

The Termination Process: 5 ROE Traps to Avoid



If you hate filling out the ROE (aka Record of Employment), you're not alone. It's not simply how confusing the form is; what makes ROE completion such a daunting challenge is that the stakes are so high. Making mistakes can get you into trouble with not only the government but the employee who, as she parts way with your organization, is probably not feeling so positive about you to begin with. Here's a look at 5 of the most common ROE errors that employers make and what you can do to avoid them.

The ABCs of the ROE

Here's a quick review of ROE basics. (You can skip over this part if you're an old pro at this.)

Employment Insurance Regulations require employers to complete an ROE for any employee in insurable employment who experiences an "interruption of earnings." Service Canada supplies the actual form and instructions on filling it out.

The form itself contains 22 boxes or "blocks" for employers to list information about the employment, such as the reason earnings were interrupted and the employee's insurable earnings to date. Employers also must certify that the information that they provide in the form is complete and accurate. Service Canada uses that information to determine whether the employee is eligible for EI, the rate of benefits and duration of the claim.

What's At Stake

Listing inaccurate information on the ROE can cause employees to miss out on benefits they're entitled to receive or, perhaps even worse, receive benefits to which they're not entitled and have to pay back. And if you list false information deliberately, you run the risk of fines, triple damages and up to 6 months in jail. ROE information can also increase your liability risks if the employee later sues you for wrongful dismissal. (See the accompanying piece on the EI Claims process.)

5 ROE Pitfalls to Avoid

Beware of these 5 pitfalls when completing the ROE.

1. The Block 16 Trap

Trap: Block 16 is the part of the ROE listing the reason earnings were interrupted. An employee who quits or is fired for cause may ask you to list shortage of work (A) or other (K) rather than dismissal (M) in Block 16 so she can get EI benefits. While you may be tempted to help the employee, deliberately listing false information exposes you to fines and other penalties. It also compromises your ability to argue just cause in a subsequent wrongful termination suit.

Example: An Alberta car salesman violates dealership policy and lets his son drive a demonstration car. The son wrecks the car. The incident costs the salesman his job. But exactly how is subject to dispute. The salesman claims he was fired; the dealer claims he quit. The court believes the salesman and awards him \$10,000 in damages for wrongful dismissal. The key evidence is the fact that the dealer listed K–Other, rather than M–Dismissal in Block 16 of the ROE [*Ata v. Carter Pontiac Buick Ltd.*].

Solution: Don't deliberately list an inaccurate code in Block 16 to help an employee get EI. While it may be well-intentioned, falsifying ROE information is ill-advised and extremely risky.

2. Letting an Untrained Person Complete the Form

Trap: Filling out the ROE requires experience and skill. "Entrusting that task to junior level clerks and secretaries the way some organizations do is sheer madness," laments one veteran payroll manager.

Solution: Make sure that the person who completes the ROE at your organization has the training and instructions to do the job properly. "After going to all the trouble of ensuring the termination is carried out properly, you don't want to undo all your hard work with a silly ROE error," cautions the payroll manager.

3. Not Completing an ROE for All Employees

Trap: You may assume that the ROE isn't required for employees who don't seek EI benefits when their employment ends, e.g., students who return to school or seasonal workers who return to off-season pursuits.

Solution: The trigger for completing the ROE is whether the employment is insurable, not whether the employee is actually seeking or qualifies for benefits. So complete an ROE for all employees in insurable employment.

4. Deliberately Withholding the ROE

Trap: It may be tempting to delay completing the ROE until a severance settlement is reached. The problem is that the ROE must be issued electronically within a specific deadline. And the clock starts ticking once the employment ends. **Result:** By the time the settlement is negotiated, it may already be too late. Holding back the ROE can also make it look like you acted in bad faith and expose you to risks of aggravated, *Wallace* and discrimination damages.

Example: The Ontario Human Rights Tribunal cites an Ontario dental clinic's refusal to furnish an employee's ROE as evidence that the firing was in retaliation for a sexual harassment claim. Withholding the ROE, the Tribunal said, "is tantamount to a poignant captivity" and "thwarted the employee's

access to well-needed benefits" [*Farias v. Chuang*].

Solution: Even if settlement negotiations are still taking place, be sure to provide the employee the ROE within the specific deadline, which varies depending on pay periods used:

- **Weekly, biweekly or semi-monthly:** Up to 5 days after the end of the pay period when the interruption of earnings occurs;
- **Monthly or every 4 weeks:** Up to 5 days after the end of the pay period when the interruption of earnings occurs or up to 15 days after the first interruption of earnings, whichever is earlier.

If necessary, file a corrected ROE once negotiations end to account for the terms of the settlement.

5. Not Issuing an ROE When Absence Causes 40+% Dip in Earnings

Trap: The common assumption is that interruptions of earnings triggering the need for an ROE occur only when the employee actually stops working. But Service Canada has clarified that an interruption also occurs when salary falls below 60% of normal weekly earnings because of certain absences.

Solution: Be aware that employees who continue to work might require an ROE if their weekly earnings dip below 60% of previous levels because of any of:

- Injury;
- Illness;
- Quarantine;
- Pregnancy;
- The need of a parent to care for newborn or adopted children; or
- The need to care for or support a family member who's gravely ill and at significant risk of death.