

Information on Employee Termination

In good times and in economic slowdowns, the reality is that employers and employees sometimes become “former” employers and employees. Below is some information that may assist you in avoiding some of the legal pitfalls of ending an employment relationship.

Dismissal for Cause

Assuming an employee has completed his or her probationary period, dismissal for cause becomes difficult to establish. If it can be established, then generally an employee is only entitled to be paid his or her wages earned and vacation pay owing.

Serious proven employee misconduct, such as theft, is dismissal for cause.

Poor job performance generally requires a careful written record of the problem, meetings with the employee, and warnings that continued poor performance will lead to dismissal. Generally the longer an employee’s tenure, the more thorough and lengthy this documentation and process would have to be.

Lack of work or sale of the business is not cause for dismissal.

Dismissal Without Sufficient Cause

After the completion of an employee probation period most dismissals will fall into this category. It is important that this process be handled “humanely” as a “brutal” dismissal can result in an award of extra damages.

The Employment Standards Code section 56 sets out the minimum termination notice or pay in lieu of notice as follows:

- a) one week for an employee with greater than three months and less than two years at the job;
- b) two weeks for an employee with two years or more but less than four years at the job;
- c) four weeks for an employee with four years or more but less than six years at the job;
- d) five weeks for an employee with six years or more but less than eight years at the job;
- e) six weeks for an employee with eight years or more but less than ten years at the job;
- f) eight weeks if ten years or more at the job.

In addition to the minimum amount set out above, the employee is entitled to his or her pay earned and vacation pay. The pay is generally to be given within three days of the last day of employment.

It is critical to note that the Employment Standards Code amounts are minimums. The law provides additional legal rights to employees to claim damages for what is commonly called “wrongful dismissal.”

There is no set table of what an employee might be awarded for “wrongful dismissal.” Many factors are assessed by Courts, such as length of employment, importance of the job, age of employee, job prospects for the employee, and whether the employee finds a new job during the notice period. Each case however has its own set of factors to assess.

Changes to Employment Contract

If you want to change the terms of employment after an employee has started (for example decreasing the number of hours to be worked) then you may do so in most cases. You need to give an employee reasonable notice of any changes. What is reasonable will depend on the circumstances. If you do not give proper notice, however, then the change could result in a constructive dismissal.

When to Get Legal Counsel

We recommend that you consult your lawyer at the time of hiring employees. We assist you with many areas of advice in the initial employment contract stage that address issues like confidentiality of employer information and customer lists, non-solicitation and limiting the amount of pay in lieu of notice. A properly drafted employment contract will set compensation, if any, to be paid when employment ends, with the caveat that it cannot be less than [the Employment Standards Code](#).

We also recommend legal counsel if contemplating the layoff of a number of employees, high-paid employees, and/or long-term employees, to develop a sound strategy and address a compensation package. Also, seek counsel if you are changing a significant term of employment.

Being proactive with our clients in providing information helps to avoid or minimize potential legal problems. We hope you find the above information helpful.