

# Termination Notice Compliance Game Plan



8 steps to follow when providing termination notice to employees.

Terminating an employee [without cause](#) can be not only an emotional but financial ordeal for a company. That's because unlike in the US where employment is at will, Canadian employment standards laws require employers to provide terminated employees certain payments, including [notice or wages in lieu of notice](#) based on how long their employment has lasted. Failure to comply with termination notice requirements is a frequent source of litigation and fines. Here's an 8-step game plan for keeping your termination practices compliant with employment standards and other applicable laws.

## **Step 1. Determine Whether Employee Is Entitled to Termination Notice**

The duty to provide termination notice is subject to important exceptions, such as when termination is for just cause or the employee being terminated hasn't completed the minimum amount of service time required for notice rights to vest under employment standards laws (that's the rule that allows for employment to be probationary).

## **Maximum Duration of Probationary Employment in Each Part of Canada**

<b>Jurisdiction</b>	<b>Statute</b>	<b>Maximum Probationary Period</b>
Federal	<i>Canada Labour Code</i> , Sec. 230(1)	One day less than 3 consecutive months of continuous employment
AB	<i>Employment Standards Code</i> , Sec. 55(2)	90 days
BC	<i>Employment Standards Act</i> , Sec. 63(1)	3 consecutive months of employment
MB	<i>Employment Standards Code</i> , Sec. 62(1)(a)	29 days
NB	<i>Employment Standards Act</i> , Sec. 30(1)(a)	One day less than 6 months
NL	<i>Labour Standards Act</i> , Sec. 55(1)(a)	One day less than 3 months
NS	<i>Labour Standards Code</i> , Sec. 72(3)(a)	One day less than 3 months
NT/NU	<i>Labour Standards Act</i> , Sec. 14.03	89 days
ON	<i>Employment Standards Act</i> , Sec. 54	One day less than 3 months
PEI	<i>Employment Standards Act</i> , Sec. 29	One day less than 6 months

<b>Jurisdiction Statute</b>	<b>Maximum Probationary Period</b>
QC <i>Act Respecting Labour Standards, Sec. 82.1</i>	One day less than 3 months
SK <i>Labour Standards Act, Sec. 43</i>	One day less than 13 consecutive weeks
YK <i>Employment Standards Act, Sec. 50(1)</i>	One day less than 6 consecutive months

[Other exceptions](#) may also apply depending on the province's employment standards act (ESA). Common examples: Termination notice is generally not required when:

- The employee was hired for a discrete term that's expired or to perform a discrete job that's been completed (all jurisdictions);
- You offer the employee reasonable alternative employment but the employee declines the offer (AB, BC, NB, NL, NS, NT, NU, ON, PEI, YK);
- The contract is frustrated, becomes impossible to perform or has to be terminated due to events beyond the employer's control (AB, BC, MB, NL, NS, PEI, QC, YK);
- The employment is in the construction industry (BC, MB, NB, NS, NT, NU, ON, YK); and
- The employment is seasonal (AB, BC, NB, NT, NU, YK).

## **Step 2. Determine How Much ESA Termination Notice the Employee Gets**

The amount of termination notice or wages in lieu of notice required depends on how long you've employed the employee. While [requirements](#) vary, employees are typically entitled to 2 weeks' notice after 3 months of employment.

## **Step 3. Determine How Much Common Law Notice the Employee Gets**

In addition to ESA notice, employees may be in line for what's called "common law notice," aka, "reasonable notice" designed to compensate them for the financial losses they incurred as a result of being wrongfully dismissed. Specifically, common-law notice is based on the employment income the employee would have earned "during the reasonable notice period," minus amounts they received to ["mitigate"](#) their losses, such as wages from part-time jobs they took to make ends meet until they could find a higher-paying, full-time job suitable for their experience. The amount of common notice, aka, length of the reasonable notice period, depends on:

- The character of the employment;
- The length of the employee's service;
- The employee's age; and
- The availability of similar employment with regard to the employee's experience, training and qualifications.

Unlike ESA notice, employees may contract away their right to receive common-law notice. As a result, many employers include language in the employment contract purporting to limit notice in the event of termination without cause to just the termination notice required by the ESA. But while employees are allowed to waive common-law notice, courts generally frown on such waivers and will seize on even the slightest ambiguity or defect in the contract language to avoid enforcing them.

## **Step 4. Make Termination Notice Payments on Time**

Employers must pay employees the termination notice to which they're entitled within a specified time after termination occurs.

<b>Jurisdiction</b>	<b>Deadline for Paying Termination Notice</b>
Federal	Within 30 days of entitlement to termination arises
Alberta	Employer's choice between: (a) 10 consecutive days after the end of the pay period in which termination of employment occurs; or (b) 31 consecutive days after last day of employment
British Columbia	Within 48 hours of effective date of termination if employer terminates or 6 days if employee terminates the employment
Manitoba	Within 10 working days after the termination
New Brunswick	Within 21 days after the last day the employee was employed
Newfoundland	Within 1 week from date of termination
Nova Scotia	Within 5 working days after expiration of the pay period in which the termination occurs
Northwest Territories & Nunavut	Within 10 days after the termination
Ontario	Within 7 days after last date of employment or on day that would have been the next regular payday, whichever is later
Prince Edward Island	No later than the last day of the next pay period after the termination of employment
Québec	At time the employment is terminated
Saskatchewan	At time the employment is terminated
Yukon	Employer may pay by instalments of the same amount which would have been paid to the employee for the employee's regular pay period on the day which would have been the employee's regular payday provided that the employee receives all the termination pay within the period of time which the employee would have been entitled to receive as notice

## **Step 5. Provide Proper Notification of Termination**

Employers must provide written notification letting employees know that they've been terminated, the effective date of termination and other information including itemization of the different types of termination payments being made and how each was calculated. Employers might also have to furnish additional information in the notice under the terms of the contract or collective agreement. In interpreting the ESA laws, courts require termination notification to be:

- **Specific**—it must give sufficient detail to explain the termination and when it take effect;
- **Unequivocal**—it must leave no doubt that the employee has been fired and can't be wishy-washy or in any way give the employee the reasonable impression that he can keep on working; and
- **Clearly communicated**—it must actually be delivered to the employee.

There may also be provincial requirements about how notification is delivered to the employee. Thus, even a well written notice may be invalid if you don't deliver it the right way.

## **Step 6. Ensure You Pay All Amounts Due**

Terminated employees are entitled to all of their accrued earnings, including salary, wages, overtime and statutory holiday pay. Employees are also entitled to unused vacation time or an additional percentage of their salary through the date of employment. Note that some jurisdictions have different payment rules for vacation time versus regular wages and other amounts due. Example: In Nova Scotia, employers

must pay all wages when the termination notice period expires. But the employee isn't entitled to vacation pay until ten days after their last day of work.

### **Step 7. Continue Existing Deductions & Benefits**

You're required to make [source deductions](#) for income tax, CPP and EI from earnings paid after the termination, even if they weren't technically "earned." For example, according to the CRA, when you pay an employee an amount in lieu of termination notice, the amount is considered employment income, even if it's paid after the employment is terminated. So, you'll still have to deduct CPP and EI premiums and income tax. Another tricky question is how long to continue employer-sponsored benefits, such as dental plans and disability insurance. The general rule of thumb, experts say, is to keep paying them for as long as a reasonable termination notice period would require.

### **Step 8. Report Termination Payments in the ROE Form**

Last but not least, remember that the federal government requires employers to file a [Record of Employment](#) (ROE) when employment is interrupted or ends. Service Canada says that the [ROE](#) is the "single most important document in Employment Insurance (EI)," because it's used to determine whether a person qualifies for EI benefits, the benefit rate and the duration of the claim. Employers must issue a ROE within 5 calendar days of the day that an employee quits, retires or is fired, even if the employee has no intention of filing a claim for EI benefits.