



Factsheet

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and *Regulation* for purposes of interpretation and application of the law.

March 2005

Termination of Employment

The B.C. *Employment Standards Act* does not take away an employer's right to terminate an employee with or without cause. The Act requires that employees who are terminated receive 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.

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. Please note that 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' pay for which the employee is eligible.

An employee cannot be on vacation, leave, temporary layoff, strike or lockout, or be unavailable for work due to medical reasons during the notice period.

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 quit or retired.
- The employee was dismissed for just cause.
- The employee worked on an on-call basis doing temporary assignments, which he or she could accept or reject.
- The employee was employed for a definite term.
- The employee was hired for specific work to be completed in 12 months or less.
- It was impossible to perform the work because of some unforeseeable event or circumstance (other than bankruptcy, receivership or insolvency).

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Fax: 250 612-4121

Website: www.labour.gov.bc.ca/esb

- An employer whose principal business is construction employed the employee at one or more construction sites.
- The employee refused reasonable alternative employment.
- The employee was 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 would not apply.

Temporary layoff

An employer is not required to give notice of termination or pay compensation if an employee is laid off temporarily.

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.

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

A temporary layoff becomes a termination when:

- A layoff exceeds 13 weeks in any period of 20 consecutive weeks, or
- A recall period for an employee covered by a collective agreement has been exceeded.

A layoff other than a temporary layoff is considered a termination.

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 Skills Development and Labour, and any trade union that represents the employees. The length of notice depends on the number of employees affected.

If the amount of written notice is less than the required termination pay, employees must be paid the difference.

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.

Wrongful dismissal

"Wrongful dismissal" is different than termination under the *Employment Standards Act*. Employees may wish to sue their ex-employers in the courts for wrongful dismissal. Anyone considering this option would need to seek independent legal advice.

If an employee quits

Employees who voluntarily terminate their employment are not entitled to written notice of termination or compensation pay. 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.

Employees covered by collective agreements

If a collective agreement does not contain group termination benefits equal to or greater than that provided in the Act, then the *Employment Standards Act* applies.

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