



## Wrongful Dismissal by Jodi L. Wyman

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One common misconception in law is related to an employer's right to dismiss an employee. Employees often believe that without a good reason they cannot be dismissed. This is not so.

An employment relationship is akin to a contract relationship, and essentially either party can end the contract at any time. A party choosing to end the contract is however to give reasonable notice to the other party. If reasonable notice has not been given, a Court can grant the terminated employee payment in lieu of reasonable notice.

While one pay period is usually the minimum notice, Courts tend to expect more time the longer the employee has worked. The basic rule followed by the Courts has been that an employee is entitled to one month's notice for each year they have worked. If they have been at the job for five years, they are entitled to approximately five months notice, or five months wages instead. No notice is required if the employer has just cause to dismiss an employee. For

example if they have wilfully breached rules, committed fraud, or been dishonest, no notice would be required.

Since the well-known Supreme Court of Canada case of *Wallace v. United Grain Growers* in 1987, Courts have also been awarding additional wages when the employer has dismissed an employee in an inappropriate manner. For example, if they have caused the person embarrassment or unnecessary emotional stress, or been dishonest, the employer may have to pay additional compensation. In a recent Manitoba Court of Appeal case the employer did not allow the employee an opportunity to respond to allegations raised against him, but instead delivered a termination letter to his home, and changed the locks of the workplace the same evening.

Employers must remember to use basic common sense and decency when terminating an employee. First, they must ensure they have given reasonable notice. The nature of the employment, the age of the employee, and the

availability of similar employment will all affect how long the reasonable notice period is.

Secondly, a written termination notice should be provided to the employee in a direct and discreet way. Sensitivity should also be paid to personal circumstances. In a recent Ontario Superior Court case, a major bank was found liable for "intentional infliction of mental suffering". They transferred an employee to a new position for which she lacked the required skills and experience. She was transferred at the busiest time of year and her new department was understaffed. When she went on stress leave they ordered her back to work, and when she could not return they terminated her.

In this case, the employer had to pay a heavy cost for their lack of common sense and sensitivity.

Interestingly, employees have been held liable in the past for failure to give adequate notice to their employers when they decide to quit. These cases are not nearly as common as the

reverse scenario.

Matters of wrongful dismissal are sometimes settled peacefully with the employer agreeing to provide a positive letter of reference for the employee. Often the employee's main priority at this point is to secure new employment.

It is extremely important to remember however that the rules in employment law are generally disregarded in favour of any employment contract or collective agreement through a union. Parties are allowed to contract on whatever terms they choose, and the Court's principles generally only apply when there is no contract in existence. As well, human rights issues also come into play in employment law