



Termination of Employment by Breena Murray

When an employee decides to leave their job, the amount of notice needed depends on how long they have worked for their employer. If they have been employed for less than one year, they must give at least one week's notice. When employment has been for longer than a year, two week's notice must be given.

That said, if an employee leaves their place of employment without giving notice, the employer has little recourse. Employers are no longer allowed to withhold wages when an employee quits without notice.

In contrast, when an employer decides to terminate the employment of an employee, they have three options. The first option is to give the employee notice of their termination. The minimum amount of notice required as set out in the *Employment Standards Code* is based on the length of time the employee has been with the employer, and is as follows:

- at least thirty days but less than one year -- one week
- at least one year and less than three years -- two weeks
- at least three years and less than five years -- four weeks
- at least five years and less than ten years -- six weeks
- at least ten years -- eight weeks

The second option is to pay the employee wages in lieu of notice. The employer can terminate employment immediately, but they would have to pay the employee an amount that is equal to what would have normally been earned by the employee during the notice period.

However, these notice periods in the *Code* are just the minimum required. Like everything in the *Employment Standards Code*, an employer can offer more, and in some case, may have to give more if a lawsuit happens. At common law, what is considered a reasonable notice period is often

much higher than the minimum standards.

The third option available to employers is to terminate the employment of an employee for just cause. If just cause for termination is alleged, the employer neither has to give notice of the termination or pay wages in lieu of notice. However, just cause can be quite hard to prove as courts do not like to condone dismissal without notice. If the employer does not actually have cause for the dismissal, they could be faced with a lawsuit for Wrongful Dismissal.

In order to prove dismissal for just cause is justified, the employer must show that the employee acted in a way that shows they purposefully disobeyed orders, neglected their duties, was dishonest in the course of their employment or was violent in the workplace.

There are other reasons when just cause dismissal may occur, but the employer has an extra burden to prove it is justified. For example, if the employee

has failed to follow policies, the employer must show employee knew about policy, understood its importance, and had tools to comply. Also, if the employee does not have the skills to perform their duties, they may be dismissed, but only if the employer shows that they provided adequate training to the employer beforehand. Finally, excessive absenteeism without justifiable reason may constitute a just cause for dismissal. However, when dealing with absenteeism, the employer must always consider its obligations under the Human Rights Code to accommodate persons with disabilities to the point that it causes them undue hardship.