



INDIVIDUAL LAYOFF OR TERMINATION

1. Minimum Notice Requirements

Minimum Notice Employees Must Provide Employers

Employees with at least 13 weeks of service with the employer must give written notice at least two weeks before leaving the job. The notice must state the last day on which the employee is ending their employment.

Minimum Notice Employers Must Provide Employees

Employees who have been employed by the employer for more than 13 consecutive weeks must be given written notice of a clear and specific date of layoff or termination by the employer or pay instead of notice. The minimum amount of notice or pay instead of notice depends on an employee's length of employment with the employer.

Required Minimum Notice Periods or Pay Instead of Notice

Employee's Period of Employment	Minimum Period of Written Notice
more than 13 consecutive weeks but one year or less	one week
more than one year but three years or less	two weeks
more than three years but five years or less	four weeks
more than five years but 10 years or less	six weeks
more than 10 years	eight weeks

During the notice period, the employee's pay rate and normal hours of work cannot be reduced.

Rights of Employees Under Common Law

Notice requirements set by employment standards are legislative minimums. Employees, especially long-term employees, might be entitled to more notice or pay instead of notice under common law. This amount of reasonable or "common law" notice is not enforced under employment standards. Employers and employees should consult a lawyer for more information.

Notice requirements after change of ownership

If an employee is still employed at a business after a sale, lease or transfer to a new employer, their service is maintained when determining the amount of notice they are entitled to if they are later laid off or terminated. Employees are entitled to notice or pay instead of notice based on how long both employers employed them at the same workplace.

2. Pay Instead of Notice

If the employee is not allowed to work out the notice period, or notice isn't provided, pay instead of notice is required.

"Pay instead of notice" means payment of the employee's normal weekly wages for the required notice period.

If wages vary from week to week, a normal week's wage is the average wage for the last 13 weeks worked, not including overtime.

Example:

If an employee earns \$7,000 in regular wages in the 13 weeks before a notice is given, normal wages will be \$7,000 divided by 13 weeks (\$538.46 per week).

If the employee is given a working notice, the employee's schedule should ensure that they would earn no less than their normal wages for each week (\$538.46 in this example) during the notice period.

If they earn less than their normal wages, the employer must make up the difference. For example, if the employee's schedule only allowed them to earn \$400 per week during the notice period, the employer must provide an extra \$138.46 per week ($\$538.46 - 400 = \138.46).

Vacation Pay is Payable on Pay Instead of Notice

Vacation pay is payable on the actual hours worked. To make the calculation, determine the actual number of hours worked and then calculate vacation pay on the total. Vacation pay is not required on payment in lieu of notice i.e. you have terminated a person and paid them out their two weeks notice, but they did not work the two weeks.

3. Paying Out Departing Employees

Employees must be paid out in full within 14 days of their last day of work. If a payday falls within those 14 days, the employee must be paid for the pay period on their regular payday.

Wages that must be paid out by the end of the 14 day period include:

- regular wages (including banked overtime);
- public holiday pay and pay for working on a public holiday;
- pay instead of notice (if required);
- overtime pay; and
- vacation pay.

If the employer gives notice to the employee:

- banked overtime cannot replace a notice period;
- vacation days cannot replace a notice period; and
- the employee's normal hours and wages cannot be reduced during the notice period.

If an employee is given pay instead of notice:

- banked overtime payouts cannot replace pay instead of notice; and
- vacation pay cannot replace pay instead of notice.

However, employees may request to use vacation or banked overtime during a notice period.

If an employer requires an employee to report to work to receive their lay-off or termination notice, that employee is entitled to [reporting for duty pay](#). In most cases, reporting for duty pay is a minimum of three hours at the employee's regular hourly wage rate.

4. Where Notice or Pay Instead of Notice is Not Required

Notice or pay instead of notice is not required if the:

- employee has less than 13 weeks of continuous employment with the employer;
- employee refuses to work out a notice period or otherwise voluntarily resigns;
- contract of employment has a definite end date; or
- employer has "just cause" to dismiss the employee.

Just Cause

Generally, courts have ruled that just cause may exist if the employee is guilty of serious misconduct, such as theft, violence, insubordination or wilful misconduct. Just cause may also include excessive employee absenteeism, chronic tardiness and other unscheduled absences from work.

The facts and circumstances surrounding the misconduct must be examined carefully. Each case is different. The employee's position and length of service must be considered.

Personality conflicts, general dissatisfaction with performance, petty issues, or one incident of inappropriate behaviour or misconduct, are usually not serious enough for just cause to terminate without notice. In these instances, corrective action may be more appropriate.

Encourage improvement by identifying reasonable performance standards, conducting performance reviews over a reasonable period, and warning the employee of the consequences (such as termination) for failing to meet the required standards. Employers must provide employees a reasonable opportunity to make the improvements or changes needed to retain employment. Employers who do these things have a better case for just cause.

Good record keeping can be helpful in showing due diligence.

Employers who condone or ignore misconduct may be prevented from claiming that the dismissal was for just cause. Condonation means that the behaviour has been largely left unaddressed. An employee must be warned that their behaviour will lead to termination if it is not corrected, and they must be provided reasonable opportunity to correct their behaviour. Otherwise employers won't have a strong case to not provide notice or pay instead of notice, as the employee would not have been made aware that their behaviour was unacceptable.

Employers who are thinking about dismissing an employee for just cause should get legal advice before taking action.

Even if notice is provided, an employer is not allowed to terminate an employee for a reason that is protected under the Act. Protected reasons in various sections of the Act include: filing a complaint, reporting an offense by the employer, illness or injury, requesting modifications or reassignment of job duties to accommodate a disability, requesting a leave, pregnancy or requesting compliance with the legislation.

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5. Protection for Workers Who are Ill, Injured or on Workers' Compensation

Except for just cause unrelated to injury or illness, no employer shall terminate or take discriminatory action against an employee due to illness or injury of the employee or illness or injury of the employee's immediate family member who is dependent on the employee.

Employers are prohibited from firing employees who are absent due to sickness or injury for up to 12 days in a calendar year or 12 weeks in a period of 52 weeks if the illness or injury is serious. Employees must have 13 weeks of service for this protection, unless the employee's illness or injury is related to a public health emergency.

The only exception to this protection is where the employer has just cause that is unrelated to the employee's absence.

The Saskatchewan Human Rights Code

Complying with employment standards will not protect an employer who is found to have discriminated against an employee for a prohibited reason under *The Saskatchewan Human Rights Code*.

The Saskatchewan Human Rights Code prohibits employers from terminating employees on the basis of race or perceived race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin, or receipt of welfare. Contact the Saskatchewan Human Rights Commission toll-free at 1-800-667-9249 or [visit the Saskatchewan Human Rights Commission website](#) for more information.

Government of Saskatchewan Employment Standards Website:

[Individual Layoff or Termination | Layoffs and Termination | Government of Saskatchewan](#)