

MITIGATION: *Turning a Job Loss into a Gain*
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An employee terminated from his or her employment has a positive obligation to mitigate damages even if he or she has a valid claim for wrongful dismissal. This means that a terminated employee is obligated to make reasonable attempts to find a similar job to the one that was lost. A terminated employee should look for a position requiring similar skills, at a similar status and similar salary to the job that was lost. While it may not be possible to find exactly the same type of position at exactly the same salary, efforts must still be made to find something similar. This rule applies to all forms of wrongful dismissal, including, constructive dismissal and discriminatory dismissal.

At the trial of any wrongful dismissal claim the issue of mitigation will arise. The terminated employee may be called upon to prove his or her attempts to find another job. Attempts to find another job that is not similar to the one that was lost may not be considered reasonable attempts to mitigate. If the terminated employee is unable to prove he or she made reasonable attempts to find another job, any monetary award for damages that might otherwise be granted may be reduced significantly if the former employer can prove that there were similar jobs available for the terminated employee had he or she made a reasonable effort to find one.

Therefore, terminated employees should do the following to attempt to mitigate their damages and to prove those attempts:

1. Send out resumes with cover letters and keep copies of every letter and resume that is sent.
2. Keep a list of all prospective employers that have been applied to as well as the date on which the application was made and a copy of applications that were submitted;
3. Keep copies of advertisements and internet postings that were replied to such as advertisements that appear in the Employment News, The Toronto Star, The Globe and Mail, The Toronto Sun, or other regional newspapers or job postings that are published on websites such as www.workopolis.com, www.monster.ca, www.careerbuilder.ca and www.jobshark.ca.
4. Consider using the services of an outplacement service such as Equity Career Transition & Outplacement Service (www.equityoutplacementservice.com) to assist in finding alternate employment. Often a former employer may agree to pay the cost of such service.
5. Keep notes of all telephone calls and interviews with prospective employers including the date of the call/interview, the name of the person spoken to and what was said.

A terminated employee with a claim for wrong dismissal should also keep records of all expenses incurred in attempting to find another job. These expenses are part of the damage claim. These expenses may include outplacement service fees, taxi receipts, parking, postage, extra day care and other expenses reasonably incurred in trying to find another job.

This article is not intended to be relied upon as legal advice. Those considering commencing a claim against a previous employer should consult with a lawyer to discuss their rights, obligations and remedies applicable to their particular circumstances.