Do You Have to Provide Termination Notice to Seasonal Employees? – Ask The Expert



QUESTION

I work for a retail operation that hires temporary employees to work during the December holiday season. Do we have to pay these workers termination notice when their seasonal employment ends?

ANSWER

No, unless you agree to do so voluntarily.

EXPLANATION

Unlike in the U.S. where employment is at will, employment standards laws in Canada require employers to provide employees they let go without just cause termination notice or wages in lieu of notice based on how long they worked for you. However, exceptions apply. In just about all locations and situations, these exceptions would apply to those employed on a seasonal basis, especially when the job lasts for just a few weeks. There are 3 relevant exceptions to consider.

Seasonal Employee Exception

There are 6 jurisdictions that expressly carve out seasonal and intermittent employment as an exception to the employer's obligation to furnish termination notice: Alberta, BC, New Brunswick, Northwest Territories, Nunavut and Yukon.

The Discrete Contract Exception

All jurisdictions also have an exception covering employees who are hired for a discrete term or to perform a discrete job that's expected to last less than 12 months. Once that term expires or that job is completed, you can terminate without notice. The 12-months limitation isn't really an issue for seasonal employees given that seasonal jobs almost always last less than a year. However, to qualify for the exception, you might have to enter into a written contract which expressly:

- States that the contract is only for a certain period of time or for the performance of a certain task;

- Specifies that term or describes that task; and
- States that the contract will end when the term expires or the task is completed—in the latter case, you might want to define what completion means.

The Minimum Service Threshold

The ultimate fallback is that employees don’t qualify for termination notice unless they’re continuously employed for at least the minimum amount of time specified in the employment standards law. While the statutory minimum varies by jurisdiction, seasonal employees are unlikely to get over the threshold; but they might. So, you need to be aware of when employees become entitled to termination notice in your own jurisdiction:

- **30 days:** MB (unless a collective agreement specifies otherwise) and NL;
- **3 months/90 days:** FED, AB, BC, NS, NT, NU, ON and QC;
- **13 weeks:** Saskatchewan; and
- **6 months:** NB, PEI and YK.