

# At a Glance: Termination of Employment in Canada



## Termination of employment

### *Grounds for termination*

**May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?**

In most jurisdictions, an employer can terminate the employment of a non-unionised employee for any reason and without cause, provided that the employee is provided with the requisite period of notice of termination or pay in lieu of notice of termination (and, in select jurisdictions and circumstances, severance pay). This is subject only to human rights legislation, which in most instances precludes an employer from terminating the employment on the basis of a protected ground of discrimination.

Without cause terminations for unionised employees are subject to applicable collective bargaining agreements and the jurisdiction's labour relations legislation. Often, an employer is precluded from terminating the employment of a unionised employee without cause.

An employer can also terminate an employee with cause, in which case they are not required to provide a notice of termination (or pay in lieu of notice or severance pay, if applicable). What amounts to statutory cause varies by employment standards legislation in each jurisdiction. However, it is generally founded on willful acts of misconduct, insubordination or negligence.

Cause for termination also exists in common law. The threshold for common law cause for termination can differ from the threshold for statutory cause and is often lower. Such grounds can include conduct such as dishonesty, fraud, theft, breach of trust, insubordination, insolence, absenteeism and repeated underperformance.

Because thresholds for cause differ between common law and statute law, it is possible for an employer to terminate an employee for cause at common law but for the grounds to fall short of those for statutory termination for cause. In such cases, the employer will not owe the employee a common law reasonable notice of termination, they will still owe a statutory notice of termination.

### *Notice*

**Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?**

Employees are entitled to notice of termination in instances where the employer does not have cause to justify the employee's dismissal. Notice of termination may be provided as working notice, pay in lieu of working notice or a combination of it.

**In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?**

An employee is not entitled to notice of termination (either under employment standards legislation or at common law) where there is cause for termination. What amounts to cause varies by jurisdiction.

*Severance pay*

**Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?**

Ontario mandates the provision of severance pay to certain employees who have been dismissed without just cause. This severance pay is owed in addition to a notice of termination (or pay in lieu thereof), subject to certain conditions and limited exemptions.

To be entitled to this severance pay:

- an employee in Ontario must have been employed with the employer for five or more years; and
- their the employer must:
  - have an Ontario payroll of at least C\$2.5 million annually; or
  - have severed the employment of 50 or more employees in a six-month period, because all or part of the employer's business has permanently closed.

Ontario's statutory severance pay is calculated by multiplying the employee's regular wages for a regular working week by the sum of the number of completed years of employment and the number of completed months of employment (not included in completed years) divided by 12.

The Canada Labour Code also entitles certain federally regulated employees to severance pay on termination of employment, in addition to notice requirements. To be entitled to this severance pay, a federally regulated employee must have completed at least 12 consecutive months of continuous employment. This severance pay is equal to two days' pay at the employee's regular rate of wages for each full year of employment, with a minimum of five days' pay.

*Procedure*

**Are there any procedural requirements for dismissing an employee?**

Employment standards legislation across Canada does not require prior approval for most terminations of employment, absent mass or group terminations. In particular, certain filing requirements with the applicable employment standards body must be met before terminating the employees in large numbers over a defined period. The number of terminations necessary to trigger these filing requirements varies by jurisdiction.

## *Employee protections*

### **In what circumstances are employees protected from dismissal?**

In most instances, an employer is precluded from dismissing employees for reasons related to grounds protected by human rights legislation.

Certain employees in certain jurisdictions are also precluded from being dismissed for reasons other than just cause. This includes most unionised employees, certain federally regulated employees, and certain employees in Nova Scotia and Quebec.

## *Mass terminations and collective dismissals*

### **Are there special rules for mass terminations or collective dismissals?**

Aside from Prince Edward Island, employment standards legislation in all Canadian jurisdictions set out special requirements for mass or group terminations. The number of employees necessary to trigger a mass termination, and the period over which the terminations must occur, varies by jurisdiction. An employer is, in most instances, required to give the applicable employment standards body notice of the mass termination, and must also give a stipulated period of notice to the impacted employees. In certain jurisdictions, this notice of mass termination (or pay in lieu, therefore) must be provided in addition to employees' individual entitlement to notice of termination without cause.

## *Class and collective actions*

### **Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?**

Employees may launch a class action claim against an employer under class action legislation in all jurisdictions aside from Prince Edward Island, where no class action legislation is in force.

## *Mandatory retirement age*

### **Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?**

Human rights legislation across Canada (including for both federally and provincially regulated employers) precludes the enforcement of mandatory retirement ages, unless there is a bona fide occupational requirement for age to preclude employees from performing required duties in a safe, efficient or reliable manner.

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