

# Calculating Termination Notice of Employees with Irregular Work Weeks



Calculating wages in lieu of notice is straightforward when the employee being terminated works a regular workweek. You simply pay the amount the employee would have received had termination notice not been given. This includes overtime, vacation, and other types of pay to which the employee is entitled under employment standards law and, if applicable, the terms of the employee's contract and/or settlement agreement.

But things can get a lot trickier for employees with irregular workweeks. In most jurisdictions, wages in lieu of notice for such employees are based on an average of wages earned over a set time period. And certain types of pay, such as overtime, sickness, holiday, and vacation pay, are often taken out of the equation. Failure to follow this rule will result in overpayments.

## **Example**

A secretary who's fired after 4½ years of employment is entitled to four weeks' notice under the Ontario *Employment Standards Act*. Assume the secretary makes \$20 per hour but doesn't work the same number of hours each week. To calculate her wages in lieu of notice, the company must average her pay over the last 12 weeks. However, the company is unaware of this and bases her payment on actual earnings over the last 12 weeks rather than an average.

<b>Previous Service Hours</b>		<b>Actual Earnings</b>	<b>Earnings Employer Should Have Used</b>
Week One	44 regular 4 overtime*	\$880 \$120	\$880**
Week Two	36 regular 8 sick	\$720 \$160	\$720** \$160
Week Three	40	\$800	\$800
Week Four	40	\$800	\$800
Week Five	32 regular 8 public holiday	\$640 \$160	\$640**
Week Six	44	\$880	\$880
Week Seven	40	\$800	\$800
Week Eight	40 vacation	\$800	\$0**

Previous Service Hours		Actual Earnings	Earnings Employer Should Have Used
Week Nine	40 vacation	\$800	\$0**
Week Ten	32 regular 8 public holiday	\$640 \$160	\$640**
Week Eleven	44 regular 4 overtime	\$880 \$120	\$880*
Week Twelve	24 regular 16 sick	\$480 \$320	\$480** \$320
<b>TOTAL</b>		\$10,160	\$8,000
<b>AVERAGE</b> (Total ÷ 12)		\$847/week	\$667/week

### Notes

\*In Ontario, overtime is due after 44 hours in a week.

\*\*Overtime, public holiday, and vacation time not included in the calculation, but sick pay is.

### **Bottom Line**

The company was required to pay the secretary four weeks' wages in lieu of notice of \$2,668, or \$667 per week for four weeks; instead, it paid her \$3,388, or \$847 per week for those four weeks. **Result:** An overpayment of \$720.

### **The Vacation Pay Factor**

Average earnings used to calculate wages in lieu of notice of employees who work irregular workweeks don't include vacation. But under the Ontario ESA, the employee in the above example would be entitled to vacation pay during the notice period even if she doesn't work through the notice period. Assuming a vacation pay entitlement of 6%, the employer would have to pay her an additional \$160.08 (6% of \$2,668). The same is true of sick pay and additional benefits the employee may have been entitled to under her employment contract. For example, if the secretary would have earned three sick days during her notice period, the employer must pay for those sick days in addition to other pay due upon termination.