



How to discharge an employee

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As a general proposition, in a non-unionized setting an employer is at liberty to terminate the employment of an employee at any time. However, there do exist restrictions on how this may be done, the reasons for which it may be done and the amount that it will cost the employer.

If an employer wishes to end the employment relationship with an employee, it may do so in one of two ways: by discharging the employee for just cause; or not for just cause upon providing reasonable notice.

If an employer terminates the employment of an employee for just cause, this means that the conduct of the employee has reached the point that the employment relationship has been irretrievably damaged. This is a very high threshold to meet and requires a great deal of diligence and effort on the part of the employer in terms of managing the employee's conduct, creating clear expectations and warning the employee, preferably in writing, that if his or her conduct does not improve that they

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face the possibility of the termination of employment for just cause without notice or pay in lieu of notice.

If just cause does not exist or an employer does not wish to engage in the conflict that may arise from a just cause termination, an employer may terminate the employment of an employee without cause by providing notice or pay in lieu of notice. The obvious question that arises is: how much?

The amount of notice to be provided to an employee on termination is determined from three possible sources: a contract of employment; *The Employment Standards Code* (the Code); and the common law.

If an employee has a contract of employment which establishes the amount of notice to be provided to the employee on termination and that amount is not less than the minimum set out in the Code, then that provides guidance to the employer in terms of the amount of notice owing to the employee on termination.

The Code sets out the minimum standard, beneath which an employer and an employee cannot contract. This is also the amount that the Employment Standards Branch would award to an employee should an employee make a complaint to that governmental department if they are not provided with adequate or any notice on termination.



However, even if an employer provides an employee without a contract with the statutory minimum set out in the Code, if the employee were to sue the employer for wrongful dismissal successfully, the amount payable to the employee would be determined based on similar cases decided previously by the courts. Depending on the age of the employee, their length of service, the nature of their position and a host of other factors, the range can be anywhere from two to four, or more, weeks per year of service. Courts have tended to be reluctant to award anything in excess of twenty-four months' notice even for very long-term employees.

As a cautionary note, it should be noted that notwithstanding the employer's ability to terminate the employment of employees, they cannot do so for reasons that contravene statutes such as the Code, *The Human Rights Code*, *The Workplace Safety and Health Act* and other similar legislation.

There are many legal issues that can arise throughout the course of an employment relationship. It is generally much more cost effective to consult legal counsel prior to taking steps such as terminating employment or implementing a policy which may, down the road, be complicated and time consuming to rectify. #



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