

Discharging and Laying-off Employees

Labour Standards information for the restaurant and foodservices industry



Labour Standards regulations do not prohibit employers from laying off or discharging employees. However, it does require the employee be given notice of impending lay-off or if notice is not possible, pay in lieu of notice.

1. Notice of lay-off or termination.

Employers must give their employees written notice when they are being laid off or discharged.

A 'lay-off' means the temporary termination of the services of an employee for a time greater than six consecutive scheduled days. A 'discharge' includes a termination, dismissal, a forced resignation, or a forced or significant change in the employment contract.

The amount of notice employees must receive depends on the length of time the employee has been employed. Annual holidays cannot form part of the notice. The employer cannot reduce the employee's pay and normal hours of work during the notice period.

Length of Service	Minimum Notice
0 (but less than 3 months)	0 weeks
3 (months but less than 1 year)	1 week
1 year (but less than 3 years)	2 weeks
3 years (but less than 5 years)	4 weeks
5 years (but less than 10 years)	6 weeks
10 years and over	8 weeks

Note that labour standards provides job protection for pregnant employees and employees who are disabled even during the first three-month probationary period.

2. Pay in lieu of notice.

If appropriate notice of lay-off is not given, pay in lieu of notice is required. Pay in lieu of notice means payment of the employee's regular wages for the minimum notice period required.

If wages vary from week to week, a normal week's wages is the average wage for the last four weeks of work, not including overtime.

3. Payment of outstanding wages.

When an employee is terminated, all wages, holiday pay owing and if required, pay in lieu of notice, must be paid within 14 days.

4. Just cause.

Notice is not required where an employee is fired for 'just cause'. Just cause is not defined in *The Labour Standards Act*. However, over the years, the courts have handed down numerous decisions on this issue. Generally, the courts have ruled that an employer does not have just cause to terminate an employee without notice or pay in lieu of notice merely because the employer is dissatisfied with the employee's performance. However, just cause may exist to immediately dismiss an employee without prior warning if the employee is guilty of very serious misconduct (for example, theft). The facts and circumstances surrounding the misconduct must be examined carefully. Each case is different.

In most cases, more than one incident of employee misconduct is required for an employer to fire an employee for just cause. For these less serious cases of employee misconduct, the employer should encourage improvements by identifying reasonable performance standards, conducting performance reviews over a reasonable period of time, and warning the employee of the consequence of failing to meet the required standards.

Note: This publication is not a legal document. The original Act and Regulations should be consulted for all purposes of interpretation and application of the law.



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