

The Duty to Provide Termination Notice Covers Employees, Too



Who says employees can just quit any time they want without giving notice?

Few things are more disruptive to an organization and its business operations than the unexpected resignation of key employees. But while you can't prevent employees from quitting, you are at least entitled to some advance notice so you're not left completely high and dry by their departure. Or are you? The answer depends on [where in Canada you operate](#).

When Must Employees Provide Termination Notice?

As any HR director can well attest, employers aren't allowed to terminate an employee [without cause](#) unless they provide [termination notice or wages in lieu of notice](#) required under the jurisdiction's employment standards law based on how long their employment has lasted. Employees may also qualify for so called ["common law" or "reasonable notice"](#) that's more generous than the employment standards minimum. But what often goes overlooked is that employment standards termination notice requirements may be a 2-way street.

It all [depends on the jurisdiction](#):

- **Employee termination notice is required in 8 jurisdictions:** Alberta, Manitoba, Newfoundland, Nova Scotia, Prince Edward Island, Québec, Saskatchewan and Yukon; and
- **Employee termination notice is not required in 6 jurisdictions:** Federal, B.C., New Brunswick, Northwest Territories, Nunavut and Ontario.

Employee Notice Rules in Ontario

In Ontario, employees don't have to give notice **unless** they've already received written notice of termination from their employers and want to qualify for employment standards severance, in which case they must provide written notice before the "statutory notice period."

Example: Having worked for 7 years, Heather is entitled to 7 weeks' termination notice under the Ontario ESA. If Heather's employer gives her 10 weeks' notice, she'd have to give her employer at least 2 weeks' written notice of her resignation. As long as Heather's resignation takes effect during the statutory notice period, in this case

the last 7 weeks of the 10-week notice period, she's entitled to severance pay.

How Much Termination Notice Must Employees Provide?

Where employee notice is required, it generally must be in writing (Manitoba and Québec are the exceptions). As is the case [when the employer terminates](#), the amount of notice required is based on how long employees have worked for the employer (which may have to be consecutive or continuous, depending on the jurisdiction).



When Do Employees Not Have to Provide Termination Notice?

Even in the 8 jurisdictions that require employees to provide termination notice, exceptions apply. Thus, employee notice commonly isn't required if:

- Requiring employee notice would go against established industry custom or practice (AB, SK);
- The employee quits because staying would endanger his/her personal health or safety (AB, SK);
- The employee's contract is or has been frustrated or become impossible to perform due to unforeseeable or unpreventable causes (AB, MB, SK, YK);
- The employee leaves because the employer does something nasty to the employee like mistreating, deliberately endangering, constructively dismissing or violating key contract terms or conditions (AB, MB, NL, NS, SK);
- The employee is employed in construction (MB, NS, YK);
- The employee is on [temporary layoff](#) (AB, SK, YK);
- The employee was hired for a discrete task or term of 12 months or less (MB, NL, YK); and
- The employee is on strike or being locked out (AB, MB).

What Can You Do If Employees Don't Provide Termination Notice?

You're generally **not** allowed to deduct wages of employees for quitting without providing the required termination notice. What you can do, though, is sue the employee for what's called "[wrongful resignation](#)," the flip side of wrongful dismissal which allows employers to seek money damages covering the losses they incur as a result of the employee's failure to provide termination notice required by employment standards law. Just knowing that you have this card to play can increase your bargaining leverage and may even put you in a position to persuade the employee to stay until you can start seeking a replacement.

Jurisdiction-Specific Remedies

In Yukon, if employees don't provide the required termination notice, employers can deduct a week's worth of wages at the regular rate of pay for normal hours. If the employee consents to the deduction, employers can keep the money; if the employee doesn't consent, they must remit the amount to the Employment Standards Director who will then determine who should get the money.

In Newfoundland, employees can buy their way out of notice requirements by paying the employer an amount equal to what they would normally earn, including overtime, for the required period of notice at the contract rate. Thus, for example, an employee who quits after 1 year could fork over a week's worth of wages rather than provide the required 1-week notice.