

What is Unjust Dismissal?



Federally regulated employees are governed by the provisions of the Canada Labour Code (the “**Code**”). When a federally regulated employer (for example banks, airlines, telephone companies, etc.) dismisses an employee, section 240(1) of the Code permits the employee to make a written complaint to an inspector if the employee feels that the dismissal is unjust, provided:

- the employee has completed 12 consecutive months of employment;
- is not subject to a collective agreement; and
- is not excluded due to managerial status.

Making a complaint pursuant to Section 240(1) of the Code does not preclude an employee from pursuing a wrongful dismissal claim in the courts.

Unjust Dismissal

The concept of unjust dismissal under the Code is different from, and broader than wrongful dismissal.

Under the Code, a person can make a written complaint regardless of whether he or she is paid severance or given notice in lieu. Consequently, a dismissal can still be “unjust”, even if an employer has given the dismissed employee notice or pay in lieu of notice. This is because the underlying purpose of unjust dismissal is to protect the personal dignity and autonomy of the individual employee in termination situations.

in order for a termination to be “just”, an employer’s decision must be:

- rational;
- made in good faith;
- made in a non-arbitrary and non-discriminatory manner; and
- made in a procedurally fair manner

The unjust dismissal provision does not apply in situations where an employee is laid off as a result of a shortage of work or a discontinuance of the job function. Nevertheless, a dismissed employee can challenge the elimination of the position itself i.e., that the real reason was to get rid of the employee.

The remedies available to an adjudicator who concludes that a dismissal is unjust includes the authority to reinstate an employee. Other remedies include ordering the employer to pay damages or making any other equitable order that will remedy the

unjust dismissal and protect the personal dignity of the employee.

Employer Tips

While it may not be possible to prevent an employee from filing an unjust dismissal claim, employers can take steps to minimize a finding that a dismissal is unjust by:

- having a fair reason for the termination and telling the employee (preferably in writing), the reason(s) for the termination;
- acting reasonably and following a fair procedure when dismissing the employee;
- giving the employee as much notice as possible;
- not using lack of work as an excuse to get rid of an employee;
- not alleging just cause if not terminating for cause; and
- making a reasonable severance offer in return for a general release of all claims.

The above suggestions are not exhaustive and employers should seek legal advice before dismissing an employee, if they think the employee is likely to file an unjust dismissal claim.

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