



Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation

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Aussi offert en français sous le titre : Lignes directrices concernant le licenciement ou la rétrogradation pour rendement insatisfaisant; le licenciement ou la rétrogradation pour des raisons autres qu'un manquement à la discipline ou une inconduite; et le licenciement en cours de stage

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1. Context

These guidelines replace the following Guidelines issued on April 1, 2005:

- *Guidelines for Demotion/Termination of Employment for Unsatisfactory Performance*
- *Guidelines for Termination of Employment and Demotion for Reasons other than discipline (Medical Incapacity)*
- *Guidelines for Rejection on Probation*

These guidelines support the principles set out in the [Policy Framework for People Management](#) by providing advice that will foster sound people management practices across the core public administration.

Unsatisfactory Performance: Paragraph 12(1)(d) of the [Financial Administration Act \(FAA\)](#) authorizes every deputy head in the core public administration to terminate employment of or demote an employee whose performance is, in the opinion of the deputy head, unsatisfactory. Subsection 12.2(1) permits delegation of this authority.

Other Reasons: Paragraph 12(1)(e) of the [FAA](#) authorizes every deputy head in the core public administration to terminate employment of or demote an employee for reasons other than breaches of discipline or misconduct. Such actions must be for cause in compliance with subsection 12(3) of the FAA. Subsection 12.2(1) permits delegation of these authorities.

During Probation: Subsection 61(1) of the [Public Service Employment Act \(PSEA\)](#) authorizes the Treasury Board to establish, by regulation, the probationary period for classes of employees who are appointed from outside the public service. Subsection 62(1) of the [PSEA](#) provides deputy heads with the authority to terminate employment during the probationary period established by regulation of the Treasury Board. Subsection 24(1) of the [PSEA](#) permits delegation of this authority.

2. Target Audience and Purpose

These guidelines assist human resources advisors in the [core public administration](#) in their role of providing advice and guidance to management in situations such as the following:

- The employee's performance is unsatisfactory and action to demote the employee or terminate his or her employment is being considered;
- Action to demote an employee or terminate employment for reasons other than breaches of discipline or misconduct is being considered. Demotion or termination for medical incapacity is the most common action. Demotion or termination for other reasons can also include failure to meet the basic requirements of the position (e.g., a valid driver's licence), abandonment of position, and failure to meet the security requirements of the position; and
- Termination of employment during probation is being considered.

3. General

Upon request, the Treasury Board Secretariat's (TBS's) Employer Representation in Recourse Team is available to provide advice and guidance on demotion or termination of employment.

It is recommended that measures taken to act in a manner consistent with the following principles are a matter of record.

- a. In making a decision to terminate employment of or to demote an employee whose performance is unsatisfactory, the following guiding principles are key:
 - The required level of job performance is determined;
 - The level of performance required is communicated to the employee;
 - Reasonable levels of supervision and instruction are provided to the employee;
 - The employee is allowed a reasonable period of time to meet the required level of job performance;
 - The employee is provided with reasonable warnings about the consequences of his or her continued failure to meet the required level of job performance; and
 - Once the inability to meet the required level of job performance has been established, reasonable alternative employment within the competence of the employee is considered.

Please be mindful that jurisprudence has established that the delegated manager is to notify the employee in writing when a decision is made to demote him or her or to terminate his or her employment. The notification is to state the reasons for the decision and the effective date, and is to inform the employee that he or she has the right to grieve the decision.

- b. In making a decision to demote an employee or terminate employment for other reasons, such as medical incapacity, the

following guiding principles are key:

- The employee has been unable to work due to illness or disability for an extended period, has exhausted his or her sick leave credits, and may have been granted leave without pay;
- The employee will not be able to return to duty within the foreseeable future. This determination should be based on an assessment of the employee's health, either by physicians of Health Canada, other medical practitioners deemed qualified by the employer, or both;
- Efforts have been made to accommodate the employee's condition to the point of undue hardship, taking into consideration issues of health, safety and cost, where the employee is determined to be "fit for work with limitations" after having been examined by physicians of Health Canada, other medical practitioners deemed qualified by the employer, or both;
- The employee has been made aware of services offered through the Employee Assistance Program; and
- Other options, such as resignation or retirement on medical grounds, have been presented to the employee for consideration.

Please be mindful that jurisprudence has established that the delegated manager is to notify the employee in writing when a decision is made to demote him or her or to terminate his or her employment. The notification is to state the reasons for the decision and the effective date, and is to inform the employee that he or she has the right to grieve the decision.

- c. In making a decision to terminate employment during the probationary period, the following guiding principles are key:
- The employee on probation knows the specific job duties and requirements of the position;
 - The employee on probation is aware of the required standard(s) of performance and appropriate conduct;
 - The employee on probation receives feedback when performance or conduct requires improvement; and
 - The employee on probation receives the appropriate training for the position.

The probationary period is to assess the suitability of the employee for the position for which he or she has been hired. This assessment can include an evaluation of the following, as appropriate:

- The employee's reliability, including attendance at work;
- The employee's compatibility with colleagues or clients;
- The employee's ability to meet work requirements, including those associated with the workload; and
- The employee's ability to adhere to established policies, procedures, practices and codes of conduct.

Please be mindful of jurisprudence which has established that a decision to proceed with a termination of employment during probation should be based on objective and demonstrable grounds and must not be made arbitrarily, in a discriminatory manner, or in bad faith. That is, a manager or supervisor should be satisfied that the employee is not suitable for the position, and should be able to demonstrate that he or she has acted in good faith based on the employee's unsuitability for the position. The grounds for such a decision could include unsatisfactory performance or misconduct.

The employee is to be notified by the delegated manager in writing of the decision to proceed with a termination of employment during probation, stating the reason for the decision and the effective date.

4. Definitions

demotion (*rétrogradation*)

An action taken by the employer to appoint an employee to a position at a lower maximum rate of pay.

individual grievance (*grief individuel*)

A complaint in writing, presented by an employee on his or her own behalf, in compliance with section 208 of the [Public Service Labour Relations Act](#), the [Public Service Labour Relations Board Regulations](#) or the applicable provisions of the relevant [collective agreement](#).

medical incapacity (*incapacité médicale*)

A continuing, non-culpable absence from duty due to illness or disability that prevents the employee from fulfilling his or her employment obligations.

medical retirement (*retraite pour raisons de santé*)

Retirement on grounds of disability where physicians of Health Canada certify that there is an impairment that prevents the employee from engaging in any employment for which he or she would be reasonably suited.

termination (*licenciement*)

The separation from the core public administration of an employee for cause.

unsatisfactory performance (*rendement insatisfaisant*)

A non-culpable deficiency in job performance. It is the inability to perform the duties of one's position to a reasonable standard.

5. Redress

An employee who is demoted or whose employment is terminated for unsatisfactory performance or for reasons other than breaches of discipline or misconduct may grieve the decision by filing an individual grievance at the final level of the grievance procedure, under the [Public Service Labour Relations Board Regulations](#) and any applicable collective agreement. Individual grievances in these cases are also subject to third-party adjudication, under subparagraph 209(1)(c)(i) of the [Public Service Labour Relations Act \(PSLRA\)](#).

An employee whose employment is terminated during probation may grieve the decision by filing an individual grievance at the appropriate level of the grievance procedure under the [Public Service Labour Relations Board Regulations](#) and the applicable [collective agreement](#). However, section 211(a) of the [PSLRA](#) prohibits the referral of these grievances to adjudication.

6. References

- [Financial Administration Act](#)
- [Public Service Employment Act](#)
- [Public Service Labour Relations Act](#)
- [Public Service Labour Relations Board Regulations](#)
- [Policy Framework for People Management](#)
- [Collective agreements](#)

7. Enquiries

Please direct enquiries about these guidelines to your departmental labour relations headquarters. Departmental labour relations headquarters can contact their Employer Representation in Recourse Analyst at TBS for interpretation of the guidelines:

Employer Representation in Recourse Team
Compensation and Labour Relations
Treasury Board Secretariat
Ottawa ON K1A 0R5