

# Canada Labour Code Part III



**Lay-offs, Termination  
and Unjust Dismissal**

# Application

- Applies:
  - When employee/employer relationship exists
  - Regardless of other laws, customs, contracts or arrangements
  - To interns and student interns
  - To part-time, full-time, seasonal, permanent or casual employment, and temporary foreign workers





# **Individual Termination**

# Lay-off vs. Termination

- Lay-off is **NOT** employment termination if:
  - the lay-off is a result of a strike or lockout
  - Lay-off less than three months
  - Lay-off more than three months has call-back date within six months
  - the term of the lay-off is more than three months but not more than 12 months and the employee, throughout the term of the lay-off, maintains recall rights pursuant to a collective agreement

**Note:** *Recall of less than two weeks does not interrupt lay-off period.*



# Termination from Employment

- Lay-off IS considered to be a termination:
  - When employer has no intention of recalling employee to work
- Record of Employment
  - Responsibility of Service Canada
- Vacation Pay
  - Payable within 30 days of dismissal from employment



# Individual Termination

- If an employer terminates an employee who has completed at least three consecutive months of employment by the employer, the employer must give:
  - notice in writing, of the employer’s intention to terminate their employment on that date,
  - wages at their regular rate of wages for their regular hours of work, in lieu of the notice, or
  - A combination of notice and wages
- Termination notice and/or wages in lieu of notice are **not required** if termination is for just cause



# Individual Termination

- The number of weeks of notice and/or pay is based on the length of completed consecutive employment

Length of completed continuous employment	Weeks of notice and/or pay
3 months	2
3 years	3
4 years	4
5 years	5
6 years	6
7 years	7
8 or more years	8



# Individual Termination

- An employer must give any employee whose employment is terminated a statement in writing at the time of termination.
- The statement must set out:
  - vacation benefits,
  - wages,
  - severance pay, and
  - any other benefits and pay arising from their employment with the employer.





# Severance Pay

- An employer who terminates the employment of an employee who has completed twelve consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, pay to the employee the greater of:
  - Two days pay per completed year of employment OR
  - Five days wages at the employee's regular rate of wages for his regular hours of work
- Severance pay not required if dismissal for just cause





# Unjust Dismissal

# Unjust Dismissal: Complaints Process

- Employee must:
  - Have completed 12 months' continuous employment
  - Make their complaint within 90 days of dismissal
  - Make their complaint in writing
- Employee must not be:
  - A managers or superintendents or exercise management functions
  - Subject to a collective agreement

***Note:*** Also applies to constructive dismissals



# Unjust Dismissal: Complaints Process Cont'd

- Employer is required to:
  - If requested by the complainant, give written reasons for dismissal within 15 days
- The Head of Compliance and Enforcement is required to:
  - assist the parties to the complaint to settle the complaint
- If a complaint is not settled in a time that is considered to be reasonable in the circumstances, the Head of Compliance and Enforcement shall, on the written request of the person who made the complaint that the complaint be referred to the Canadian Industrial Relations Board.



# Just Cause

- Employer must:
  - Clearly communicate expectations of employees and what will happen if not met
  - Take measures (actions) to help employee correct inappropriate behaviour as opposed to disciplinary action



# Progressive Discipline

- Progressive discipline :
  - Verbal warning and written warnings
  - Suspension (may vary in length) and/or final warning
  - applied consistently and fairly to everyone
  - Act early



# Progressive Discipline cont.

1. Clarify job expectations / give training and supervision;
2. Give time and opportunity for job performance to improve;
3. Give written warning of what will happen if work does not improve;
4. Review performance:
  - a. Work improves, problem solved (end process); **or**
  - b. Work does not improve, problem unresolved;
5. Employee dismissed (end process).



# Records

- Keep a written record with dates of:
  - Meetings
  - Training sessions
  - Warnings
  - Performance reviews
  - Keep records for 3 years





# Scott Test

Federal Court decision in *Bird v. White Bear First Nation*, 2017 FC 477, provided the following direction:

- Has the employee given just and reasonable cause for some form of discipline by the employer?
- If so, was the employer's decision to dismiss the employee an excessive response in the circumstances?
- If so, what alternative measure should be substituted as just and equitable?

Mitigating factors to be considered:

- seriousness and immediacy of the misconduct;
- premeditated or repetitive nature of the misconduct (as opposed to momentary or otherwise isolated lapses);
- employee's length of time and his or her disciplinary record;
- employer's past corrective disciplinary attempts to solve to the problem; and
- dismissal's consistency with the employer's policies, or whether it is arbitrary and harsh treatment.



# Questions - Labour Program Contact

- For more information:

- Toll-free: 1-800-641-4049

- <https://www.canada.ca/en/services/jobs/workplace/federal-labour-standards.html>



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