interests;

(i.e. conflict of interest.)

e. Wilful disobedience to a lawful and reasonable order of a superior in a matter of substance:

f. Theft, fraud or dishonesty;

(The onus is on the employer to prove this, and immediate action must be taken or condonation will be assumed.)

g. Continual insolence or insubordination;

h. Excessive absenteeism and/or consistent lateness despite corrective counselling.

i. Permanent illness;

j. Inadequate job performance over an extended period, resulting from drug/alcohol abuse, and failure by the employee to accept the employer's attempts to rehabilitate the employee.

3.2. The employer carries the onus to **prove just cause**, so sound documentation must be in place:

a. Regular, accurate performance evaluations are essential in order to substantiate any dismissal for just cause.

b. Where poor performance is cited as the reason for dismissal, at least **three** warnings must be given documenting:

- the area of inadequacy,

- steps to be taken to improve,

- the level of competency required and

- the consequences of non-compliance, including the possibility of dismissal.

c. These warnings must be shared with the employee, both **verbally** and **in writing**.

(It is to be recognized that redundancy or lack of sufficient work does not constitute just cause for discharge. In that case full severance pay must be made to the terminated employee.)

A proper "Employee Warning Record" should be used in the case of poor performance.

3.3. Where just cause is proven, the employer is not required by law to pay the employee any severance allowance. If none of the valid reasons for dismissal exist, then adequate compensation in lieu of notice and severance allowances must be provided. Other factors eliminating the need for severance pay are:

a. If the employment arrangement was temporary or on a contract of less than 12 months, with a specific termination date.

b. If the employee has refused reasonable alternate employment with the employer.

c. If it is impossible to perform the contract of employment due to an unforeseeable circumstance; or

d. If an employee is temporarily laid off with a reasonable prospect of return to work.

4. **Human Rights**

Under Human Rights legislation wrongful dismissal is considered to have taken place where discrimination is evidenced (involved or implied) in any of the following areas:

age, race,

sex (including pregnancy, and, in some jurisdictions, sexual orientation),

color, religion,

marital status, physical or mental handicap,

ethnic origin, a prior unrelated criminal record.

It is important to consider the human rights in all matters of employee relations, and especially when dealing with the subject of termination. The reason for dismissal may well include grounds which potentially infringe upon prohibited discriminatory grounds. Even if the underlying circumstances of the dismissal involve prohibited discrimination, then the dismissal could be construed to be a human rights violation. If so, the employer must satisfy the Board of Enquiry that it is an unjustifiable hardship to the organization to keep the employee.

5. **Termination Without Cause and Severance Allowance.**

5.1. When termination is being considered, it must first be established if any of the approved criteria for rightful dismissal exist. If not, a reasonable notice period or pay in lieu of notice is to be granted. Reasonable notice is the length of time necessary for the terminated employee to find equivalent work elsewhere. In determining the length of reasonable notice to be granted, the following factors are to be considered:

a. Availability of similar employment in immediate area;

This is considered the major factor in determining reasonable notice.

b. Age;

Recognize that older employees may find it more difficult to secure suitable alternative employment.

c. Character and Nature of the Position held;

Was this employee in a management/executive position or unskilled?

d. Circumstances surrounding the hiring;

If the employee was induced to leave a secure, well-paying position to join the employer and then, subsequently, dismissed, the notice period will need to be increased.

e. Manner of dismissal;

In some cases the circumstances of an unwarranted and abrupt dismissal merit a greater severance allowance.

f. Length of Service;

Provincial Employment Standards outline the minimum notice periods required by law, based on the employee's length of service. It should be recognized that these are minimal guidelines.

g. Experience, training and qualifications of employee, which would have a bearing on his considered value to the employer prior to termination

5.2. In considering these factors, it may be advisable to seek the counsel of the Employee Consultant or the Legal Advisor at Territorial Headquarters.

Any severance package to be offered should be outlined in a letter to the employee. The employee must be granted reasonable time to consider the severance package and any release to be signed as a condition of settlement. The key issues which should be addressed in the letter and severance package are:

a. Pay in lieu of notice (as specified by Provincial Employment Standards) and any additional severance payments being granted;

b. Vacation Pay;

c. Reimbursement of any outstanding expenses upon presentation of applicable receipts;

d. Benefits;

(**NOTE:** Coverage must be continued for the minimum period of notice as established by Provincial Employment Standards.);

e. Arrangements for a letter of reference:

This letter should provide only basic information - date of hire, date employment ceased, employee's position, and brief description of duties held.

f. Arrangements for the return of employer's property;

g. The release form to be signed by employee.