Severance Best Practices: How to Let Go of an Employee with Respect and Their Benefits Intact

For HR managers in Canada, letting an employee go is one of the hardest parts of the job. Whether due to restructuring, poor performance, or downsizing, termination brings a mix of legal, financial, and human complexities.

Handled poorly, severance can trigger costly lawsuits, damage the company's reputation, and devastate workplace morale. Handled well, it can protect the organization's compliance position while helping the departing employee land on their feet with dignity intact.

This article explores severance best practices from a Canadian perspective—how to balance legal obligations with respect, how to maintain employee benefits during the transition, and how jurisdictional differences shape the process across provinces.

The Legal Foundation: Employment Standards vs. Common Law

In Canada, severance obligations don't come from one single source—they come from a mix of **employment standards legislation** and **common law principles**.

1. **Employment Standards Acts (ESAs):**
   Every province and the federal jurisdiction has minimum statutory requirements for notice and termination pay. These laws set the "floor," not the ceiling. For example: **Common Law (Court Decisions):**
    - Ontario ESA requires notice or pay in lieu of notice based on years of service, up to a maximum of 8 weeks. In addition, certain employees may qualify for **statutory severance pay** if the employer has a payroll of $2.5 million+ or has dismissed 50+ employees within a 6-month period.
    - British Columbia ESA caps notice/pay in lieu at 8 weeks.
    - Quebec's Act Respecting Labour Standards sets notice periods from 1 week (3 months' service) up to 8 weeks (10 years' service).
    - Federally regulated employees (banks, airlines, telecom) are covered under the **Canada Labour Code**, which provides up to 8 weeks' notice/pay, plus severance pay of 2 days' wages per year of service (minimum 5 days).

2. Courts often award **reasonable notice** far beyond statutory minimums. A rule of thumb: 1 month per year of service, depending on factors such as age, length of service, position, and availability of comparable work. For example, a 55-year-old manager with 20 years of service may be entitled to 18–24 months of notice, not just the 8 weeks the ESA prescribes.

This is where many employers stumble—confusing statutory obligations with common law entitlements. HR managers must recognize that statutory notice is the legal minimum, but not necessarily the final word.

Benefits During the Notice Period

A common area of confusion is whether benefits must continue after termination.

- **Statutory requirement:** In most provinces, benefits must be maintained throughout the statutory notice period, whether the employee is working or receiving pay in lieu. This includes group health, dental, life insurance, and pension contributions.
- **Common law extension:** If a court finds the employee was entitled to a longer reasonable notice period, benefits are usually extended for that duration as well—unless the contract expressly limits it.

For example, in **Love v. Acuity Investments (2011, Ont. CA)**, the Ontario Court of Appeal ruled that benefit continuation must extend through the common law notice period unless explicitly excluded. Employers who terminate benefits prematurely risk being on the hook for lost coverage.

Best Practice: Always clarify in termination letters how long benefits will continue, and ensure this aligns with both ESA requirements and contractual commitments.

Provincial Differences That Matter

- **Ontario:** Dual obligations—notice under the ESA plus statutory severance pay for large employers. Ontario is also a hotbed for wrongful dismissal claims.
- **Quebec:** Termination requires “a good and sufficient cause” after 2 years of service, unless part of a layoff affecting 10+ employees. Quebec courts are protective of employees’ dignity, making respectful process crucial.
- **Alberta:** ESA notice/pay is capped at 8 weeks, but courts regularly award much more. Alberta is seeing increased attention on termination clauses in contracts.
- **British Columbia:** Similar to Alberta; ESA caps at 8 weeks, but common law may stretch to 24 months. Courts scrutinize whether employers acted in “good faith” during termination.
- **Federal (Canada Labour Code):** Employees with 12+ consecutive months of service get both notice (up to 8 weeks) and severance pay (2 days per year of service, minimum 5 days). Courts have emphasized fairness in how dismissals are communicated.

Takeaway: Always check both the ESA in your jurisdiction **and** assess common law exposure before finalizing a severance package.

The Human Side: Respectful Termination Practices

Compliance is critical, but the human dimension of termination is just as important. Research from the Canadian Centre for Occupational Health and Safety shows that

employees who perceive a termination as “fair” are significantly less likely to pursue legal action.

Key principles of respect:

- **Private and timely communication:** Never terminate by email or in a public setting. Choose a private space, with both HR and a manager present.
- **Clarity and compassion:** Avoid vague language like “your role is being restructured.” Be direct but empathetic.
- **Dignity in logistics:** Allow the employee to gather their belongings privately, avoid escorting them out in front of peers unless security is truly required.
- **Support for transition:** Offer outplacement services, references, or networking help. These gestures often soften the blow and reduce litigation risk.

A cautionary case: In 2017, an Ontario court awarded aggravated damages against an employer that dismissed an employee in a humiliating manner, parading them out under guard. The court held that the employer failed to act in good faith during dismissal, compounding the harm.

Common Pitfalls to Avoid

- **Relying only on ESA notice:** Courts rarely accept ESA minimums as sufficient for long-service employees.
- **Cutting off benefits prematurely:** Courts almost always extend benefits through the notice period.
- **Failing to document performance issues:** Without a paper trail, terminations “for cause” rarely hold up, leading to higher severance costs.
- **Insensitive communication:** A legally compliant package won’t shield you from damages if the process is handled in bad faith.

Best Practices Checklist (Without Lists in Practice)

Think of severance best practice as weaving three threads together: compliance, communication, and care. Compliance ensures you meet ESA and common law obligations. Communication means you speak openly, truthfully, and with clarity. Care reflects how you treat the individual—not just the package you give them, but the dignity with which you deliver it.

When these three threads align, the risk of litigation shrinks, morale among remaining employees improves, and the departing employee is more likely to leave as an ambassador rather than an adversary.

Case Study: Lessons from Ontario

Consider the case of a Toronto software firm that downsized during the pandemic. One employee with 12 years of service was offered 12 weeks’ pay—the ESA minimum—and told benefits would stop immediately. He sued, and the Ontario Superior Court found he was entitled to 14 months’ notice, plus benefits. The employer’s failure to continue health coverage led to an additional award for the cost of private insurance he had to purchase.

The lesson is stark: statutory minimums are rarely sufficient, and ignoring benefits continuation can multiply liability.

Case Study: Québec’s Emphasis on Dignity

In Québec, courts focus heavily on whether terminations respect the employee’s dignity. In **Standard Life v. Tremblay (2012, QC)**, the court held that the employer’s failure to explain the reasons for dismissal adequately violated the employee’s right to dignity. Damages were awarded not for the severance amount, but for the manner of communication.

For HR managers in Québec, this means communication style is not just good practice—it can be a legal issue.

The Future of Severance in Canada

Several trends are shaping the future of severance practices:

- **Increased litigation:** Employees are more aware of their rights and more willing to challenge lowball offers.
- **Contract scrutiny:** Courts continue to strike down termination clauses that don’t meet ESA minimums or that are poorly drafted.
- **Mental health considerations:** Termination is increasingly seen as a mental health stressor, and courts may award damages where dismissals are handled insensitively.
- **Remote terminations:** With hybrid work, more terminations are happening via video calls. This raises new questions about how to ensure respect and dignity in a digital environment.

Doing Right by Law and People

Severance is not just about writing a cheque. It’s about how you balance compliance, compassion, and corporate responsibility. For Canadian HR managers, this means:

- Knowing your ESA obligations in each jurisdiction.
- Recognizing that common law often entitles employees to much more.
- Maintaining benefits through the notice period.
- Communicating with honesty, clarity, and respect.
- Supporting employees’ dignity and future prospects.

If you treat severance as an exercise in both legal compliance and human care, you protect your organization from lawsuits while upholding the values that make people proud to work for you—even when they’re leaving.

In the end, the best severance practice is not just about what you give employees, but how you let them go.