

Termination of Employment

This fact sheet explains the law in general. It is not intended as legal advice for your particular problem. Because each person's situation is different, you may need to seek legal advice. A lawyer at MWC reviewed this information in May 2018.

An employer can terminate your employment as long as he or she gives you with an appropriate written notice, or compensation in lieu of notice or a combination of the two. An employer does not have to give written notice or compensation if there is just cause for dismissal. Just cause is discussed below.

An employer cannot give you a written notice while you are on vacation, leave, temporary layoff, or unavailable for work due to medical reasons.

If you continue to work for your employer after the notice period ends, the notice has no effect.

Once the employer has given you written notice, he or she cannot alter any condition of the employment including the wage rate unless you give written consent.

My employer terminated me without notice. Does he owe me compensation?

If an employer terminates your employment without advance written notice or just cause, then you may be entitled to compensation. To assess whether you are due compensation, you should first consult your employment contract. If the terms of the contract are better than the standard provided under the law, the employer is obligated to uphold the contract. However, if your contract does not state anything about notice, or if your contract gives you notice that is inferior than the standard provided under the law, the following standards under the Employment Standards Act (ESA) apply:

- If you have been employed for less than 3 consecutive months, no notice or pay is required.
- If you have been employed for more than 3 consecutive months, you get at least 1 week's notice or equivalent pay.
- If you have employed for at least 1 consecutive year and less than 3 years, you get at least 2 weeks' notice or equivalent pay.
- If you have been employed for at least 3 consecutive years, you get at least 3 weeks' notice or equivalent pay. After 3 years, for each additional years of employment, you get additional one week's notice or equivalent pay.

A week's pay is calculated by totalling the wages earned in the last eight weeks in which you worked, not including overtime, and dividing that total by eight.

Are there circumstances where the employer does not have to provide notice?

An employer does not have to provide notice or compensation if:

- You have not completed 3 consecutive months of employment;
- You quit or retire;
- You are dismissed for just cause;
- You are employed for a definite term;
- If you refuse a reasonable alternative employment offer by the employer; or
- It is impossible to perform the work because of some unforeseeable event or circumstance (for example, the elderly person, who you were hired to care for, dies);

What is 'Just Cause'?

An employer has the legal right to terminate you without giving written notice or compensation if the employer is dismissing you for just cause.

Examples of what constitutes just cause are:

- Theft;
- Fraud and dishonesty;
- Assault or harassment;
- Serious breach of rules;
- Chronic absenteeism;
- Unsatisfactory performance.

For serious cases of dismissal such as theft, fraud, dishonesty, assault or serious wilful misconduct, only one provable incident can justify dismissal.

As a live-in caregiver or a migrant worker, do I have a right to quit?

As a live-in caregiver or a migrant worker employed for a definite term, you are not required under BC's *Employment Standards Act* to give your employer working notice before quitting. If you choose to give notice, your employer may accept or refuse the notice.

Once you quit, the employer must pay all of your final wages including annual vacation pay, statutory holiday pay, and unpaid overtime within 6 days after your last day of work.

What is Constructive Dismissal?

Constructive Dismissal is an indirect termination of the employment relationship. It occurs when the employer unilaterally changes the fundamental terms of the employment contract that are so detrimental to the employee that it often leads to the employee quitting the job. The employer's unilateral changes to the terms of the contract demonstrate that the employer no longer intends to be bound by the terms of the employment contract.

Changes to the fundamental terms of the employment contract that lead to constructive dismissals often involve:

- 1) Not providing the promised hours of work;
- 2) Not providing the promised type of work; or
- 3) Not providing the promised wages.

Employees who are constructively dismissed may be entitled to dismissal claims and termination pay as much as explicit dismissals.