

Just Cause

The purpose of this factsheet is to help employers and employees understand the meaning of just cause as it applies under the Employment Standards Act.

Some employees who are terminated without just cause sue for wrongful dismissal through the courts. That is different than a complaint made to the Employment Standards Branch under the Act. Those who wish to consider an action for wrongful dismissal should seek legal advice. The Employment Standards Branch cannot provide this advice.

The Employer's Right to Fire

An employer has the legal right to terminate an employee. The Act does not affect this right. It does require that an employer who wishes to terminate an employee must give the employee an appropriate amount of written working notice, compensation in lieu of such notice, or a combination of the two. What is appropriate is determined according to the employee's length of service. For this reason the Act refers to compensation paid in lieu of notice as "compensation for length of service." More information is available in the factsheet *Termination of Employment*.

An employer does not have to give written notice or compensation for length of service to an employee who is dismissed for "just cause."

Burden of Proof

In order to be relieved of the requirement to give written notice or to pay compensation for length of service upon terminating an employee, the onus is on the employer to prove that just cause for termination exists.

What Constitutes Just Cause?

Following are some examples of what may constitute just cause:

- Theft;
- Fraud and dishonesty;
- Assault or harassment of co-workers;
- Breach of duty;
- Serious wilful misconduct;
- Conflict of interest, especially if it involves provable loss to the employer;
- Serious breach of company rules or practices;
- Serious undermining of the corporate culture;
- Chronic absenteeism or tardiness;
- Unsatisfactory performance.

Serious Infractions

Serious infractions which involve things like theft, fraud, dishonesty, conflict of interest or wilful misconduct may require only one provable incident to justify dismissal without written notice or compensation for length of service.

The extent to which employment misconduct constitutes just cause must be considered on a case-by-case basis. One test is whether it can be said that the employee behaved in a manner totally inconsistent with the continuation of employment.

Wilful misconduct can be defined as a situation where the employee knew what to do and did not do it, or knew what not to do and deliberately did it. A mistake or error in judgment, especially if due to inexperience or lack of training, is not wilful misconduct.

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Other Circumstances

Unsatisfactory performance, or instances of minor misconduct such as absenteeism or tardiness do not normally relieve an employer of the requirement to give written notice or to pay compensation for length of service when terminating an employee.

Where an employer seeks to rely on unsatisfactory performance or instances of minor misconduct to prove just cause, it must show that:

- A reasonable standard of performance was established and communicated to the employee;
- The employee was clearly warned that his or her performance was below the established standard and that continued failure to meet the standard would result in dismissal;
- The employee was given a reasonable amount of time to meet the required standard of performance; and
- The employee still failed to meet the standard.

Where the dismissal is related to the inability of the employee to meet the requirements of the job, and not to any misconduct, the employer must be able to show that reasonable efforts were made (e.g. additional training or supervision) to assist the employee to meet the expectation.

Condoning Unsatisfactory Performance or Behaviour

The employer must consistently apply company rules or practices. The employer cannot argue just cause if an employee is terminated for misconduct the employer has excused in the past, or that it permits in other employees.

If an employer has forgiven misconduct, or if it has failed to take action, it cannot later use that misconduct to prove just cause. In order to be relied on as proof of just cause, serious misconduct must result in dismissal at the time, or within a reasonable amount of time after an employer has conducted an investigation.

Example:

An employee is caught stealing a small amount of money from the employer's till. The employee explains that she needed to pay her child's school fee, and that she intended to replace the money on the next payday. The employer decides not to terminate the employee. A month later, the employee is late for work two days in a row and is terminated. The employer cannot use the theft to prove just cause for terminating the employee.

