

Temporary Layoff Requirements – Know The Laws Of Your Province



If your company is planning to downsize and restructure its workforce, be prepared to navigate the employment standards compliance risks involved. This is especially true if temporary layoffs are a possibility. [Temporary layoffs](#) don't terminate the employment relationship like permanent layoffs do; they simply put it on pause. That's a big deal because it avoids triggering termination notice requirements; it also means you don't have to permanently cut ties with employees that you may want to later recall if and when the company gets its current financial troubles resolved and returns to stability.

However, temporary layoffs also involve legal risk. Employment standards laws provide leeway for temporary layoff without notice but also impose strict limitations. Adding to the challenge, at least for companies that operate in multiple province, is how vastly temporary layoff requirements vary by jurisdiction, particularly regarding:

- How long a temporary layoff can last before it becomes permanent and the duty to pay termination notice kicks in.
- What, if anything, employers can do to extend that maximum duration.
- What does and doesn't count in calculating these deadlines and durations.
- How to determine the amount of termination notice the employee is entitled when and if the temporary layoff becomes permanent.
- How these foregoing rules apply to union employees.

As shown below, the rules are particularly intricate and elaborate in Alberta, BC, Manitoba, Ontario, the federal jurisdiction, and the 3 territories. By contrast, the requirements are fairly simple in the Maritimes and Saskatchewan.

Here's a summary of the temporary layoff rules in each part of Canada. Go to the HR Insider website for a complete [Temporary Layoffs Compliance Game Plan](#).

FEDERAL

1. A lay-off isn't deemed to be termination if:
 1. The term of the lay-off is 3 months or less.
 2. The term of the lay-off is more than 3 months and the employer:

1. Notifies the employee in writing at or before the time of the lay-off that he'll be recalled on a fixed date within 6 months from the lay-off date or within a fixed period within 6 months from the lay-off date.
 2. Actually recalls the employee in accordance with subparagraph (i).
 3. The term of the lay-off is more than 3 months and:
 1. The employee continues to receive payments from the employer during the lay-off in an amount agreed on by the employee and employer.
 2. The employer continues to make payments for the benefit of the employee to a pension plan registered under the [Pension Benefits Standards Act](#) or under a group or employee insurance plan.
- The employee receives supplementary unemployment benefits.
1. The employee would be entitled to supplementary unemployment benefits but is disqualified from receiving them under the [Employment Insurance Act](#).
 1. The term of the lay-off is more than 3 months but not more than 12 months and the employee, throughout the lay-off, maintains recall rights under a collective agreement (*Canada Labour Standards Regs, Sec. 30(1)*).
 2. Re-employment periods of less than 2 weeks duration don't count in determining the term of a lay-off for the purposes of (a), (b) and (d) above (*Canada Labour Standards Regs, Sec. 30(2)*).

[ALBERTA](#)

1. The only way that an employer who wants to maintain an employment relationship without terminating an employee may temporarily lay off the employee is by giving the employee a written layoff notice (*Emp Standards Code, Sec. 62(1)*).
2. The layoff notice must:
 1. State that it's a temporary layoff notice.
 2. State the date that the layoff is to commence.
 3. Include a copy of Sections 62, 63 and 64 of the ESC (*Emp Standards Code, Sec. 62(2)*).
3. The employment of an employee who's laid off for one or more periods exceeding, in total, 90 days within a 120-day period terminates, and termination pay is payable, unless:
 1. During the layoff the employer, by agreement with the employee:
 1. Pays the employee wages or an amount instead of wages.
 2. Makes payments for the benefit of the laid-off employee in accordance with a pension or employee insurance plan or similar plan.
 2. There's a collective agreement binding the employer and employee containing recall rights for employees following layoff (*Emp Standards Code, Sec. 63(1)*).
4. When payments under subsection (a) of Item #3 above cease or recall rights under subsection (b) of Item #3 expire, the employment terminates and termination pay is payable (*Emp Standards Code, Sec. 63(2)*).
5. Item #4 above doesn't apply if different provisions for termination after temporary layoff are agreed to under a collective agreement (*Emp Standards Code, Sec. 63(4)*).
6. An employer may request an employee to return to work by providing the employee with a recall notice (*Emp Standards Act, Sec. 64(1)*).
7. A recall notice must:
 1. Be in writing.
 2. Be served on the employee.

3. State that the employee must return to work within 7 days of the date the recall notice is served on the employee (*Emp Standards Code*, Sec. 64(2)).
8. An employee that fails to return to work within 7 days of being served with the recall notice is not entitled to termination notice or termination pay if the employer decides to terminate the employee's employment as a result of the employee's failure to return to work in accordance with the notice (*Emp Standards Code*, Sec. 64(3)).
9. Item #8 above doesn't apply to an employee bound by a collective agreement containing recall rights for employees following a layoff (*Emp Standards Code*, Sec. 64(4)).

BRITISH COLUMBIA

1. Termination notice rules don't apply to a "temporary layoff," defined as:
 1. In the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment.
 2. In any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks (*Emp Standards Act*, Sec. 1(1)).
 2. For purposes of Item #1(a) above, "exceeds" means exceeds by no more than 24 hours (*Emp Standards Regs*, Sec. 1(2)).
 3. An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of the time period specified in the definition of "temporary layoff" (*Emp Standards Act*, Sec. 72(1)).
 4. An application for such a variance must:
 1. Be made in a form and manner required by the director.
 2. Be certified by the employer and include written approvals, made in a form and manner required by the director, from a majority of employees affected by the variance.
 3. Include the following:
 1. The variance requested.
 2. The duration of the variance.
- The reason for requesting the variance.
1. The employer's name, address, email address, and telephone number.
 2. The name, email address, and home phone number of each employee whose written approval is included in the application.
 3. The total number of employees who will be affected by the variance (*Emp Standards Regs*, Sec. 30.2).

MANITOBA

1. **General Rule:** Employment is deemed terminated where an employee is laid off for one or more periods exceeding, in total:
 1. 8 weeks within a 16-week period.
 2. Any greater number of weeks within a longer period (referred to in this section as a "threshold"), as specified by the director upon application by the employer (*Standards Regs*, Sec. 23(1)(a) + (b)).
2. **Exceptions:** Employment is not deemed terminated under the above conditions if:
 1. In the business in which the employee is employed, employees are subjected to regular and recurring lay-offs, and the employee was told about it when he or she was hired.
 2. During the lay-off the employer, by agreement with the employee, continues:

1. To pay wages to the employee, or to make payments to the employee in place of wages.
2. To make payments for the benefit of the employee to a pension plan or group or employee insurance plan or, where the employee has a pension plan and a group or employee insurance plan, to both (*Emp. Standards Regs*, Sec. 23(1)(c) + (d)).
3. Special rules require for counting the above durations of laid off employees are temporary help employees, seasonal employees, and employees subject to a collective agreement.

NEW BRUNSWICK

1. An employer may lay off an employee without notice where there is a lack of work, due to any reason unforeseen by the employer at the time notice would otherwise have been given, for such period as the lack of work continues due to that reason (*Employment Standards Act*, Sec. 31(1)(a)).
2. An employer may lay off an employee without notice for any reason, for a period of up to 6 days (*Employment Standards Act*, Sec. 31(1)(b)).

NEWFOUNDLAND & LABRADOR

1. Employment is not deemed terminated if it's a "temporary lay-off," defined as a lay-off of no more than 13 weeks in a period of 20 consecutive weeks (*Labour Standards Act*, 49(1)(a)).
2. A day during the period of 20 consecutive weeks for which an employee receives pay, including pay for a public holiday during that period, doesn't count in the calculation of the 13 week lay-off period (*Labour Standards Act*, 49(2)).
3. If the temporary lay-off exceeds the above time period, the employment is deemed terminated as of the beginning of the temporary lay-off (*Labour Standards Act*, 50).
4. Where a period of notice of temporary lay-off or of termination of employment is provided for in a collective agreement within the meaning of the [Labour Relations Act](#) or a written contract of service between the employer and employee that differs from the period of notice required to be given by the employer or employee (under Part X of) the LSA, the period provided for in the collective agreement or contract of service is the period of notice required to be given by the employer or employee (*Labour Standards Act*, 51(1)).

NOVA SCOTIA

1. An employer doesn't have to provide termination notice to a person who is laid off or suspended for a period not exceeding 6 consecutive days (*Labour Standards Code*, Sec. 72(3)(c)).
2. Where a person who has been laid off and who, by virtue of the duration of his lay-off was not entitled to the notice under Section 72 (Item #1 above), has his employment terminated by continued lay-off or otherwise, the employer must pay to that person an amount calculated in accordance with Section 72 as though his employment had been terminated without notice on the day he was laid off (*Labour Standards Code*, Sec. 76(2)).

NORTHWEST TERRITORIES

1. An employer who wants to temporarily lay off an employee must give the employee a written notice of temporary layoff (*Emp Standards Act*, Sec. 42(1)).
2. A temporary layoff must not exceed 45 days during a period of 60 consecutive days (*Emp Standards Act*, Sec. 42(2)).
3. A notice of temporary layoff must indicate the expected date on which the employer will request the employee to return to work (*Emp Standards Act*, Sec. 42(3)).
4. An employer who temporarily lays off an employee, without giving the employee a notice of temporary layoff in accordance with Item #1 above will be deemed to have terminated the employee (*Emp Standards Act*, Sec. 42(4)).
5. The Employment Standards Officer may, by order, extend a temporary layoff to a period exceeding 45 days if he or she is satisfied that:
 1. Special circumstances justify the extension.
 2. The employee will be recalled (*Emp Standards Act*, Sec. 43(1)).
6. If an employer lays off an employee for longer than 45 days during a period of 60 consecutive days or provided by any extension ordered, the employee will be deemed to have his or her employment terminated on the last day of the temporary layoff, and the employer must pay the employee termination pay (*Emp Standards Act*, Sec. 43(2)).
7. Employer doesn't have to pay termination notice to an employee on temporary layoff who doesn't return to work within 7 days after being requested to do so in writing by the employer (*Emp Standards Act*, Sec. 37(2)(e)).

NUNAVUT

1. An employer doesn't have to pay termination notice to:
 1. An employee is temporarily laid off, defined as an interruption of employment by an employer for a period:
 1. Not exceeding 45 days of layoff in a period of 60 consecutive days.
 2. Exceeding 45 days of layoff, where the employer recalls the employee to employment within a time fixed by the Labour Standards Officer.
 2. An employee on temporary layoff who doesn't return to work within 7 days after being requested to do so in writing by the employer (*Labour Standards Act*, Secs. 14.04(a) + (e)).
2. An employer that wants to temporarily lay off an employee must:
 1. Give the employee written notice of temporary layoff.
 2. Indicate in the notice of temporary layoff the expected date on which the employer will request the employee to return to work (*Labour Standards Act*, Sec. 14.05(1)).
3. An employer that temporarily lays off an employee without giving the employee the required notice of temporary layoff will be deemed to have terminated the employee (*Labour Standards Act*, Sec. 14.05(2)).
4. Where an employer temporarily lays off an employee and the layoff exceeds a temporary layoff:
 1. The employment is deemed to have terminated on the last day of temporary layoff.
 2. The employer must pay the employee termination pay (*Labour Standards Act*, Sec. 14.06).

ONTARIO

1. An employer is deemed to have terminated an employee and required to pay termination notice if the employer lays the employee off for a period longer than the period of a temporary lay-off (*Emp Standards Act*, Sec. 56(1)).

2. A temporary lay-off means:
 1. A lay-off of not more than 13 weeks in any period of 20 consecutive weeks.
 2. A lay-off of more than 13 weeks in any period of 20 consecutive weeks, if the lay-off is less than 35 weeks in any period of 52 consecutive weeks (but not 52 or more weeks in any period of 78 consecutive weeks) and:
 1. The employee continues to receive substantial payments from the employer.
 2. The employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan.
- The employee receives supplementary unemployment benefits.
1. The employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if that were not so.
2. The employer recalls the employee within the time approved by the Director.
3. If an employee is not represented by a trade union, recalls the employee within the time set out in an agreement between the employer and the employee.
1. In the case of an employee represented by a trade union, a lay-off longer than a lay-off described in clause (b) where the employer recalls the employee within the time set out in an agreement between the employer and trade union (*Emp Standards Act*, Secs. 56(2)-(3)).
3. For the purpose of Item #2 above, an employee who has a regular work week is laid off for a week if:
 1. In that week, the employee earns less than one-half the amount he or she would earn at his or her regular rate in a regular work week; and
 2. The week is not an excluded week (*Emp Standards Act*, Sec. 56(3.1)).
4. An excluded week counts as part of the periods of 20 and 52 weeks referred to in Item #2(a) and (b) above (*Emp Standards Act*, Sec. 56(3.2)).
5. An employee who doesn't have a regular work week is laid off for a period longer than the period of a temporary lay-off if for more than 13 weeks in any period of 20 consecutive weeks he or she earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 20-week period (*Emp Standards Act*, Sec. 56(3.3)).
6. An excluded week doesn't count as part of the 13 or more weeks but does count as part of the 20-week period (*Emp Standards Act*, Sec. 56(3.4)).
7. If the 12-week period contains an excluded week, the average amount earned is calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded (*Emp Standards Act*, Sec. 56(3.4)).
8. An employee who doesn't have a regular work week is laid off for a period longer than the period of a temporary lay-off if for 35 or more weeks in any period of 52 consecutive weeks he or she earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 52-week period (*Emp Standards Act*, Sec. 56(3.5)).
9. For the purposes of Item #8 above:
 1. An excluded week isn't counted as part of the 35 or more weeks but is counted as part of the 52-week period.
 2. If the 12-week period contains an excluded week, the average amount earned is calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded (*Emp Standards Act*, Sec. 56(3.6)).
10. An employer who lays an employee off without specifying a recall date will not be considered to have terminated the employee, unless the period of the lay-off exceeds that of a temporary lay-off (*Emp Standards Act*, Sec. 56(4)).
11. If an employer terminates the employment of an employee under Item #2(c) above,

the employment is deemed to be terminated on the first day of the lay-off (*Emp Standards Act*, Sec. 56(5)).

12. An employer must pay statutory severance if it lays the employee off for 35 weeks or more in any period of 52 consecutive weeks (*Emp Standards Act*, Sec. 63(1)(c)).
13. An employer doesn't have to pay termination notice to an employee who's on a temporary lay-off and doesn't return to work within a reasonable time after having been requested by his or her employer to do so (*Termination & Severance of Emp Reg*, 2(7)).

PRINCE EDWARD ISLAND

Employer doesn't have to provide termination notice to a person who's laid off for a period not exceeding 6 consecutive days (*Emp Standards Act*, Sec. 29(2)(b)).

QUÉBEC

1. The employer must give written notice to an employee before terminating the employee's contract or laying the employee off for 6 months or more (in other words, no written notice required for temporary layoff of less than 6 months) (*Labour Standards Code*, Sec. 82).
2. Termination notice must be paid when the employment is terminated or when the employee is laid off for a period expected to last more than 6 months, or at the end of a period of 6 months after a layoff of indeterminate length, or a layoff expected to last less than 6 months but which exceeds that period (*Labour Standards Code*, Sec. 83).
3. For an employee with recall rights of more than 6 months under a collective agreement, the employer must pay employment notice only from the first of the following dates:
 1. The expiry of the recall privileges of the employee.
 2. One year after layoff (*Labour Standards Code*, Sec. 83.1).
4. An employee with recall rights of more than 6 months under a collective agreement is not entitled to termination notice if:
 1. The employee is recalled before the date on which the employer is required to pay the termination notice and if subsequently the employee works for a period equal to or longer than that of the notice required for that employment by ([section 82](#) of) the LSC.
 2. The employee is not recalled owing to "superior force" (*Labour Standards Code*, Sec. 83.1).

SASKATCHEWAN

1. An employer must provide termination notice to an employee it terminates or lays off (*Sask Employment Act*, Sec. 2-60(1)).
2. "Layoff" defined as the temporary interruption by an employer of the services of an employee for a period exceeding 6 consecutive work days (*Sask Employment Act*, Sec. 2-1(l)).
3. **Result:** An employer doesn't have to provide termination notice for layoffs lasting 6 consecutive work days or less.

YUKON TERRITORY

1. An employer doesn't have to provide termination notice to an employee on "temporary layoff," defined as an interruption of employment by an employer for a period:
 1. Not exceeding 13 weeks of layoff in a period of 20 consecutive weeks.
 2. Exceeding 13 weeks of layoff, if the employer recalls the employee to employment within a time set by the director (*Emp Standards Act*, Secs. 49(1)(e) + 48(1)).
2. If an employer temporarily lays off an employee and the layoff exceeds a temporary layoff, the employee will be deemed to have been terminated at the start of the temporary layoff, and the employer must pay the employee the termination notice required by (section 51 of) the ESA (*Emp Standards Act*, Sec. 53(1)).
3. The employer may seek approval from the board to extend the temporary layoff period (*Emp Standards Act*, Sec. 53(2)).