

CORPORATE POLICY AND PROCEDURE



POLICY	Non-Union Termination Policy
CATEGORY	Corporate
AUTHORITY	Human Resources
RELATED POLICIES	None
APPROVED BY	Executive Team
EFFECTIVE DATE	January 1, 2011
REVISION DATE	October 1, 2016

POLICY STATEMENT

The City of Guelph acknowledges that there will be circumstances, where it may be necessary to terminate non-union employees “without cause”.

Where appropriate in such cases, alternate employment offers will be explored which preserve employee dignity and provide meaningful employment before offering a separation package.

The City of Guelph also acknowledges that there will be circumstances where employees will be terminated for “cause”. In these situations, no alternate offers of employment will be made.

PURPOSE

The City of Guelph is committed to treating all employees with dignity and respect and in accordance with all employment law, when it is necessary to terminate employment.

DEFINITIONS

Terminated without Cause:

Termination of employment as a result of the employer’s decision to end the services of an employee, for reasons that do not constitute a termination with cause under this policy or at common law, including, but not limited to: reorganization, position elimination, inability of the employee to fulfill the expectations of their position.

Terminated with Cause:

Termination of employment because of a breach of a term or condition of employment by the employee, including, but not limited to, failure to comply with the employer's rules and policies, or failure to perform the duties of the relevant position in a safe, reliable and competent manner.

Separation Payment:

The amount paid by the City to a non-union employee when the employee is terminated without cause. This includes the minimum notice of termination and severance pay requirements in the Employment Standards Act, and an additional payment to assist the employee in transitioning to new employment. This payment will be deemed to fully satisfy any entitlement the employee may have to reasonable notice or pay in lieu of reasonable notice under the common law.

Regular Employee:

Employee who is hired for an indefinite period of time, and has successfully completed a probationary period.

Temporary Employee:

Employee who is hired for a fixed or definite period of time

E Days:

"Extra Days"—Five days of paid leave in place of overtime for eligible non-union employees

ESA:

The "ESA" means the *Employment Standards Act, 2000*, as amended, and includes any replacement or successor legislation.

SCOPE

This policy applies to all regular non-union employees of the City of Guelph and to non-union temporary employees as provided for by this policy.

Where an employee has in his or her employment contract, specific provisions for termination of employment which vary from the terms of this policy, the provisions in his or her employment contract will prevail. In all other cases, this policy will be deemed to form part of the employee's employment contract.

Eligibility for Separation Payments

Staff members whose employment is terminated without cause are eligible for separation payments.

A staff member's employment may be terminated without cause for various reasons, including but not limited to:

- The employee's position has been eliminated and a non-union re-assignment is not available.
- The employee's terms and/or conditions of employment have been altered significantly.
- The employee can no longer fulfill the expectations of the position.
- Employees terminated for cause are not eligible for separation payments.

Placement Options

Where available, the City may consider the following alternate employment options prior to offering a separation package to a regular non-union employee.

1. Another position that is appropriate to the employee's organizational level and skills in the employee's home department, or in another City department;
2. A temporary project or other temporary work that is appropriate to the employee's organizational level and skills in the employee's home department, or in another City department.

If one of these options is available, the employee may be reassigned for an indefinite period of time (in the case of option 1), or temporarily for a fixed period of time (in the case of option 2).

If the employee is indefinitely re-assigned to a lower-rated position, the employee will be entitled to salary adjustment in accordance with the Salary Adjustment provisions of the Non-Union Compensation Policy in effect at the time of re-assignment.

If the placement is temporary, the employee will receive formal working notice at the time of reassignment. Such employee may then work through a part or all of his/her notice period provided that an appropriate project or other work is available.

If temporarily re-assigned, the employee's salary will be maintained during the re-assignment period. The employee will also receive appropriate time off (with pay) to pursue employment opportunities with other organizations by attending interviews and utilizing career transition services. The employee will be entitled to apply for internal postings during the period of working notice.

- (a) If the employee secures another non-union position with the City during a period of working notice, appropriate salary adjustment (where applicable) will continue for the period for which notice and separation payments would otherwise be owing.
- (b) If the employee secures a union position during the period of working notice, the terms and conditions of the relevant Collective Agreement will apply.
- (c) Under no circumstances shall an employee simultaneously receive both salary and a separation payment from the City.
- (d) Where no appropriate project or work can be located within the City, the employee will be terminated and receive a separation package in lieu of notice, paid through salary continuance.

Early Retirement Options

The salary continuance period may be structured to facilitate retirement. If desired by the employee, options for retirement will be developed in consultation with the Human Resources Department for consideration by the employee.

Choosing a retirement option may affect the amount of separation payment. Eligibility for retiree benefits will be in accordance with the Council approved policy in place at the time of the employee's termination/retirement.

Release

Employees receiving a separation package will be required to sign a Full and Final Release and Agreement of Notification. The purpose of these documents is as follows:

- To confirm that if the employee obtains alternate employment during the period of salary continuance, he/she will notify the City.
- To release the City from any future claims by the employee including but not limited to the Ontario Human Rights Code, the Workplace Safety and Insurance Act, Short and Long Term Disability, and wrongful dismissal.
- To ensure confidentiality surrounding the negotiation of the terms of the separation and to ensure notification of disclosure only as required by law.

Any employee who refuses to sign these documents will not be entitled to a separation package, and will instead receive only the minimum entitlements, including termination pay, severance pay (if applicable) and benefits, to which he or she is entitled under the *ESA*.

Payment and Benefit Entitlement on Termination

Upon the termination of an employee's employment without cause, the City will provide the employee with a separation package. The separation package will consist of only the following:

- For employees in General Manager/Manager level positions and above, salary continuance, based on the employee's regular base salary, for a period equal to 4 weeks per completed year of service to a maximum of 20 months, or until the employee finds new employment, whichever happens sooner.
- For all other non-union employees, salary continuance, based on the employee's regular base salary, for a period equal to 3 weeks per completed year of service, to a maximum of 20 months or until the employee finds new employment, whichever happens sooner.
- Reimbursement of professional fees to a maximum of \$500.00, inclusive of HST, for having the separation package reviewed by a lawyer and/or financial advisor.

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- Career transition services retained on the employee's behalf by the Human Resources Department, as deemed appropriate, based on the employee's level in the organization and his/her re-employment prospects. Such career transition services must be taken as services; should the employee choose not to take the career transition services, no cash in lieu will be provided. Employees who choose to retire will not be provided with career transition services.
 - Continuation of benefits including health, dental and basic life insurance and excluding Short Term and Long Term Disability, during the period of salary continuance. Short Term and Long Term Disability benefits will continue only for the minimum period required by the ESA. Benefits will be discontinued when the employee obtains alternate employment with benefit coverage.
 - Continuation of payments towards OMERS pension credits during the period of the salary continuance provided there is no pension credit earned under another pension plan.
 - Payments for unused vacation, lieu time and any other amounts owing will be paid in a lump sum when the separation period commences, in accordance with the ESA. Vacation credits will not be earned during the salary continuance period. Unused E days are not paid to employees in receipt of a separation package.
 - Sick bank payouts, where applicable, may be tax sheltered or deferred and will be paid in a lump sum at the conclusion of the salary continuance period.
 - The salary continuance period will end upon the commencement of alternate employment, provided that the minimum notice and severance requirements under the ESA have been met. If the minimum notice and severance requirements under the ESA have not been met, the salary continuance period will continue only until they have been met and will then immediately cease. At this point, the employee will receive 50% of the outstanding balance of the regular base salary portion of the separation package. For clarity, the employee will not receive any further benefits, payments toward OMERS pension credits, or other compensation from the City after commencement of new employment, and will only receive 50% of the outstanding regular base salary.

Any payments made pursuant to the above provisions are in full satisfaction of any amounts owing to the employee, including statutory entitlements to notice and severance pay under the ESA or other applicable legislation, and common law damages in relation to the employee's employment or termination of employment.

If any employee's entitlements under the ESA exceed that which is set out above, the provisions under the ESA will govern. Where common law requirements require modification to the prescribed formula, legal advice will be sought to confirm such requirements.

Re-employment with the City of Guelph

An employee terminated without cause may be eligible for re-employment with the City of Guelph following the expiration of the salary continuance period.

Employees terminated for cause will not be eligible for re-employment.

Temporary Employees

Temporary employees' employment will end automatically at the expiry of the term set out in their contracts, and no separation payments will be paid unless required under the ESA.

If the City terminates the employment of a temporary employee prior to the expiry of their contract, the employee will be entitled to notice of termination or separation payments in lieu of notice of termination in accordance with the provisions of their employment contracts and the ESA.

Temporary employees who are terminated for cause are not eligible for separation payments.

Where it is deemed appropriate, the City may consider alternate employment options for a temporary employee. Temporary employees are not eligible for career transition services or reimbursement of professional fees for a lawyer or financial advisor.