When You Don’t Have to Pay Employees Termination Notice – Know The Laws Of Your Province



Unlike in the US where employment is at will, employers must provide notice or wages in lieu of notice to employees they terminate. Termination notice can be quite expensive, especially when employees have been with the company for a long time. The good news is that termination notice requirements are subject to exceptions. While rules vary by jurisdiction, you don’t have to pay notice when termination is for just cause or the employee hasn’t completed the minimum amount of service time required for notice rights to vest under employment standards laws. Other common exceptions include when:

- The employee was hired for a discrete term that has expired or perform a discrete job that has been completed (all jurisdictions);
- The employee declines the employer’s offer of reasonable alternative employment (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).

Here’s a comprehensive list of all the termination notices in all parts of Canada.

FEDERAL

- Employee has less than 3 consecutive months of continuous employment
- Employee terminates their own employment
- Employee is dismissed for just cause
- Employee is on a lay-off that doesn’t constitute a termination of employment
- The contract provides an end and that the work ends on that date

(*Canada Labour Code*)

ALBERTA

- Employee was employed by employer for 90 days or less
- Employee is terminated for just cause
- Employee is employed for a definite term or task for period not exceeding 12 months on completion of which employment terminates
- Employee is laid off after refusing employer's offer of reasonable alternative work
- Employee refuses work made available through a seniority system
- Employer doesn't provide employee due to strike or lockout at employee's place of employment
- Employee is employed under agreement giving employee right to elect to work or not work for a temporary period when requested to work by employer
- The employment contract is or has become impossible for employer to perform due to unforeseeable or unpreventable causes beyond employer's control
- Employee is employed on a seasonal basis and on the completion of the season the employee's employment is terminated
- Employment ends in the circumstances described in sections 62 to 64 dealing with temporary leave and recall

(*Employment Standards Code*, Sec. 55(2))

BRITISH COLUMBIA

- Employee has less than 3 consecutive months of employment
- Employee is terminated for just cause
- Employee retires or terminates their own employment
- Employee is employed under an arrangement by which (i) employer may ask employee to come to work at any time for a temporary period, and (ii) employee has the option of accepting or rejecting one or more of the temporary periods
- Employee is employed for a definite term
- Employee is employed for specific work to be completed in a period of up to 12 months
- Employee is employed under an employment contract that's impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the Bank Act (Canada) or a proceeding under an insolvency Act
- Employee is employed at one or more construction sites by an employer whose principal business is construction
- Employee has been offered and refused reasonable alternative employment by employer
- Employee is a teacher employed by a board of school trustees
- Employee is a teacher employed with or has a service contract with a francophone education authority as defined in the School Act
- Employee is covered by a collective agreement and (i) is employed in a seasonal industry in which the practice is to lay off employees every year and to call them back to work, (ii) was notified on being hired by the employer that the employee might be laid off and called back to work, and (iii) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation

(*Employment Standards Act*, Sec. 65)

MANITOBA

- Employee's period of employment with employer is less than: (i) the probationary period specified in the collective agreement, if that period is one year or less, or (ii) in any other case, 30 days
- Employee is terminated for just cause
- Employment is for a fixed term and terminates at the end of the term
- Employee is employed for a specific task and period not exceeding 12 months, on completion of which employment terminates
- Employee is employed in construction
- Employee is employed under an arrangement by which the employee may choose to work or not work for a temporary period when asked to work by the employer
- Employee is employed under an agreement or employment contract that's impossible to perform or has been frustrated by a fortuitous or unforeseeable circumstance
- Employee is on strike or locked out and the termination meets requirements set out in regulation
- Employee gives employer written notice of their intent to retire or quit on a specific date, and the employment terminates on that date
- Employer's business or part of the business in which employee is employed is sold or transferred, and employee is immediately re-employed in the same business on terms and conditions that, as a whole, are equivalent to or better for the employee

(*Employment Standards Code*, Sec. 62(1))

NEW BRUNSWICK

- Employee refuses reasonable alternate employment offered by employer as alternative to being terminated or laid off
- Termination is due to employee's completion of a definite assignment that the employee was hired to perform over a period not exceeding 12 months, whether or not the exact period was stated in the employment contract
- Employee completes a term of employment that was fixed in the employment contract, unless employee is employed for a period of 3 months beyond that period
- Employee retires under a bona fide retirement plan
- Employee does construction work in the construction industry
- Termination or layoff is due to normal seasonal reduction, closure or suspension of an operation

(*Employment Standards Act*, Sec. 31)

NEWFOUNDLAND

- Service contract between employer and employee has existed for less than 30 days
- Employee is terminated for just cause
- Employee willfully refuses to obey employer's lawful instruction, or commits misconduct or is so neglectful of duty as to adversely affect employer's

interest, or otherwise breaches a material condition of the service contract of service that the director or Labour Relations Board believes warrants summary dismissal
- Employee is laid off for a period not exceeding 1 week
- Employee is employed for a firm non-renewable term or for a specific task not exceeding 12 months and the employment isn't terminated before the completion of the term or task
- Employee rejects employer's offer of reasonable alternative employment of a similar nature requiring similar skill, effort and ability that would enable the employee to earn during a similar number of working hours a total wage comparable to that the employee earned under the contract being terminated
- Employee reaches age of retirement according to established practice of undertaking in which employee is employed
- Employer is required to terminate service contract due to: (i) destruction of or major breakdown to plant machinery or equipment, or (ii) climatic or economic conditions beyond employer's foreseeable control and that necessitate declaration of redundancy

(*Labour Standards Act*, Sec. 53)

NOVA SCOTIA

- Person has less than 3 months of employment
- Employee is guilty of willful misconduct or disobedience or neglect of duty not condoned by employer
- Person was employed for a definite term or task for a period not exceeding 12 months
- Person is laid off or suspended for period not exceeding 5 consecutive days
- Person who is discharged or laid off for any reason beyond employer's control including complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, cancellation, suspension or inability to obtain orders for the products of the employer, fire, explosion, accident, labour disputes, weather conditions and actions of any governmental authority, if the employer has exercised due diligence to foresee and avoid the cause of discharge or lay-off
- Person has been offered reasonable other employment by the employer
- Person has reached the age of retirement established by the employer on the basis of a bona fide occupational requirement for the position in which that person is employed
- Person is employed in the construction industry
- Person is employed in an activity, business, work, trade, occupational profession that's exempted by regulation

(*Labour Standards Code*, Sec. 72(3))

ONTARIO

- Employee has less than 3 months of continuous service
- Employee was hired on the basis that employment is to terminate on expiry of a definite term or completion of a specific task
- Employee is on a temporary lay-off
- Employee is guilty of willful misconduct, disobedience or willful neglect of duty that's neither trivial nor condoned by employer
- Employment contract becomes impossible to perform or is frustrated by a fortuitous or unforeseeable event or circumstance
- Employee refuses employer's offer of reasonable alternative employment with the employer
- Employee refuses alternative employment made available through a seniority system
- Employee who's on a temporary lay-off and doesn't return to work within a reasonable time after having been asked to do so by their employer
- Employment is terminated during or as a result of a strike or lock-out at place of employment
- Employee is a construction employee
- Employee is terminated when they reach the age of retirement in accordance with the employer's established practice, as long the termination doesn't violate the *Human Rights Code*

(*Termination and Severance of Employment,* O Reg 288/01, Sec. 2)

PRINCE EDWARD ISLAND

- Employee has less than 6 months of continuous service
- Termination is for just cause
- Person is employed to perform a definite task for a period not exceeding 12 months
- Person is laid off for a period not exceeding 6 consecutive days
- Person has been offered reasonable other employment by their employer
- Termination or layoff is for any reason beyond employer's control, including (i) complete or partial destruction of a plant, (ii) destruction or breakdown of machinery or equipment, (iii) inability to obtain supplies and materials, or (iv) cancellation or suspension of, or inability to obtain, orders for the products of the employer, if the employer has exercised due diligence to foresee and avoid the cause of termination or layoff
- Termination or layoff is because of labour disputes, weather conditions or actions of any governmental authority that affect directly employer's operations

(*Employment Standards Act*, Sec. 29(2))

QUÉBEC

- Employee has less than 3 months of uninterrupted service
- Employment is under a contract for a fixed term or specific undertaking that has expired
- Employee commits a serious fault
- Termination or layoff is a result of superior force

(*Labour Standards Act*, Sec. 82.1)

SASKATCHEWAN

- Employee has less than 13 consecutive weeks of service
- Employee is terminated for just cause
- Employee voluntarily resigns
- Employment contract has a definite end date
- Employee is a care provider, other than a live-in care provider

(*Sask Employment Act*, Sec. 2-60(1) and *Employment Standards Regs*., Sec. 30)

NORTHWEST TERRITORIES

- Employee has less than 90 days of service
- Employee is terminated for just cause
- Employee is temporarily laid off
- Employee refuses employer's offer of reasonable alternative work with the employer
- Employee is on temporary layoff and doesn't return to work within 7 days after being asked to do so in writing by the employer
- Employee is employed in the construction industry
- Employee is employed for less than 180 days a year, seasonally or intermittently, in an activity, business, work, trade or profession
- Employee is employed in an activity, business, work, trade or profession, for a definite term or task for a period not exceeding 365 days where at the end of the term the employment is terminated
- Employee is employed in an activity, business, work, trade or profession for less than 25 hours in a week

(*Employment Standards Act*, Sec. 37(2), and *Employment Standards Regs*., Sec. 4.1)

NUNAVUT

- Employee has less than 90 days of service
- Employee is terminated for just cause
- Employee is temporarily laid off
- Employee refuses employer's offer of reasonable alternative work with the employer
- Employee is on temporary layoff and doesn't return to work within 7 days after being asked to do so in writing by the employer
- Employee is employed in the construction industry
- Employee is employed for less than 180 days a year, seasonally or intermittently, in an activity, business, work, trade or profession

- Employee is employed in an activity, business, work, trade or profession, for a definite term or task for a period not exceeding 365 days where at the end of the term the employment is terminated
- Employee is employed in an activity, business, work, trade or profession for less than 25 hours in a week

(*Labour Standards Act*, Sec. 14.04, and *Notice of Termination Exemption Regs.*, Sec. 1)

YUKON

- Employee has less than 6 months of service
- Employee is terminated for just cause
- Employment is in the construction industry
- Employment is a seasonal or intermittent job that lasts for less than 6 months in a year
- Employee is on temporary layoff
- Employment is under an employment contract of employment that's impossible to perform due to an unforeseeable event or circumstance
- Employee is offered and refused reasonable alternate employment
- Employment ends because the contract or assignment the employee was hired to performed is completed, if 12 months or less
- Employee was hired on an employment term set in the employment contract unless they remain employed for one month or more after the term is completed

(*Employment Standards Act*, Sec. 49(1))

(*Employment Standards Act*, Sec. 50(2))

Exceptions: Employee notice requirements don't apply to: a. the construction industry; b. seasonal or intermittent undertakings that operate less than 6 months in a year; c. an employee on temporary layoff; d. an employee employed under a contract that's impossible to perform due to an unforeseeable event or circumstance; d. an employee who has refused reasonable alternative employment by their employer; e. termination due to the employee's completion of a project or assignment that the employee was hired to perform over a period not exceeding 12 months, regardless of whether the employment contract states the exact period; or f. an employee still employed after completing the term of employment set in the employment contract, unless the employee is employed for more than 1 month after the completion of that term (ESA, Sec. 49(1))

Employer Remedies: If an employee quits without giving the required notice: a. the employer may, with the employee's consent, deduct from wages due 1 week's wages at the employee's regular rate of pay for the employee's

normal hours of work; b. if the employee doesn’t consent to the deduction, the employer must pay the 1 week’s wages to the Yukon Employment Standards Director who will then investigate and determine whether to repay the money to the employer or employee (ESA, Sec. 52)