

Termination of Employment

The B.C. *Employment Standards Act* does not remove an employer's right to terminate an employee. The Act requires that employees who are terminated receive written notice or compensation based on length of service.

Compensation eligibility

An employee who is terminated may be eligible for compensation based on the following formula:

- After three consecutive months of employment – one week's pay;
- After 12 consecutive months of employment – two weeks' pay;
- After three consecutive years – three weeks' pay, plus one week's pay for each additional year of employment to a maximum of eight weeks.

A week's pay is calculated by:

- Totalling the employee's wages, excluding overtime, earned in the last eight weeks in which the employee worked normal or average hours; and
- Dividing the total by eight.

The sale, lease or transfer of a business does not typically interrupt an employee's period of continuous employment unless the employee has been terminated by the vendor employer.

No compensation required with working notice

No compensation is required if an employee is given advance **written** notice of termination equal to the number of weeks for which the employee is eligible. This notice **must** be in writing.

An employee can also be given a combination of written notice and compensation equal to the number of weeks of pay for which the employee is eligible.

An employee must be able to work during the notice period. If an employee is on vacation, leave, temporary layoff, strike or lockout, or unavailable for work due to medical reasons during the notice period, the employer must either suspend the notice period until the employee returns to work or pay that employee compensation in lieu of notice.

If employment continues after the notice period ends, the notice is of no effect.

Once written notice has been given, the employer may not alter any condition of employment, including the wage rate, without the employee's written consent.

No notice or compensation required

Notice or compensation is not required if:

- The employee has not completed three consecutive months of employment;
- The employee quits or retires;
- The employee is dismissed for just cause (see "Just Cause" factsheet);
- The employee works on an on-call basis doing temporary assignments, which he or she can accept or reject;
- The employee is employed for a definite term;
- The employee is hired for specific work to be completed in 12 months or less;

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- It is impossible to perform the work because of some unforeseeable event or circumstance (other than bankruptcy, receivership or insolvency);
- An employer whose principal business is construction employs the employee at one or more construction sites;
- The employee refuses reasonable alternative employment;
- The employee is a teacher employed by a board of school trustees.

If a definite term or specific work is extended for at least three months past its scheduled completion, the definite term and specific work exceptions described above do not apply.

Temporary layoff

A fundamental term of an employment contract is that an employee works and is paid for his or her services. Therefore, **any** layoff, including a temporary layoff, constitutes termination of employment **unless** the possibility of temporary layoff:

- is expressly provided for in the contract of employment;
- is implied by well-known industry-wide practice (e.g. logging, where work cannot be performed during “break-up”); or
- is agreed to by the employee.

In the absence of an express or implied provision in an employment agreement that allows temporary layoff, the Act alone does **not** give employers a general right to temporarily lay off employees.

Where temporary layoff is permitted by the terms and conditions of employment, the Act applies to limit it to:

- a layoff of up to 13 weeks in a period of 20 weeks, or
- a period of time in which an employee covered by a collective agreement has the right to be recalled.

If an employee's hours are reduced, a week of layoff is a week in which an employee earns less than 50 percent of his or her weekly wages at the regular rate, averaged over the previous eight weeks.

A temporary layoff becomes a termination when:

- it exceeds 13 weeks in any period of 20 consecutive weeks, or
- the recall period for an employee covered by a collective agreement is exceeded.

When a temporary layoff becomes a termination, the beginning of the layoff is the termination date and the employee's entitlement to compensation for length of service is based on that date.

Group terminations

Where an employer intends to terminate 50 or more employees at a single location within a two-month period, the employer must give written notice of group termination to each employee affected. The employer must also notify the Minister of Labour and any trade union that represents the employees. The length of the required notice is set out in the Act and varies depending on the number of employees affected.

If written notice is not given, the employer must give termination pay instead. If the length of written notice given is less than the Act requires, the employer must give a combination of notice and termination pay.

Group termination requirements are in addition to individual termination requirements. The individual and group notice periods may not coincide.

Branch may deem employment terminated

If an employer substantially alters a condition of employment, the Branch may determine that a person's employment has been terminated. In such a case, the termination provisions of the Act apply.

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Wrongful dismissal

Some employees who are terminated 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.

If an employee quits

An employee who voluntarily quits his or her employment is not entitled to written notice of termination or compensation for length of service. Final wages, including any outstanding wages such as annual vacation pay, statutory holiday pay and overtime either worked or in a time bank, must be paid to the employee within six days after the employee's last day of work. The Act does not require the employee to give notice to the employer.

If an employee does give notice, the employer may accept or refuse the notice. If the employer refuses the notice, or terminates the employee during the notice period, the employer must pay compensation equal to the lesser of:

- the remaining amount of notice the employee has given; or
- the employee's statutory entitlement under the Act.

Collective agreements

If a collective agreement does not contain group termination benefits equal to or greater than those provided in the Act, the Act applies.

Questions about the application of these sections to employees covered by a collective agreement must be addressed through the grievance procedure.

