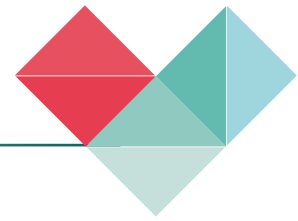




Information on **Labour Standards**

10 RIGHTS ON TERMINATION OF EMPLOYMENT



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

The *Canada Labour Code*, Part III sets out rights on termination of employment and governs Individual Termination of Employment, Severance Pay, Unjust Dismissal and Group Termination.

The following questions and answers will be of interest to employers and employees working in the federal jurisdiction. [Publication 1- Summary](#) describes the types of businesses covered by the *Code*.

INDIVIDUAL TERMINATION OF EMPLOYMENT

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

An employer must provide an employee with at least two weeks written notice of their intention to terminate the employment of an employee. In lieu of written notice, the employer must pay two weeks wages at the regular rate to the employee.

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

This requirement 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 their 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);
- e) where the contract provides an end and that the work ends on that date.

3 Does the Code require an employee to give notice to their employer when ending their own employment?

No. However, if there is an employment contract that contains a requirement to do so, an employee may be required to provide notice to their employer.

SEVERANCE PAY

4 When does an employee qualify for severance pay?

An employee who has completed at least 12 consecutive months of continuous employment qualifies for severance pay.

5 How is severance pay calculated?

Severance pay is two days' pay at the employee's regular rate of wages for each full year of employment, with a minimum of five days' pay.

6 Are there any absences from employment that do not interrupt the continuity of employment?

Yes. Absences that do not interrupt the continuity of employment are lay-offs that are not a termination of employment under the *Code* (see question 4) and absences permitted or condoned by the employer.

7 Is an employer required to provide severance pay in all circumstances?

An employer is required to pay severance pay in all circumstances except as follows:

- a) when a lay-off does not result in a termination of employment;
- b) when an employment contract contains an end date and the contract ends;
- c) when an employee is dismissed for just cause; and
- d) when an employee quits or terminates their own employment.

LAY-OFF

8 Is a lay-off considered a termination of employment?

No. Certain types of lay-off do not constitute a termination of employment such as when:

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

9 What happens if an employer is unable to recall an employee to work during a lay-off?

The lay-off becomes a termination of employment, and the employer must pay severance pay to the employee. In addition, if written notice of termination of employment was not provided, pay in lieu of notice must be paid.

10 What happens if an employee does not return to work when recalled while on a lay-off?

If the employee does not return to work, the employee has ended their employment and is not entitled to severance pay and termination pay.

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.

11 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 publication 8 – *Unjust Dismissal*.

GROUP TERMINATION OF EMPLOYMENT

12 What constitutes a group termination of employment?

A group termination of employment is the termination of employment of 50 or more employees working at a single industrial establishment either on the same date or within any four-week period.

13 When an employer is planning a group termination of employment, what must they do?

When a group termination of employment is planned, a federally regulated employer is required to provide written notice to the Minister of Labour at least 16 weeks before the terminations of employment are to take effect. An employer is also required to cooperate with the Canada Employment Insurance Commission, provide affected employees with a statement of benefits and establish a Joint Planning Committee.

In addition to the notice provided to the Minister, the employer must give notice to each employee affected by the terminations of employment.

14 What is an industrial establishment?

An industrial establishment is determined in one of two ways:

1. For the following employers, this is set out in the [Canada Labour Standards Regulations Schedule I](#):
 - a) Canadian Pacific Limited;
 - b) Canadian National Railway Company;
 - c) Via Rail Canada Inc.;
 - d) Air Canada; and
 - e) Bell Canada.
2. For remaining federal jurisdiction employers, the industrial establishment is determined by consulting the appropriate [Employment Insurance Economic Region](#).

15 How is the four consecutive week period calculated?

The four-week period is calculated from the date of termination of employment of the first employee in the group whose employment is to be terminated and ends four weeks after.

Example	Number of Affect Employees per Week														Is this a Group Termination of Employment?
	0	1	0	0	48	49	0	1	0	0	1	49	0	0	
1 Week		1	2	3	4										No
2 Week					1	2	3	4							Yes
3 Week											1	2	3	4	Yes

Example 1: A group termination of employment did not occur because there are less than 50 employees affected during the four-week period. In this example, 49 employees were affected.

Example 2: A group termination of employment occurred because there are more than 50 employees affected during the four-week period. In this example, 98 employees were affected.

Example 3: A group termination of employment occurred because there are 50 employees affected during the four-week period.

16 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 industry or type of business of the employer;
- c) location or establishment where the affected employees work;
- d) number of affected employees (both unionized and non-unionized);
- e) date or dates of termination of employment;
- f) union information, if applicable; and
- g) the reason(s) for the group termination of employment.

To provide notice to the Minister of the group termination provisions, a [form](#) is available to assist employers with the process.

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

The written notice of a group termination of employment is to be sent to

Minister of Labour, Ottawa, Ontario, K1A 0J2, with copies sent to:

Minister of Employment and Social Development Canada, Ottawa, Ontario, K1A 0J9;

Canada Employment Insurance Commission, Ottawa, Ontario, K1A 0J9.

A copy of the notice should also be provided to the union representing affected employees.

If there is no union, a copy of the notice should be provided to all affected employees.

This requirement may be met by posting a copy of the notice in the work place where affected employees can see it. This includes electronically posting the document as long as all affected employees have access to the electronic system where the document is posted.

18 What is an employee entitled to when a group termination of employment is being implemented?

At least two weeks before the last day of work, or earlier if possible, an employer must provide the employee with a statement of benefits which includes information on the employee's wages, vacation pay and severance pay owed. In addition, information on any other benefits should be provided.

At the end of their employment, employees affected by a group termination of employment should receive:

- all outstanding wages, including overtime pay and general holiday pay owed;
- vacation pay;
- termination pay, if two weeks written notice was not provided; and
- severance pay for employees with more than 12 months service.

19 What is a Joint Planning Committee?

A Joint Planning Committee is established by the employer to develop an adjustment program aimed at minimizing the impact of the group termination of employment on affected employees. Adjustment measures may include early retirement packages, job reassignment and training within the organization, or assistance in finding new employment.

A Joint Planning Committee is set up when the notice is provided and continues until the end of the notice period, usually 16 weeks. Members of the committee include employee and employer representatives and they must hold their first meeting within two weeks of the notice being given to the Minister.

Within six weeks of the notice being given, the committee must complete an adjustment program for affected employees setting out the adjustment measures.

If an adjustment program is not ready in six weeks or some members are not satisfied with the proposed program, either the employees or employer representative may ask the Minister of Labour to appoint an Arbitrator to help resolve the dispute.

Is it possible for an employer to obtain a waiver from the group termination of employment provisions?

Yes. An employer may seek a waiver of any or all of the following requirements:

- a) to provide and post the 16-week written notice of group termination of employment;
- b) to provide statement of benefits to affected employees; or
- c) to form a joint planning committee.

In order to be granted a waiver, an employer must show that applying the provisions would:

- a) be unduly prejudicial to the interests of affected employees or of the employer;
- b) be seriously detrimental to the employer's operation; or
- c) not be necessary, because similar measures exist under a collective agreement or established employee adjustment program.

A request for waiver may be obtained by completing the form available from the Service Canada website: <http://catalogue.servicecanada.gc.ca/content/EForms/en/Profile.html?Group=HRSDC/LAB/LS> and sending it to the Minister of Labour at Ottawa, Ontario, K1A 0J2.

This publication 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.

Information about these provisions may be obtained from the Labour Program by calling toll free at 1-800-641-4049, by visiting the website at <https://www.canada.ca/en/employment-social-development/programs/employment-standards/federal-standards.html> or by submitting your questions or comments through the Labour Program [Contact Us form](#).

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