After the Axe Has Fallen

The worst part of the termination process is wielding the axe. The second worst part is settling accounts with the employee after the axe has fallen. Calculating back pay and termination payments is half the battle; the other challenge is to ensure that all payments are properly processed and transmitted to the employee. Unfortunately, that’s not as simple as it sounds.

Step 1: Gather the Necessary Termination Information

Employers are required to notify employees of termination in writing (or provide equivalent wages in lieu of notice.) Even if you don’t prepare the written notice, you must get a copy of it and ensure that payroll does likewise. “The termination notice often includes the basics about the termination, including termination date and, if you’re lucky, all termination and other payments due the employee,” explains a leading Ontario payroll consultant.

Unfortunately, termination notices typically leave out the key information payroll needs to calculate and process payments. For example, it’s common for a notice to state that an employee is due earned overtime but not list the actual amount owed. Another piece of crucial information that is commonly omitted is an explanation of how earned commissions are to be paid after termination.

The best way to avoid these problems is for payroll to let HR (and other departments) know what information it needs to process termination by listing it in a policy the way our Model Policy does.

. Like our Model, yours should require that payroll be notified of termination within one day that notice is provided to the employee. The policy should also explain how basic payments, such as wages in lieu of notice, overtime, statutory holiday pay, vacation pay and retiring allowances are processed upon termination and stipulate the information required for processing each, including:

- Last date of employment;
- Wages in lieu of notice;
- Overtime, call-in, vacation, statutory holiday and sick pay;
- Severance pay and retiring allowances;
- Pension options;
- Commissions due upon and after termination;

- Payments in exchange for a promise not to compete; and
- Amounts forgiven on an employee's debt.

Step 2: Fully Document Payments Due Upon Termination

Many provinces require employers to itemize the different termination payments made to the employee. Others, like Ontario, require employers to include an explanation of how payments were calculated. But even if the law doesn't require it, there are 2 good reasons to itemize and document calculation methods:

1. Prevent Disputes: Itemizing each type of payment due upon termination and explaining how it was calculated makes it harder for employees to claim later that they weren't paid for something.

1. **2. Prevent Errors in Withholding:** Proper documentation is crucial to ensure that proper withholdings and remittances are made on each listed amount.

Step 3: Report All Termination Payments in ROE

Employers must complete a Record of Employment ("ROE") when an employee is terminated (or his earnings are otherwise interrupted). Termination payments, such as wages in lieu of notice, must be reported in not one but 2 places:

- Block 15, which requires employers to report total insurable earnings and insurable earnings by pay period; and
- Block 17, which requires employers to report all payments or benefits paid upon, in anticipation of and after termination.

Anything that's insurable for the purposes of taking an EI premium belongs in Block 15, including wages, stat holiday pay, vacation pay and banked overtime. If there's been a pay period with no insurable earnings and the employer must complete Block 15(c), any payments on termination that are insurable should be added to the *first* pay period in Block 15(c) since the pay periods are reported in reverse order.

Conversely, Block 17 is used only for payments that result from the termination itself, such as wages in lieu of notice, statutory severance pay and retiring allowances.

Step 4: Ensure Each Payment Is Made On Time

Employers must pay certain amounts due terminated employees, such as earned wages, wages in lieu of notice and statutory severance pay (if any), within a time period set by law. Although deadlines vary by province, they follow 3 common patterns:

Payment due no later than date of termination (QC and NU);

- Payment due within set time period, usually less than 10 days after effective date of termination or last day worked (AB, BC, MB, NL, NS, NT, SK and YK); and
- Payment due on or before next regular pay period or set time period (Fed, NB, ON andPEI).

In some provinces, the time required for paying earned wages is different from the time for reimbursing unused vacation leave. For example, in NS, wages (including earned holiday pay) must be paid on or before the last day of the notice period, regardless of whether the employee received pay in lieu of notice. But unused vacation leave is due within 10 days of the employee's actual termination date.

<u>Example</u>: An NS employee terminated on March 1 gets 4 weeks' pay in lieu of notice.

Wages would be due by March 29 (the last day of the notice period) and vacation pay on March 11 (10 days after the last date worked). (See “Know the Laws”

to find outwhat your province requires.)

Step 5: Complete T4 and T4A Tax Slips Properly

Be extra careful when you prepare and file year-end T4 and T4A tax slips with CRA for the terminated employee at the end of the year. Remember to file separate T4 tax slips listing all EI-insurable payments such as wages, vacation pay, statutory holiday pay and wages in lieu of notice for each province of employment. So you might have to prepare more than one T4 tax slip for a terminated employee, depending on when the employee stops working and how payments are made after termination.

Example 1: John is an engineering manager for a pharmaceutical equipment manufacturer that processes payroll at its Ontario headquarters. He lives inSaskatchewan and reports to work each day at the manufacturer’sAlberta facility. On July 1, John receives notice of termination. His employer gives him six months’ salary continuance and 12 months’ retiring allowance, each beginning July 1, and he’s no longer required to report for work. John’s payments up to June 30 must be taxed in accordance with Alberta provincial income tax rates and reported on a T4 showing Alberta in Box 10. His salary continuance, however, must be taxed according to Ontario’s tax rates and filed on a separate T4 listing Ontario inBox 10.

On the other hand, T4A tax slips, which list non-insurable payments such as retiring allowances and statutory severance pay, are based on tax rates of the province where the employee resides at the time of payment. In the above example, John’s employer must prepare a T4A tax slip for John’s retiring allowance using Saskatchewanas the basis. But that would change if John moved into or out of Québec because Québec has different income tax rates.

Example 2: While still receiving his retiring allowance, John moves to Montréal. Since Québec has a different tax rate, withholdings on the retiring allowance will be different from what it would be if John was still living in Saskatchewan. And if his previous employer also does business in Québec, it must prepare a Relevé 2 for John in addition to the T4A—even if John never worked in the employer’s Québec location.

Step 6: Make Sure Employees Don’t Work Past Effective Notice Date

The employment laws in many provinces—including AB, BC, NL, NS, NT, NU and YK—specify that a termination notice is no longer valid if the employee works past the effective date of the notice. Thus, if the notice lists May 1 as the termination date and the employee is still working on May 2, the employer must prepare a new notice with a new notice period to terminate the employee. Result: Payroll must process termination payments all over again, since the amount the employee earned after the first notice could have an impact on the amounts due after the second notice. So, once you give notice of termination, make sure the employee doesn’t continue to work past the effective date.

Also be aware that there are 3 jurisdictions where you don’t necessarily have to create a new notice for employees who work for a limited period after the effective date of the original termination notice:

Federal: Employees may work two weeks after notice period expires;

- **New Brunswick:** Employees may work for one month after notice period expires;
- **Ontario:** Employees may work 13 weeks past effective date of termination, provided that the continued employment is considered “temporary.”