



Employment Standards Act

Termination of Employment

Updated May 2023



Termination of Employment

Termination by an employer

An employer may end the employment of an employee who has worked for them for less than six months for any reason (subject to the *Human Rights Act*). After six months, the employer must provide the employee with notice, and must allow the employee to work and earn wages during the notice period.

This rule does not apply to:

- (a) the construction industry;
- (b) a seasonal or intermittent job that lasts for less than six months in a year;
- (c) an employee discharged for just cause (see below);
- (d) an employee whose employer has failed to abide by the terms of the employment contract;
- (e) an employee on temporary layoff;
- (f) an employee employed under a contract of employment that is impossible to perform due to an unforeseeable event or circumstance; or
- (g) an employee who has been offered and who has refused reasonable alternate employment;
- (h) an employment relationship that ends because the contract or the assignment the employee was hired to performed is completed, if 12 months or less;
- (i) an employee hired on an employment term that was set in the employment contract unless they remain employed for one month or more after the term is completed.

(subsection 49(1))

Notice and pay instead of notice

An employer who terminates the employment of an employee who has been employed for six months or more must give the following notice **in writing**, or pay in lieu of notice, or a combination of both:

Years of service	Notice	Pay in lieu
6 months up to 1 year	1 week	1 week's pay
1 year up to 3 years	2 weeks	2 weeks' pay
3 years up to 4 years	3 weeks	3 weeks' pay
4 years up to 5 years	4 weeks	4 weeks' pay
5 years up to 6 years	5 weeks	5 weeks' pay
6 years up to 7 years	6 weeks	6 weeks' pay
7 years up to 8 years	7 weeks	7 weeks' pay
More than 8 years	8 weeks	8 weeks' pay

(subsection 50(1))

An employer may not give notice while the employee is on vacation.

**See also the Special leave without pay factsheet.*

(subsection 50(3))

If the employee continues to work after the notice period has passed, the notice is void.

(section 55)

Just cause

An employer is not required to give notice or pay in lieu of notice if they have just cause to terminate the employment of an employee.

“Just cause” has been defined in common law to fall into two categories: serious misconduct or minor misconduct.

An employer may terminate the employment of an employee for just cause for **serious misconduct** if the employee engages in fraud, theft, misappropriation or otherwise engages in dishonesty that goes to the core of the employment relationship. For example, an act of dishonesty that violates an essential condition of the employment contract, breaches trust in the work relationship or is directly inconsistent with their job duties.

An employer may terminate the employment of an employee for just cause for **minor misconduct** if:

- the employer set and communicated to the employee reasonable standards of performance;
- the employee was notified of their failure to meet the standards;
- the employee was given sufficient time to meet the standards;
- the employee was informed of the risk of termination if they continued to fail to meet the standards; and
- the employee continued to fail to meet the standards.

Employers must provide clear and consistent standards for all staff. They must also take steps to correct employee behaviour in a reasonable amount of time.

Temporary lay off

A “temporary lay off” is when an employer causes a break in an employee’s employment. The break becomes permanent if it lasts for longer than 13 out of 20 consecutive weeks or for a time set by the Director of Employment Standards.

(subsection 48(1))

If a temporary lay off becomes a termination, then the employer must pay the employee pay in lieu of notice that would have been owing had the employer terminated the employee at the beginning of the temporary lay off.

(subsection 53(1))

Termination by an employee

An employee who quits after having been employed for longer than six months, must give their employer the following notice **in writing**:

Years of service	Notice
Between six months and less than two years	1 week
2 years or more but less than 4 years	2 weeks
4 years or more but less than 6 years	3 weeks
6 years or more	4 weeks

If the employee does not provide enough notice, the employer may withhold one week's wages from the employee's last paycheque with the employee's consent. If they do not consent, the employer must pay the amount they wish to deduct from the employee to the Director of Employment Standards. The Employment Standards Office will investigate and decide the appropriate course of action (i.e., to repay the employer or to pay the amount to the employee).

One week's wages means the employee's regular rate of pay for normal hours of work.

(sections 50(2) and 52)

Termination by change of employment conditions

If a termination notice has been given, the employer cannot, without the employee's consent, change their rate of pay or any other terms or conditions of employment.

If an employer substantially changes a term or condition of employment, without the employee's consent, the Director may determine whether the change amounts to a termination or was intended to encourage the employee to quit.

(sections 54 and 56)

Group terminations

An employer who plans to terminate a group of 25 or more employees within a period of four weeks or less must notify the Director of Employment Standards as follows:

Number of employees	Notice
25 – 49	4 weeks before the date of termination
50 – 99	8 weeks before the date of termination
100 – 299	12 weeks before the date of termination
300 +	16 weeks before the date of termination

(section 58)

Remedies

If the Director of Employment Standards finds that an employer has contravened any of the above, the Director may order the employer to:

- (a) comply with the Act;
- (b) fix or stop the contravention; or
- (c) pay any wages that the employee lost because of the contravention.

(section 57)

For more information

This fact sheet is for guidance only. If anything in this document conflicts with the *Employment Standards Act*, the *Employment Standards Act* prevails.

For more information, contact an Employment Standards Officer at 667-5944 or eso@yukon.ca.