

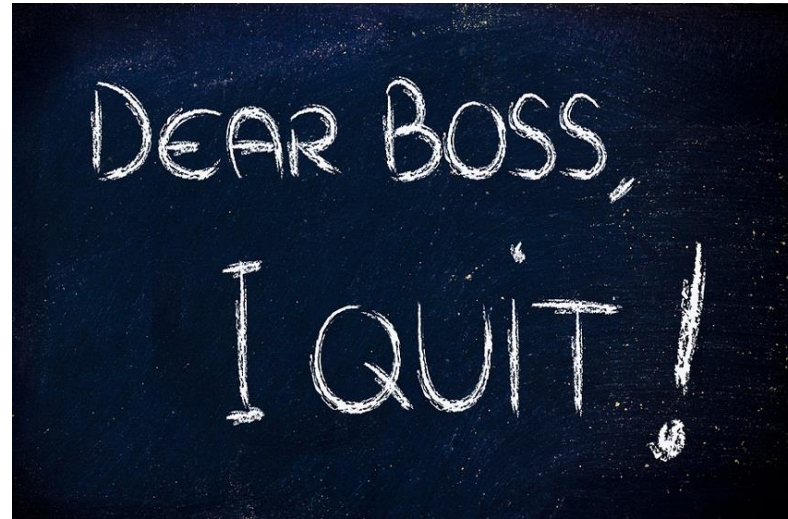
How to Handle Employee Resignations and Retractions

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Overview

1. The Basics of Employee Resignations
2. How to Handle Employee Retractions
3. Practical Considerations



1. Basics of Employee Resignations

Basic Principle of Resignation of Employment

“A resignation must be clear and unequivocal. To be clear and unequivocal, the resignation must objectively reflect an intention to resign, or conduct evidencing such an intention.”

- Kieran v Ingram Micro Inc.
2004 CarswellOnt 3117 (CA) at para 27

Basics of Employee Resignations

- Resignation = the employee ends the employment relationship.
- Resignation must be voluntary, clear and unequivocal to be valid.
 - Both a subjective and an objective component to the analysis.
- Employer must accept the employee's resignation.



Basics of Employee Resignations

- When is a resignation not clear and unequivocal?
 - Employee angrily storms out yelling “I quit”.
 - Employee makes a general statement that they are not happy with their current position.
 - Employee states “I’m looking for another job.”

Basics of Employee Resignations

- When is a resignation not voluntary?
 - Employee does not have legal capacity to resign.
 - Employee did not act of their own free will.
 - Employee was given an ultimatum.

Basics of Employee Resignations

- Employee provides notice of resignation
 - Employee has a reciprocal duty to provide reasonable notice of resignation to their employer.
 - Best practice: include a provision in the employment contract clearly stating the amount of notice of resignation to be given.
 - What if an employee does not give enough notice / does not comply with the notice provision?
 - What if there is no resignation clause in the offer letter/employment agreement?

Basics of Employee Resignations

- Job abandonment?
- No “rule of thumb” length of absence.
 - Do the employee’s actions / statements clearly and unequivocally show an intention to no longer be bound by the employment contract?



2. How to Handle Employee Retractions

How to Handle Employee Retractions

- Three questions to consider when an employee attempts to retract his/her resignation:
 1. How long has it been since the employee submitted their resignation?
 2. Did the employer accept the employee's resignation?
 3. Has the employer taken steps in reliance on the employee's resignation?

How to Handle Employee Retractions

- Detrimental reliance:
 - Relevance
 - Previous case law
 - Recent trends



How to Handle Employee Retractions

Scenario: Change in Circumstances

- Employee resigns after their employer announces a new computer software is being introduced, because they do not want to learn the new software.
- During the resignation notice period, the employee learns that the software is no longer being introduced.
- Employee retracts their resignation.
- Should the employer recognize the employee's rescission of notice?

How to Handle Employee Retractions

Scenario: Change in Circumstances

- Employee resignation is equivocal.
- If the circumstances that lead someone to resign change, they are entitled to withdraw their resignation.

3. Practical Considerations

Practical Considerations

- Context is key
- To bind an employee to their resignation, clearly accept the resignation.
 - Accept an employee's resignation in writing.
 - The longer an employer takes to accept the employee's resignation, the bigger the window in which the employee can retract their resignation.
 - Do not condone an employee's equivocation.
- Impact of employee retractions on years of service.

Thank you and Questions

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