

# Does Termination Notice Include Salary & Disability Benefits?



Under contract law, wrongfully terminated employees are entitled to damages based on the salary they would have received during the notice period had they been allowed to work. But suppose employees are terminated while on disability leave – do they get both salary and disability benefits for the notice period? Or do disability benefits get subtracted from wages? **Answer:** It depends on what the employment contract and disability plan say. Consider these 2 venerable cases involving similar situations but totally different outcomes.

## **Disability Benefits Are Deducted from Termination Notice**

**Situation:** A government agency lays off an employee getting short-term disability benefits under an employer-sponsored plan. The court rules that the termination is wrongful and awards the employee 20 months' notice damages of \$102,100. The employer appeals arguing that disability benefits during the notice period should be deducted from notice damages.

**Ruling:** The Supreme Court of Canada agrees that disability benefits should be deducted from dismissal damages.

**Reasoning:** The terms of the disability plan clearly state that disability benefits are designed to make up for the salary losses of employees who can't work due to illness or injury. Accordingly, benefits amounts are based on a percentage of salary and subject to reductions for pensions, workers' comp, and other benefits. By contrast, the Court continued, contract damages are designed to compensate employees for losses suffered as a result of being wrongfully dismissed. The employee wouldn't have been allowed to receive both salary and disability while he was working, the Court explains. So, letting him collect both now would, in effect, provide him a double recovery. Such an outcome might discourage employers from setting up such plans in the first place.

[Sylvester v. British Columbia](#), 1997 CanLII 353 (SCC), [1997] 2 SCR 315

# Disability Benefits Are Not Deducted from Termination Notice

**Situation:** The president of a construction supply company is fired while he's out on disability leave. The court finds the termination wrongful and awards the president about \$110,000 in damages, the equivalent of 24 months' notice. The employer asks the court to deduct the \$163,000 in benefits that the president received under the company's long-term disability plan.

**Ruling:** The Court of Appeal of Ontario rules that disability benefits should not be deducted.

**Reasoning:** Unlike in *Sylvester*, the plan in this case comes from a third-party insurer. Consequently, the plan is liable for disability benefits and the employer is on the hook only for salary during the notice period. The fact that the money is coming from 2 different sources makes the double recovery concern cited by the Court in *Sylvester* less of an issue. In addition, the benefits aren't just a substitute for salary in this case. The president had deliberately traded salary for higher benefits in negotiating his contract. Because salary and benefits were intended to be separate components of his compensation package, the president is entitled to receive remuneration for both as part of his damages, the Ontario high court rules.

[McNamara v. Alexander Centre Industries Ltd.](#), 2001 CanLII 3871 (ON CA)