

Terminating A Federally Regulated Employee? New Requirements That Employers Need To Know

written by Tina Tsonis | February 28, 2024



Canada Labour Code amendments now in force place new obligations on employers, including graduated notice of termination of employment similar to many provincial employment standards statutes

Bottom Line

Effective February 1, 2024, federally regulated employers who dismiss an employee without cause must give the employee notice in writing of the termination of their employment, pay in lieu, or a combination thereof, up to a maximum of 8 weeks. This is in addition to severance pay, where those provisions are applicable. These rules apply to terminations of employment of up to 49 employees. The separate *Canada Labour Code* rules applying to terminations of 50 or more employees continue unchanged.

Employers Must Now Provide Graduated Notice of Termination Depending on Length of Service

After passing changes to the individual termination provisions of the *Canada Labour Code* as a part of the *Budget Implementation Act, 2018, No. 2*, the Federal Government has finally called into force revisions establishing a new section 229.1 and revisions to section 230 that grant increased notice of termination to employees dismissed without cause. Like many provincial statutes, this updated approach to notice requires graduated notice of termination, based on the employee's length of service.

Previously, an employee who had completed three consecutive months of continuous employment was entitled at termination to two weeks of notice (whether working notice or pay in lieu of notice).

Now, as of February 1, 2024, federally regulated employers who terminate an employee without cause must give the employee differing amounts of notice, depending on the employee's length of service, as follows:

Length of Continuous Employment Individual Notice Entitlement

At least 3 months, up to 3 years	2 weeks
At least 3 years, up to 4 years	3 weeks
At least 4 years, up to 5 years	4 weeks
At least 5 years, up to 6 years	5 weeks
At least 6 years, up to 7 years	6 weeks
At least 7 years, up to 8 years	7 weeks
At least 8 years	8 weeks

This written notice of termination can be working notice, pay in lieu of notice, or a combination of these. Note that these new notice requirements are *separate* from the CLC's continuing requirement that employers provide severance pay to employees who have completed twelve (12) consecutive months of continuous employment.

Employers Required to Provide a Written 'Statement of Benefits'

Also effective February 1, 2024, employers must now provide terminated employees with a written statement that sets out their entitlements **as of the date of the statement**. These statements must include:

- vacation benefits
- wages
- severance pay
- any other benefits (such as group insurance benefit continuation) and pay arising from their employment.

When this information must be given to the employee depends on whether the employer is providing working notice, pay in lieu of notice, or a combination.

With **working notice**, the employer must provide this statement of benefits as soon as possible, but not later than 2 weeks before their termination date.

For employees who receive **a combination of working notice and pay in lieu of notice**, the statement of benefits must be provided to the employee as soon as possible, but not later than two weeks before the date of termination, unless the notice period is shorter. In that case, the statement of benefits can be provided on the date which notice of termination is provided to the employee.

If the employer is providing **pay in lieu of notice**, the statement of benefits must be provided on the date of the termination of employment.

Federally Regulated Employees Continue to Have Unjust Dismissal Protections

These new graduated notice of termination requirements do not change the unjust dismissal protections under division XIV of the *Canada Labour Code* for non-unionized employees. As a reminder to federally regulated employers, non-managerial employees who have completed 12 consecutive months of continuous employment and are not subject to a collective agreement have the ability to challenge the termination of their employment if the dismissal was "unjust". These challenges go before the Canada Industrial Relations Board, which has the ability to grant a broad range of remedies, including monetary damages and/or equitable relief, including reinstatement. Generally, non-union, non-managerial employees can bring a complaint of unjust dismissal unless the employee was laid off due to a lack of work or the discontinuance of a function.

Unless an enforceable employment contract limits entitlements, it is not considered sufficient to simply provide the employee with statutory notice of termination of their employment (or pay in lieu or a combination thereof) and severance pay.

Takeaways

These amendments have been anticipated by federally regulated employers since their passage in 2018. With the amendments finally coming into force, federally regulated employers should review their template employment agreements to ensure that their termination provisions continue to be in compliance with the Canada Labour Code. Employers should also update their template termination letter to ensure it includes all of the information as newly required by the statement of benefits.

Finally, the entitlements in the *Canada Labour Code* are the minimum amounts that an employee receives upon termination of their employment. Federally regulated employers should be mindful that, at termination, employees may be owed additional amounts under their employment contracts or any applicable collective agreement.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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