

Layoffs and Terminations During COVID-19

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. The information in this fact sheet was reviewed by a lawyer, and was last updated on 16 February 2021.

COVID-19 has had significant economic impacts, resulting in many people temporarily or permanently losing their jobs. This fact sheet explains what it means to be laid off or terminated, what your rights are in those situations according to British Columbia's *Employment Standards Act*, and how your work situation may impact your immigration status.

What is the law about layoffs and terminations?

The *Employment Standards Act* (the "Act") is the law that governs employers and employees in the province of British Columbia. It includes rights and obligations concerning layoffs and terminations. For the rules regarding layoffs and terminations that apply to your situation, your employment must be covered by the Act. It is worth noting that not all workers in BC are covered by the Act.

Is my employment covered by the Act?

The Act applies to most workers in BC. However, the Act may **not** apply to you if:

- You are part of a unionized workplace;
- You are an independent contractor, so you are considered to be self-employed;
- You are in a profession that has its own association, such as an accountant, lawyer, engineer, doctor, or real estate agent; or
- You work in a federally-regulated industry, such as interprovincial highway transport trucking or banking.

What is a layoff?

If you are given no work or your hours are reduced so that you earn less than half of your regular weekly wages, you are laid off. A layoff must be temporary, which means that there is a plan for you to return to your regular work schedule.

Can I be laid off?

Your employer can only lay you off when:

- Layoffs are normal and expected in your industry, such as seasonal work; **or**
- Your employment contract states that you could be laid off; **or**
- You and your employer agree beforehand that you can be temporarily laid off.

There is a maximum amount of time that you can be laid off. Every week that you are earning less than 50% of your regular wages is considered one week of layoff. In any 20-week period, you cannot be laid off for more than **13 weeks**.

A special exception to the length of time you could be laid off due to COVID-19 has been added to the Act. If you were temporarily laid off due to COVID-19 before 01 June 2020, the maximum allowable length of the layoff was **24 weeks** within a period of 28 consecutive weeks (instead of the usual 13 weeks). That 24-week period must have ended on or before 30 August 2020.

What are my rights if I am laid off?

Your employer must give you your Record of Employment (ROE) if you are laid off.

If you have worked for one year, you must be given at least two weeks of vacation time in each of the following years of employment. Your period of absence due to layoff is included when determining continuous employment for vacation entitlement.

You can be recalled to work again at any time during the temporary layoff. You can return to work for your employer as long as your work permit is valid. Your employer must provide reasonable notice to you about returning to work, with a specific return date and enough time for you to plan for the return. Your employer cannot make any substantial changes to your hours, pay, or other working conditions during your layoff. If you do not return to work when you are asked to, you will be considered to have quit your job.

If you do not agree to be laid off, if you are laid off for longer than the allowable length of time, or if your employer significantly changes the hours you will work or pay you will receive upon your return while you are laid off, your employment could be considered terminated instead. Your employer could owe you additional pay for termination, known as compensation for length of service.

Your employment may have provided you with particular benefits, such as extended healthcare and dental plans. If you have a dispute with your employer on whether you are entitled to such benefits during your layoff period, you may want to seek legal help.

If I am laid off, can I extend my work permit with the same employer?

Because a layoff is temporary and you can be recalled to work during the layoff, you are still considered to be employed by your employer. This means you can apply to extend your work permit even if you are laid off. If you are applying for a Labour Market Impact Assessment (LMIA) -based work permit, your employer will need to get a new LMIA in order for you to apply for a new work permit. When you are submitting the work permit application, it is helpful to include an explanation from your employer about your ongoing employment, the temporary layoff period, and the anticipated return to work plan.

What is termination?

Termination means your employment has ended. This could be because:

- Your layoff is not temporary;
- You quit, retire, or are fired; or
- The conditions of your employment, such as hours of work or wages, are substantially changed.

What are my rights if I am terminated?

When your employment is terminated, your employer must give you your ROE.

If an employer terminates your employment without advance written notice or just cause, you may be entitled to compensation for length of service. To assess whether you are entitled to compensation, you should first look at your employment contract. If the terms of the contract are more favourable than the standards provided under the *Act*, your employer is obligated to uphold the contract. Otherwise, the standards under *Act* apply, provided that your employment is covered by the *Act*.

Under the *Act*, your employer can choose to give you written notice of termination, pay or a combination of notice and pay. The amount that you are entitled to depends on how long you worked for your employer, as set out in the table below:

Length of Employment	Amount of notice/pay
0-3 months	None
After 3 months up to 12 months	1 week
After 12 months up to 3 years	2 weeks
After 3 years up to 4 years	3 weeks
After 4 years up to 5 years	4 weeks
After 5 years up to 6 years	5 weeks
After 6 years up to 7 years	6 weeks
After 7 years up to 8 years	7 weeks
After 8 years	8 weeks

It is worth noting that the BC Employment Standards Branch cannot assist with enforcing your contract if it provides you with a higher amount than the above table. If this is your situation, you may want to seek legal help in case of a dispute with your employer.

If you **quit** your job, **retire** or are **dismissed for just cause**, such as incompetence to do the job or illegal conduct like theft, you are not entitled to compensation for length of service.

If you are given written notice of termination, you still need to work during the notice period. If you are temporarily laid off for any periods during your employment, the layoff period does not reduce the amount of compensation for length of service that you are entitled to.

What if I'm terminated during COVID-19?

During the COVID-19 pandemic, there is an exception to compensation for length of service or written notice of termination if it is considered **impossible** for you to continue working due to COVID-19. While each person's case is unique and needs to be considered on its own merits, below are some examples where you **may not** be entitled to compensation:

- Your employer's business is closed due to public health orders for longer than the temporary layoff period;
- Your work cannot be performed safely or remotely, or
- The business had to permanently close due to COVID-19.

On the other hand, if your employer's business suffered significant losses or reduced profits, that is not enough to show that was impossible for you to continue working. In this case, you are likely entitled to compensation for being terminated.

If you are entitled to compensation for length of service and you do not receive it, you may file a complaint with the Employment Standards Branch. More information about the complaint process can be found at <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/complaint-process>.

Will a layoff or termination affect my immigration status?

If you have an employer-specific work permit, you are not authorized to do any other work while you are laid off or upon your termination. Doing unauthorized work can impact future immigration applications. If you want to change jobs or employers, you will need to meet the eligibility requirements and apply for a new work permit. As long as your work permit is valid, even if you are not working, you have legal status to remain in Canada.

If you are applying for permanent residence through the BC Provincial Nominee Program (BC PNP), your employment status is important since this is an economic immigration program based on labour market needs. A layoff or termination is defined by the BC PNP as a material change in your employment status. If this change occurs after you have been nominated, you and your employer must inform the BC PNP about the change. You could alternatively request to withdraw your application. You can read more about employment changes at different stages of the BC PNP process at: https://www.welcomebc.ca/getmedia/2a73e874-0d2c-4277-a4fd-178c90a8fb87/BC-PNP-Skills-Immigration-and-Express-Entry-BC-Program-Guide_Addendum.pdf.aspx.

If you are working as a caregiver in Canada and you plan to apply for permanent residence through the Home Child-Care Provider Pilot or Home Support Worker Pilot, there are requirements for the amount of qualifying work experience you must have to be eligible. Full-time work is considered to be at least 30 hours per week. Your work experience does not need to be continuous, but you must have worked full-time for a total of at least 24 months in the 36 months before your application. Periods of unemployment do not count towards the 24 months. You do not need to be employed at the time you apply.

If you have questions or concerns about your employment status and immigration consequences, you can contact the Migrant Workers Centre for legal advice or referrals.

If I am laid off or terminated, can I access any kind of income supports?

You may be eligible to apply for Employment Insurance (EI) or other federal income benefits. Please see the fact sheet on *Income Support Benefits for Migrant Workers during COVID-19* for more information.

