

# Going Viral for Being Fired: Implications for Employers When Employees Record their Termination

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A recent trend of employees recording termination meetings has appeared on social media apps, such as TikTok, and creates new considerations for employers when conducting termination meetings. These videos show discussions with managers regarding the termination of employment, often including the emotional reactions of the employee. Some of these videos have attracted millions of views and garnered unwanted or negative attention for the employer. Based on current trends, these videos have the opportunity to "go viral" and significantly impact the public image of an organization. Furthermore, if the videos are demonstrative of employer wrongdoing, they may be used as evidence for enhanced liability for employers.

In order to avoid the legal and reputational risks related to recorded termination meetings, employers should consider the following precautions and take steps to plan ahead and be prepared, avoid potential exposure and avoid false statements.

While the recent trend appears to be limited to employee termination the following precautions may also be relevant for other employee meetings to discuss matters including performance management, discipline or layoffs.

## Plan Ahead and Prepare

Employers must be aware that these recordings are occurring and that all termination meetings must be professional and appropriate. To facilitate this, employers should plan ahead e.g. prepare talking points, to assist managers to complete the meetings. In planning, employers should consider how much detail regarding the decision is necessary in the circumstances. In the event of a termination without cause in most cases absent a contractual obligation to the contrary, the employer is not required to provide a specific reason for the termination.

## Avoid Potential Exposures

In the course of preparing for a termination meeting, employers should be mindful to avoid saying anything that could be raised in a legal claim later. Employees in Canada have legal protections relating to terminations including the freedom from discrimination in employment on the basis of grounds protected by human rights legislation (e.g. age, race or gender) and the protection against reprisals or retaliation in certain circumstances (e.g. for raising a workplace health and safety issue, or making an inquiry about their rights under employment standards or occupational health and safety legislation). Managers involved in termination meetings must be aware of these legal protections and avoid making termination decisions based on prohibited grounds.

## Avoid False Statements

Employers should be mindful that statements during a termination meeting can give rise to bad faith or aggravated damages later. Any statements promising post-termination entitlements or benefits to the employee that are not acted upon can prompt these damages.

This is especially true if the employee can produce a recording of said promises.

In a recent decision, *Teljeur v Aurora Hotel Group*, the plaintiff produced a recording of his termination meeting where the employer is heard telling the employee that they would pay him entitlements beyond the *Employment Standards Act* statutory minimums, which they later failed to do. The recording of the false statement supported the court's decision to award \$15,000 in moral damages for the employer's actions during termination. [1] The judge found that the false assurance of entitlements was "significant" in the decision to award moral damages.[2]

## Maintain Professionalism

Employers should be wary of the reputational risk of a recorded termination meeting. If an employer appears overly harsh or insensitive, the recording may spark judgement from the public. Like forms of written communication to employees, employers should prepare for and conduct themselves in virtual or in-person employee meetings as if the meeting will be viewed by third parties or the public.

## Set Expectations Through Policies and Inquiries

Employers may implement workplace policies regarding audio, video, or digital recordings in the workplace that may include a general prohibition on recording workplace meetings and conversations without the consent of participants, or a prohibition in specific circumstances or workplace locations. When recording is suspected, the employer should ask the employee at the beginning of the meeting to confirm whether or not they are recording.

In situations where the employee has not been dismissed, where there is a policy breach or it is later found that the employee lied about recording there may be grounds for discipline. In any case, employers should take precautions to ensure that the meeting itself does not expose them to enhanced liability.

## Employer Best Practices

Termination meetings must be carefully planned and executed, especially in the age of viral recordings. Below are best practices for employers to implement in light of the above risks,

1. Employers should set expectations about workplace recordings through written policies and training, and confirming with employees during meetings whether they are recording in any format.
2. Employers should assume that termination meetings are being recorded and conduct themselves accordingly (whether or not a policy prohibiting recordings exists).
3. Managers conducting termination meetings should be trained regarding the level of sensitivity, detail and representation that is required during such meetings. Furthermore, managers should be familiar with areas of potential employer liability and conduct and representations to avoid during these meetings.
4. Employers should plan for a termination meeting in advance, which may include preparing talking points for individuals conducting the meeting and any logistics immediately following the meeting (e.g. holding an in-person meeting in a private or discrete location, and the return of the employee's personal belongings).
5. Employers should consider having another member of management present for termination meetings as a witness, and to take notes of the discussion during the meeting.
6. Employers should provide employees with written confirmation of termination and all related arrangements including the return of company property, terms for any separation arrangements, timelines for statutory entitlements and a reminder of post-employment legal obligations.

If you have questions or need advice with respect to the topics discussed above or any other labour and employment matters, please do not hesitate to contact Daniel Wong or Seth Holland or your regular lawyer in WeirFoulds' Employment & Labour Practice Group.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

[1] [Teljeur v. Aurora Hotel Group](#), 2023 ONSC 1324

[2] *Ibid* at para 51.

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