

When an employer wants to terminate an employment relationship for reasons other than just cause, the employee is generally entitled to reasonable notice of termination, or pay in lieu of notice (unless the employee signed an enforceable contract limiting common law reasonable notice).

Courts have identified several factors which help determine the time required to give an employee for reasonable notice. Those factors include the employee's age, the length of service, character of employment, and availability of similar employment.

In a recent decision, the Ontario Superior Court of Justice considered the effects of the COVID-19 pandemic on the reasonable notice analysis: see *Yee v Hudson's Bay Company*, 2021 ONSC 387 [Yee] (link: <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc387/2021onsc387.html?autocompleteStr=2021%20ONSC%20387&autocompletePos=1>).

The Court found that reasonable notice "is to be determined by the circumstances existing at the time of termination". As such, it was held that COVID-19 will not increase an employee's entitlement to reasonable notice if the employee's termination occurred *prior* to the start of the pandemic.

However, the decision in *Yee* suggests that employees dismissed *after* the start of the COVID-19 pandemic may be entitled to receive longer notice periods (see para 22):

It seems clear terminations which occurred before the COVID pandemic and its effect on employment opportunities should not attract the same consideration as termination after the beginning of the COVID pandemic and its negative effect on finding comparable employment.

The question of the impacts of COVID-19 on reasonable notice periods is likely to come before the courts again. Employers should expect employees terminated after the COVID-19 pandemic to argue that they should be entitled to receive longer notice periods due to its economic impact on Canada's job market.

Please do not hesitate to contact me if you have any questions or if I can be of assistance in guiding you through any employment law issues.

This article was prepared by:

NICOLE DENISET
LAWYER
204.956.3531
deniset@pitblado.com



NICOLE DENISET
LAWYER
204.956.3531
deniset@pitblado.com

This article represents general information and is not legal advice. Please contact us if you would like legal advice that is tailored to your particular circumstances. We would be happy to help.

Relationships. Respect. Results.