

# EMPLOYMENT STANDARDS FACT SHEET

# TERMINATION OF EMPLOYMENT AND TEMPORARY LAYOFF

## *When an Employer Terminates Employment*

### 1. What notice or pay in lieu of notice (termination pay) does the *Employment Standards Code* require an employer to give to an employee whose employment is being terminated?

The employer must give written termination notice of at least:

**one** week for employment of more than 3 months, but less than 2 years;

**two** weeks for employment of 2 years or more, but less than 4 years;

**four** weeks for employment of 4 years or more, but less than 6 years;

**five** weeks for employment of 6 years or more, but less than 8 years;

**six** weeks for employment of 8 years or more, but less than 10 years;

**eight** weeks for employment of 10 years or more.

The employer may provide termination pay for the appropriate period or a combination of termination notice and termination pay. Some employees may also be entitled to a greater notice period by the courts than the minimum standards legislated by the *Code*.

### 2. Are there employees who are not entitled to receive termination notice under the *Code*?

Yes, termination notice is not required for employees who:

- have been terminated for just cause
- have been employed for three months or less
- are employed for a definite term or task of less than 12 months (this 12 month limit does not apply to employees engaged in oilwell drilling)
- refuse reasonable alternate work
- if the employee refuses work made available through a seniority system
- are not provided with work by reason of a strike or lockout occurring at the employee's place of employment

- are casual employees who may elect to work or not to work for a temporary period when requested to work by the employer
- are employed on a seasonal basis, and on the completion of the season the employment is terminated
- are subject to a contract of employment that is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer
- are employed in the construction industry
- are employed in the cutting, removal, burning or other disposal of trees and brush or either of them for the primary purpose of clearing land

It is important to remember that while the *Code* does not legislate termination notice for some employees, these employees may be entitled to notice at common law.

### 3. Are employees who work in fabrication shops preparing material for construction installations or office staff on construction sites considered to be construction employees?

No. Only those employees working at a construction site and directly involved in construction are considered to be construction employees.

### 4. Are students and part-time employees entitled to termination notice?

Yes, unless any of the factors set out in Question #2 apply.

### 5. How may notice be given?

The employer must give written termination notice to the employee.

### 6. How does an employer calculate termination pay when the wages of an employee vary from one pay period to another?

Take the average of the employee's wages for the 3-month period immediately prior to termination of employment.

**7. Are there situations when the *Employment Standards Code* prohibit an employer from dismissing an employee?**

There are two situations when an employer may not dismiss an employee:

- when an employee is on maternity leave
- or has started or is entitled to parental leave.

Otherwise, proper notice or termination pay must be provided when dismissing an employee, unless one of the situations in Question #2 applies.

**8. Does the *Code* prohibit an employer from terminating an employee for certain reasons?**

Yes. An employer may not terminate an employee's employment because:

- the employee started maternity leave
- the employee is entitled to or has started parental leave
- garnishment proceedings are being or might be taken against the employee
- the employee gave evidence or may give evidence at any inquiry or in any proceeding or prosecution under the *Code*
- the employee requested or demanded anything to which the employee is entitled under the *Code*
- the employee made or is about to make any statement or disclosure that may be required of the employee under the *Code*

It is important to note that the [Human Rights, Citizenship and Multiculturalism Act](#) also prohibits terminating an employee's employment for certain reasons. Employers and employees are required to comply with this legislation as well.

**9. What is the employer's responsibility when an employee is dismissed and notice is required?**

The employee must be provided with termination notice in writing or termination pay. A combination of notice and termination pay is allowed. Payment of all wages, overtime, general holiday pay and vacation pay owing to the date of termination is due within three days.

**10. What is the employer's responsibility when an employee is dismissed for "just cause"?**

The employer must pay all wages, overtime, general holiday pay and vacation pay due to the employee within 10 days of the date of termination. The employer must be able to support the position that there was just cause for dismissal without notice.

**11. If termination notice is given and the employee continues to be employed after the date specified for termination of employment, is the notice still valid?**

No. If the employer intends to terminate the employee subsequently, it will be necessary to issue another termination notice or provide termination pay.

**12. Can an employer reduce an employee's hours or wages during the period of termination notice?**

No. During the notice period, the employer may not reduce the wage, wage rate, or any other term or condition of employment.

***When an Employee Terminates Employment***

**13. How much notice is an employee required to give when terminating employment?**

The statute requires the employee to give one week's *written* notice if the employee has been employed by the employer for more than 3 months but less than 2 years, and 2 weeks *written* notice, if the employee has been employed by the employer for 2 years or more.

An employee does not have to give notice if:

- there is an established custom or practice in the industry respecting termination of employment
- the employee terminates employment because the employee's personal health or safety would be in danger if the employee continued to be employed by the employer
- the contract of employment is or has become impossible for the employee to perform because of unforeseeable or unpreventable causes beyond the control of the employee
- the employee has been employed by the employer for 3 months or less
- the employee is temporarily laid off

- the employee is laid off after refusing an offer by the employer of reasonable alternative work
- the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment
- the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer
- the employee terminates the employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay

**14. What is the employer's responsibility when an employee quits and gives notice?**

The employer must pay all wages, overtime, general holiday pay and vacation pay due to the employee within three days following termination of employment.

**15. What is the employer's responsibility when an employee quits without notice?**

The employer must pay all wages, overtime, general holiday pay and vacation pay due to the employee within 10 days after the date on which the notice would have expired if it had been given.

**Temporary Layoff**

**16. What notice is required to layoff employees?**

Under the *Code*, an employer who wishes to maintain the employment relationship may temporarily layoff an employee. However, the Alberta Court of Appeal has determined that a valid notice of temporary layoff must:

- be in writing,
- state that it is a temporary layoff notice and its effective date
- include sections 62, 63 and 64 of the *Code*

If these conditions are not met, the employee may have been unjustly or constructively dismissed. Some courts have also held that while the *Code* permits an employer to temporarily layoff an employee in the absence of a collective agreement or contract allowing layoff, the employee maintains the right to sue for constructive or wrongful dismissal if laid off in those circumstances.

**17. How long may temporary layoff last?**

Temporary layoff cannot be more than 59 days in duration. On the 60<sup>th</sup> day consecutive day of temporary layoff, the employee's employment terminates and the employer must pay the employee termination pay on that day unless:

- wages or benefits continue to be paid on behalf of the employee; or
- there is a collective agreement that provides recall rights longer than the 59 days.

**18. Return to Work**

During the 59-day period, an employer may recall the employee with one week's written notice. Should the layoff extend past the 59 days, the employment terminates, and termination pay appropriate to the length of service of the employee is required.

**19. Are there separate layoff rules for school employees and school bus drivers?**

Yes. The summer break in the school year may exceed 59 days. Section 5.1 of the *Regulation* permits a temporary layoff to exceed 59 days during the time between the end of a school year and the beginning of the next school year, if certain conditions are met.

**20. Can the employment of an employee be terminated while on temporary layoff?**

Yes, but the employee is entitled to termination pay.

**21. What happens if an employee, who is on temporary layoff, does not return to work within seven days after the employer has requested, in writing, that the employee return to work?**

The employee would not be entitled to any termination notice or termination pay, provided that the temporary layoff notice is valid (see point 17). The employer should retain a copy of the written request.

**Calculating Length of Employment**

**22. How is the notice period calculated when an employee has been employed by the same employer more than once?**

The *Code* states that when an employee has been employed by an employer more than once, the periods of employment with that employer are considered to be one period of employment if not more than 3 months has elapsed between the periods of employment. For example, if an employee works for an employer for 6 months, then quits for a 2-

month period, and then returns to work for another 18 months, the employee has worked for the employer for 24 months, or 2 years, and the notice period would be at least 2 weeks.