

Dismissing An Employee

For most people, firing an employee is one of their least favorite things to do. It is never pleasant and can result in potential problems for the company if the employee decides to challenge the dismissal.

The safest way to fire someone from a legal standpoint is to be sure that you have a valid, non-discriminatory reason for doing it, and you have enough documentation to support it.

Documentation means keeping a record of all communications with the employee about his or her performance; recording numbers and measurable data if possible. In addition, you should include any counselling sessions you have had with them and any chances you have given the employee to redeem themselves. As a rule you should document performance evaluations with all employees but this is particularly important when dealing with a possible termination. Following is a list of what is legally required in British Columbia when terminating employment:

Compensation Eligibility

An employee who is terminated is eligible for compensation based on the following formula:

- after 3 months' consecutive employment, 1 week's pay,
- after 1 year, 2 weeks' pay, and
- after 3 years, 3 weeks' pay, plus 1 week's pay for each additional year of employment to a maximum of 8 years.

A week's pay is calculated by totaling the employee's wages, excluding overtime, earned in the last 8 weeks in which the employee worked normal hours, and dividing this amount by 8.

An employee's period of continuous employment is not interrupted by the sale, lease or transfer of a business.

No Compensation Required with Written Notice

No compensation is required if an employer gives an employee advance written notice of termination which is equal in weeks to the number of weeks' pay for which the employee is eligible.

An employer may also give an employee a combination of notice and compensation equal to the weeks' pay for which the employee is eligible.

An employee cannot be on vacation, leave, strike or lockout, or be unavailable for work due to medical reasons during the notice period. If employment continues after the notice period ends, the notice is of no effect. Once notice has been given, the employer may not alter any condition of employment, including the wage rate, without the employee's written consent.

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No Notice or Compensation Required

An employer is not required to give notice of termination or pay compensation on termination if:

- the employee quit or retired,
- the employee was dismissed for just cause,
- the employee worked on an on-call basis doing temporary assignments which he or she could accept or reject,
- the employee was employed for a definite term,
- the employee was hired for specific work to be completed in 12 months or less,
- it was impossible to perform the work because of some unforeseeable event or circumstance (other than bankruptcy, receivership or insolvency),
- the employee was employed at a construction site by an employer whose principal business is construction,
- the employee refused reasonable alternative employment, or
- the employee was a teacher employed by a board of school trustees.

If a definite term or specific work is extended for at least 3 months past its scheduled completion, the definite term and specific work exceptions described above would not apply.