



Employment standards tool kit for employers

Module 9 | Termination of employment

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Employment Standards Tool Kit for Employers: Module 9 – Termination of Employment | Jobs, Economy and Trade

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Introduction

This tool kit was developed by the Government of Alberta to help business owners and their employees understand and comply with the *Employment Standards Code* and Regulation.

Following the Code is your responsibility, and this tool kit is designed to help you do that.

The laws for Employment Standards are minimum requirements. Some tools, forms and a list of resources are provided to assist business owners in meeting or exceeding the minimum requirements. You may use the sample tools provided, or you may develop your own.

This resource does not outline all the requirements under the *Employment Standards Code* and Regulation.

This is not a definitive guide to the legislation and does not exempt readers from their responsibilities under applicable legislation.

In case of inconsistency between this resource and employment standards legislation, the legislation will always prevail.

Availability of legislation

In Alberta, the *Employment Standards Code* and Regulation outlines the requirements for employment standards. See alberta.ca/alberta-kings-printer to download these documents.

Official printed copies may be purchased from the Alberta King's Printer online at alberta.ca/alberta-kings-printer or in person at:

7th floor, Park Plaza
10611-98 Avenue Edmonton, Alberta T5K 2P7

Phone: 780-427-4952

Call any Government of Alberta office toll-free: Dial 310-0000, then the area code and telephone number you want to reach.

Other legislation that may apply to you includes:

Canada Labour Code: www.laws-lois.justice.gc.ca/eng/acts/L-2

Labour Relations Code: www.alrb.gov.ab.ca/legislation.html

Occupational Health and Safety Act, Code and Regulation: alberta.ca/occupational-health-safety

Alberta Human Rights Legislation: albertahumanrights.ab.ca

Workers' Compensation Board: www.wcb.ab.ca/home

Employment Standards website

Visit alberta.ca/employment-standards for more information on Alberta's employment standards.

The website provides detailed information on the rights and obligations of employers and employees under the *Employment Standards Code*, as well as information for specific groups, occupations and industries.

The website also provides access to other resources, including an interactive self-assessment tool for employers, webinars, and other publications.

General termination rules

The Code requires both employees and employers to give each other notice of their intention to end the employment relationship.

This module is divided into two parts:

- when an employee terminates employment
- when an employer terminates employment



Regardless of who decides to terminate the employment, if the period of employment is 90 days or less, no notice is required from either party.

Deadline of payments for amounts owed

Upon termination, an employee's earnings (wages, overtime pay, vacation pay, general holiday pay and termination pay) must be paid as follows:

- within 10 consecutive days after the end of the pay period in which termination occurred, or
- 31 consecutive days after the last day of employment.

The employer may choose whichever option best suits their needs.

Reference: *ES Code*, Section 8(2)



Best practice

Employers can avoid additional payroll expenses by paying final earnings as part of their regular pay run.

When an employee terminates employment

If an employee wishes to terminate employment, a written notice must be given to the employer as follows:

NOTICE	LENGTH OF EMPLOYMENT
1 week	More than 90 days, but less than 2 years
2 weeks	2 years or more

Reference: *ES Code*, Section 58(1)

Employees are not required to give termination notice if:

- they have been employed for less than 90 days
- there is a different established custom or practice in an industry
- continuing to be employed by the employer would endanger their personal health or security
- the contract of employment is impossible to perform due to unforeseeable or unpreventable causes beyond their control
- they are temporarily laid off or laid off after having refused reasonable alternate employment
- they are not provided with work as the result of a strike or lockout
- they are casually employed under an arrangement whereby they may elect to work or not when requested to do so
- they terminate their employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay

Reference: *ES Code*, Section 58(2)



Most construction employees are excluded from the Code's notice of termination and termination pay provisions. School employees and school bus drivers are not entitled to termination pay if they work until the end of the school year and are given the opportunity to work at the beginning of the next school year.

Reference: ES Regulation, Sections 5 and 5.1

When an employer terminates employment

Under the Code, an employer who terminates an employee's employment must give written termination notice of at least:

NOTICE	LENGTH OF EMPLOYMENT
1 week	More than 90 days, but less than 2 years
2 weeks	2 years or more, but less than 4 years
4 weeks	4 years or more, but less than 6 years
5 weeks	6 years or more, but less than 8 years
6 weeks	8 years or more, but less than 10 years
8 weeks	10 years or more

Reference: *ES Code*, Section 56

The employer may provide termination pay for the appropriate period or a combination of termination notice and termination pay.



A termination notice is null and void if an employee continues to be employed by the same employer after the date specified for termination of employment.

Reference: *ES Code*, Section 60

Determining length of service

An employee's length of service is the time that the employee has been employed for the employer. It can include more than one period of employment, if the breaks between periods are not longer than 90 days.

If the employee took a job protected leave during the time they have worked for the employer, that time counts as being continuously employed for the purposes of calculating years of service.

Reference: *ES Code*, Section 54



If a business, or any part of it, is bought, sold, leased or transferred and an employee continues to work for the business, the employee retains all previous length of service and would be entitled to a notice of termination based on their full length of service. The original hire date with the initial business would be used for determining termination pay

Employers are not required to give termination notice (or pay in lieu) to certain employees.

SITUATIONS WHERE TERMINATION NOTICE IS NOT REQUIRED

General	<ul style="list-style-type: none">• Employed for 90 days or less• Terminated for just cause*
Temporary employees	<ul style="list-style-type: none">• Employed on a seasonal basis (if their employment is terminated on completion of the season)• Employed for a definite term or task for a period not exceeding 12 months• Casual employees employed under an arrangement where they may choose to work or not work when requested to
Employees in industries with exceptions	<ul style="list-style-type: none">• Employed on-site in the construction industry• Employed in the cutting, removal, burning or other disposal of trees and/or brush for the primary purpose of clearing land
Business circumstances	<ul style="list-style-type: none">• When a contract of employment becomes impossible to perform due to unforeseeable/unpreventable circumstances beyond the employer's control• Not provided with work as a result of a strike or lockout• Temporarily laid off**
Employee decision	<ul style="list-style-type: none">• Refused work made available through a seniority system• When employment terminates as a result of the employee failing to return to work within 7 consecutive days of a recall from temporary layoff

*See What is just cause? in this module for more information.

**Termination notice is not required, but a temporary layoff notice is. See What is a temporary layoff? in this module for more information.

While the Code does not legislate termination notice for these employees, they may be entitled to notice under common law.

Reference: *ES Code*, Section 55(2)

Contents of the termination notice

To be valid, a termination notice must:

- be in writing and addressed to the employee concerned
- be given or otherwise provided to the employee
- be for the correct notice period or longer
- include a termination date



It is not sufficient to post a termination notice on a bulletin board or other public area.



See additional resources: [Sample termination letter](#)

Termination pay (pay in lieu of notice)

If an employer, for any reason, does not wish to have an employee work out the remainder of the notice period, the employer may give the employee pay in lieu in the amount the employee would have earned had the employee worked out the required notice period.

An employer may combine notice (which the employee works out) and pay in lieu of notice to make up the required notice period.

Reference: *ES Code*, Section 57

When an employee terminates employment

If an employee provides notice, the employee can either work out the notice period or, if the employer wishes to dismiss them immediately, can be paid termination pay dependent on the amount of notice given.

Regardless of the amount of notice an employee provides, the most an employer is required to allow the employee to work or provide termination pay (or a combination thereof) is the amount of notice the employer would have been required to provide if they terminated the employee.

NOTICE GIVEN BY EMPLOYEE	EMPLOYER'S TERMINATION OPTIONS
Less than what the employer would be required to give	<ul style="list-style-type: none"> • Pay termination pay for the number of weeks the employee gave notice and dismiss immediately • Direct the employee to work the notice period and no termination pay required
Greater than or equal to what the employer would be required to give	<ul style="list-style-type: none"> • Pay termination pay only up to the number of weeks the employer would be required to give the employee termination notice and dismiss immediately • Direct the employee to work part of the notice period and pay the remainder of the notice as termination pay (up to the sum of weeks the employer would be required to give the employee termination notice) • Direct the employee to work the notice period the employer would be required to give and provide no termination pay • Allow the employee to work out the full notice period if greater notice than what's required is provided.

Calculating termination pay

Termination pay must be at least equal to the wages the employee would have earned if the employee had worked regular hours for the termination period.

When an employee's wages vary from one pay period to another, termination pay is determined by taking the average of the employee's regular wages in the 13 weeks preceding the termination date in which the employee actually worked, not just the 13 calendar weeks immediately preceding the termination date.

Situations where termination is not allowed

Generally, an employer has the right to terminate an employee at any time, as long as they provide the required length of notice or pay in lieu.

The exception is where the dismissal is in violation of human rights legislation. Go to <https://albertahumanrights.ab.ca/> for more information.

There are also situations where an employer is not permitted to terminate an employee.

An employer may not terminate the employment of, or lay off, an employee who:

- has started a job-protected leave
- is entitled to or has started maternity or parental leave

However, an employee on a long-term job-protected leave can be terminated or laid off if the employer suspends or discontinues the business, undertaking or other activity in which the employee was employed.



If this happens and operations are resumed within 52 weeks following the end of the employee's long-term job-protected leave, the employer is obligated to reinstate the employee or provide the employee with alternative work in accordance with an established seniority system or employer practice.

An employer may not terminate the employment of, or lay off, an employee:

- for the sole reason that garnishment proceedings are being or may be taken against the employee

Reference: *ES Code*, Sections 82 and 124

An employer may not terminate the employment of, lay off, or discriminate against an employee:

- for exercising their rights – or complying with certain obligations – under the Code

For example, an employee cannot be discriminated against, terminated or have employment restricted for:

- making a complaint
- giving or having the potential to give evidence at any inquiry or in any proceeding or prosecution
- requesting or demanding anything to which they are entitled
- making or being about to make any statement or disclosure that may be required

Reference: *ES Code*, Sections 82 and 125

What is just cause?

An employer can terminate an employee without notice for just cause.

Termination for just cause typically involves conduct that is serious enough (either on its own account or in combination with other factors) to justify the employer ending the employment relationship.

Employer's responsibility

The employer is responsible for proving that the dismissal is justified.

The employer must show more than just dissatisfaction with an employee's performance. Real misconduct or incompetence must be demonstrated.

It is also the employer's responsibility to prove that the employee was aware of the consequences of failure to perform certain duties or obey certain rules.



There are lots of ways to ensure that your employees know the consequences of breaking the rules. Here are a few:

- Develop an employee handbook and distribute it to all staff. Include information on vacation and general holidays, overtime, as well as disciplinary measures for misconduct. Post a copy of this handbook in a public place for all staff.
- Issue warning letters. If an employee's conduct becomes problematic, issue a warning letter describing the disciplinary action that will be taken if behaviour is not corrected.



See Additional Resources: [Sample warning letter](#)

As an employer, it is important to keep accurate records.

It is a good practice to document the time, date and outcome of any conversations or encounters that you have with an employee about inappropriate behaviour or conduct. This information could be useful if you decide to terminate the employment relationship in the future.

Having an effective policy in place on appropriate workplace behaviour can decrease an employer's liability in the event of a complaint being filed.

Situations that can merit just cause for dismissal

Misrepresentation of qualifications

If an employee does not tell the truth about his or her skills and qualifications, the employer may have just cause for dismissing the employee after determining his or her true abilities.

Sexual harassment

Sexual harassment is any unwelcome behaviour that is sexual in nature (either direct or indirect) that negatively affects (or threatens to affect) a person's job security, working conditions, prospects for promotion, earnings or job prospects.

Go to <https://albertahumanrights.ab.ca/media/2zjbynns/sexual-harassment.pdf> for more information on an employer's responsibilities in cases of sexual harassment.

Breach of duty

Breach of duty can occur when an employee knowingly jeopardizes the interests of the employer, reveals confidential information, breaches company policies or conducts him/herself dishonestly.

Conflict of Interest

Just cause for dismissal exists when an employee uses special information obtained while employed for his or her own purposes, and without the consent of the employer.

Competing with employer's interest

If an employee knowingly competes with an employer's interests, it can be just cause for dismissal.



EXAMPLE

Establishing a competing business while still working for the employer, soliciting employer's customers for a new business or taking benefits from competitors are some examples of just cause.

Willful disobedience

Willful disobedience occurs when an employee disobeys an employer's lawful and reasonable order.

Theft

Theft is just cause for dismissal. The employer is responsible for providing tangible proof that the employee committed the theft.

Fraud and dishonesty

Any fraudulent activity committed by an employee is just cause for dismissal. Unless the employee is in a position of trust, the fraud:

- must be committed against the employer or as part of the job, and
- must be deliberate (intent to defraud exists)

Insolence and insubordination

Rude and offensive behaviour toward the employer can be just cause for dismissal. It must be deliberate.



Just cause does not exist if the behaviour is a result of the employee being provoked or a personality clash.

Absenteeism or lateness

Chronic and excessive absences or lateness (even if for a valid reason) is just cause for dismissal. The absences and late arrivals must be the fault of the employee.

Some examples of just cause include:

- failing to return to work after vacation
- leave of absence without notifying the employer
- taking time off under false pretenses
- chronic tardiness that is intentional and deliberate

Illness

Temporary illness or disability is not just cause for dismissal. However permanent illness or disability may be.

Go to <https://albertahumanrights.ab.ca/issues-at-work/termination-of-employment/> for more information.

Intoxication and substance abuse

Intoxication and substance abuse are not just cause for dismissal. It is the consequences of the intoxication or abuse that are significant.

Serious incompetence

Being unable to demonstrate the skills and abilities the employee claims to possess is just cause for dismissal. To prove incompetence the employer must:

- set objective standards of the competence needed to do the job and make this known to the employee, and
- give the employee suitable instruction and support to enable him or her to meet the standard required



The incompetence must be serious enough to justify dismissal

Personality conflict

The inability to get along with fellow workers is not just cause for dismissal.



If in doubt, call a lawyer! When dealing with termination for just cause, it is a good practice to seek legal counsel prior to issuing a termination notice.

What is a temporary layoff?

A temporary layoff occurs when an employer wishes to maintain an employment relationship without terminating the employment of an employee.

In Alberta, the maximum duration of a temporary layoff is 90 days in a 120-day period. The employee is terminated on the 91st day if they have not resumed work. Termination pay must be paid if the employee is entitled

The period of temporary layoff can be extended if the employer makes regular payment to or on behalf of the employee, such as continuing to pay wages, employee pensions or benefits. The employee has to agree to receive wages/benefits for the employer to extend the temporary layoff period. Termination pay is payable when benefits cease.

If there is a collective agreement that contains recall rights following lay off, the employment terminates and termination pay is owed when recall rights expire.

To be valid, a notice of temporary layoff must:

- be in writing
- state that it is a temporary layoff notice and its effective date, and
- include sections 62, 63 and 64 of the Code regarding layoffs

Temporary layoff notice must be provided to the employee before the layoff starts.

Reference: *ES Code*, Sections 62, 63 and 64



See additional resources: [Sample layoff notice](#)

Group terminations

If an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period, the employer must give the minister responsible for Employment Standards written notice of at least 4 weeks.

If an employer is unable to do so, they can provide written notice as soon as reasonable in the circumstances.

An employer is no longer required to provide group termination notice to employees. Instead, the normal rules for individual termination notice apply to affected employees. See the sections on termination earlier in this module for details.

Group termination notice is not required to temporarily lay off a group of employees. However, employers should be aware of the rules for temporary layoffs.



Group termination notice is not required if employees are employed on a seasonal basis or for a definite term or task.

A group termination form must also be completed by the employer and submitted to Employment Standards. Visit alberta.ca/group-terminations to view the form.

Reference: *ES Code*, Section 137