



Labour

Information on **LABOUR STANDARDS**

10 TERMINATIONS

Part III of the *Canada Labour Code* (Labour Standards)

Employee terminations are regulated under Part III of the *Canada Labour Code* in regard to Individual Termination (notice), Severance Pay, Unjust Dismissal and Group Termination.

The following questions and answers will be of interest to employers and employees under federal jurisdiction. Pamphlet 1 of this series describes the types of businesses covered by the Code. It is available from any Labour Program office and on the labour.gc.ca website.

INDIVIDUAL TERMINATION

1. What notice or payment in lieu of notice must be given to an employee whose employment is being terminated?

An employee is entitled to written notice of the employer's intention to terminate his or her employment, at least two weeks before the date specified in the notice. In lieu of such notice, the employee is entitled to two weeks wages at the regular rate.

2. Does the requirement for notice or pay in lieu apply to all employees?

It applies to any employee whose employment is being terminated except as follows:

- a) an employee who has not completed three consecutive months of continuous employment;
- b) an employee who terminates his or her own employment;
- c) an employee who is dismissed for just cause;

-
- d) an employee who is on a lay-off that does not constitute a termination of employment (see question 6).

3. Is an employer required to give individual notice of termination or pay in lieu of notice to an employee covered by a group termination notice?

Yes. Even though an employee's termination is included under a notice given in respect of a group termination, individual notice is still required.

4. Does this provision apply in the case of an employee covered by an agreement which provides for "bumping rights", that is, which authorizes an employee whose position becomes redundant to displace someone having less seniority?

When an employee is covered by a collective agreement that provides for "bumping rights", the employer must advise the union in writing two weeks before the position becomes redundant and post a copy of the notice prominently in the work place. The employer may, however, choose to pay two weeks regular wages to the laid-off employee in lieu of notice.

5. Does the Code require an employee to give notice if he or she terminates the employment?

No.

LAY-OFFS

6. Are all lay-offs considered terminations?

No. Certain lay-offs do not constitute terminations of employment such as when:

- a) a lay-off is a result of a strike or lockout;
- b) the term of the lay-off is three months or less;
- c) the term of the lay-off is for more than 3 months but not more than 12 months, and the employees maintain recall rights pursuant to a collective agreement.

In certain circumstances, other lay-offs of more than three months may not constitute a termination of employment. For details, please consult section 30 of the *Canada Labour Standards Regulations* or any Labour Program office.

SEVERANCE PAY

7. How long must an employee have been employed with the employer to qualify for severance pay?

An employee must have completed at least 12 consecutive months of continuous employment to qualify for severance pay.

8. Are there any absences from employment that do not interrupt continuity of employment?

Yes. Lay-offs that are not a termination of employment under the Code (see question 6) and absences permitted or condoned by the employer.

9. How much severance pay is an employee entitled to?

The equivalent of two days pay at the employee's regular rate of wages for regular hours of work for each complete year of employment, with a minimum benefit equivalent to five days wages.

10. Are employees entitled to severance pay if they are laid off?

Yes, if the lay-off is a termination within the meaning of the legislation and the employees meet the service requirements described above (see question 6).

11. Are there any other circumstances in which the employer is not required to provide severance pay?

Yes. Severance pay does not have to be paid to employees dismissed for just cause.

12. What happens if an employee on a lay-off that is not a termination under the Code fails to return to work after having been recalled by the employer?

The employee is deemed to have terminated his or her own employment and is not entitled to severance pay.

13. Does this mean that an employee who quits or otherwise terminates his or her own employment is not entitled to severance pay?

Yes. In such cases the employer must pay all wages and any other amounts that may be due to the employee, but is not required to pay severance pay.

14. What happens if an employer is unable to recall an employee to work after a lay-off that is not a termination under the Code?

The lay-off becomes a termination, and the employer must pay severance pay to the employee. In addition, pay in lieu of notice must be given.

UNJUST DISMISSAL

Part III of the *Canada Labour Code* provides a procedure for making complaints against a dismissal that an employee considers to be unjust.

15. Who is entitled to protection from unjust dismissal?

All employees, managers excluded, who have completed at least 12 months of continuous employment with the same employer and who are not covered by a collective agreement.

For more information on the unjust dismissal provisions of the *Canada Labour Code*, see pamphlet 8 – *Unjust Dismissal*.

GROUP TERMINATION

16. What constitutes a group termination?

The termination of 50 or more employees from a single industrial establishment either simultaneously or within any period not exceeding four consecutive weeks.

17. To whom must an employer give notice of a group termination?

Written notice of a group termination must be given to the Minister of Labour, Ottawa, Ontario, K1A 0J2, with copies sent to:

- a) the Minister of Human Resources and Skills Development Canada, Ottawa, Ontario, K1A 0J9;
- b) the Canada Employment Insurance Commission, Ottawa, Ontario, K1A 0J9;
- c) any trade union certified to represent any employee in the group being terminated;
- d) any employee in the group being terminated who is not represented by a trade union.
(This requirement may be met by posting a copy of the notice in the work place where people can see it.)

18. When must an employer give notice of a group termination?

At least 16 weeks before the date the terminations commence.

19. What information must an employer include in the notice?

A notice of group termination of employment must include:

- a) the name of the employer;
- b) the location at which the termination is to take place;
- c) the nature of the industry of the employer;
- d) the date or dates on which the employer intends to terminate the employment of any one or more employees;
- e) the estimated number of employees in each occupational classification whose employment will be terminated;
- f) the reason for the termination of employment; and
- g) the name of any trade union certified to represent any employee in the group of employees whose employment is to be terminated or recognized by the employer as a bargaining agent for any such employees.

20. Is it possible for an employer to obtain a waiver from the requirement to give notice?

Yes. The Code provides that the Minister of Labour may waive any requirement of this Division where it is shown that such application would be prejudicial to the interests of the employee or of the employer, or would be detrimental to the operation of the industrial establishment. The Minister of Labour may also waive any or all of the requirements of this Division if it is demonstrated that measures are already in place that are substantially the same as those required to be established. Applications for such a waiver should be made as early as possible to the Minister of Labour, Ottawa, Ontario K1A 0J2.

21. Does an employer have obligations in group termination situations other than the notice requirement?

Yes. With some exceptions (see question 27), employers undertaking group terminations are required to establish a committee of employer and employee representatives. See also questions 1-14.

22. What is the purpose of the committee?

To develop an adjustment program aimed at eliminating the necessity for termination or, where this is not possible, to minimize its impact on affected employees and assist them in obtaining other employment.

23. When must an employer establish a committee?

An employer must establish a committee immediately upon providing the notice of termination. The

committee must hold its first meeting within two weeks of the date the notice is given.

24. How much time does a committee have to develop an adjustment program?

The maximum time allowed is 16 weeks or the length of the notice period.

25. What happens if the committee cannot agree on an adjustment program?

Either party may apply to the Minister of Labour for the appointment of an Arbitrator to settle outstanding issues. However, application cannot be made until at least six weeks after the notice of termination is given.

26. Are there restrictions on the Arbitrator's authority?

Yes. The Arbitrator has a duty to assist the parties in developing a program. However, his or her authority to arbitrate is restricted to matters that are normally the subject of collective agreement clauses on termination of employment. An Arbitrator is not empowered to review the employer's decision to terminate, or to delay the termination.

27. Under what circumstances are employers not required to establish a joint planning committee?

In broad terms, employers are not required to establish joint planning committees if the Minister of Labour has granted a waiver from that requirement as detailed in question 20. For more information regarding requirements for waivers, refer to section 228 and 229, Part III of the *Canada Labour Code*, or contact your local Labour Program office.

This pamphlet is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

The number, 1-800-641-4049, offers 24-hour bilingual information on the Directorate's programs and services and provides a single point of contact for our clients and Canadians.

You can download this publication by going online: <http://www12.hrsdc.gc.ca>

This document is available on demand in multiple formats (large print, Braille, audio cassette, audio CD, e-text diskette, e-text CD, or DAISY), by contacting 1 800 O-Canada (1-800-622-6232). If you use a teletypewriter (TTY), call 1-800-926-9105.

© Her Majesty the Queen in Right of Canada, 2012

For information regarding reproduction rights, please contact Public Works and Government Services Canada at: 613-996-6886 or copyright.droitdauteur@pwgsc-tpsgc.gc.ca

PDF

N° de cat. : HS23-2/10-2012E-PDF

ISBN: 978-1-100-21583-9

HRSDC

N° de cat. : LT-171-12-12E

Notes:
