

Employee Legal Rights and Entitlements

Written by Chilwin Cheng, BA, LLB, MBA

Member in good standing with the Law Society of British Columbia

How employment law works

Canadian employment law comes from several sources:

- Statutes, law that your elected representatives make
- Cases, law that judges make
- Contracts, law that you make with your employer or that unions make with employers

Statutes include legislation on employment standards, human rights, pensions, and unique industry statutes. [Click Here](#) for list of the most commonly-referred to statutes.

Cases involve, most commonly, situations when an employee believes that an employer has not given them enough warning that their job will end – not enough notice. [Click Here](#) to visit our Severance Package Calculator

Contracts, whether they are written or not, so long as they don't violate a statute, also affect your rights as an employee.

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Do I have an employment contract?

Assuming that you don't belong to a union and that you are not an independent contractor, you will most often fall into one of two basic categories. You have an employment contract that says how much notice you will get, or you don't.

In either case, your employer is bound by provincial employment standards legislation that sets a minimum amount of notice. They have to give you at least the amount this legislation entitles you to, no matter what your contract says, and even if your contract doesn't mention notice at all. (Click Here for links to the provincial websites where you can look up the provincial minimum notice periods.) Keep in mind, though, that you are most likely entitled to a lot more than the legislated minimum.

You may have an employment contract, even if you don't have a piece of paper that says "contract" at the top. You and your employer might have just had a conversation or a series of conversations in which you settled on an employment agreement without writing it down. If you both agreed on how much notice you would get if you were fired, then that agreement is as good as if it was written. If you have a written employment contract, then you should get what it says. Again, remember that your employer must give you at least what's required under the employment standards statutes.

If you have no employment contract (for example, you have no written contract and you had no discussion), then the law says that you should get "reasonable notice." The majority of cases fall in this category. Your employment continues up until the day that your reasonable notice ends. Your employer must either keep you employed until that date or must pay out the salary and benefits to which you were entitled up to that date.

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How much notice should your employer give you?

If your employer chooses to end your job, they must give you a certain amount of notice. The amount of notice you get is determined by three factors, in order of priority:

1. Provincial employment standards
2. Your contract or union collective agreement
3. Common law

Here's what that looks like in real-life terms.

1. Provincial employment standards:

Your employer can never give you less than what an employment standards statute says. So, in B.C., if you've been working for your employer a year, you get at least two week's notice, no matter what.

2. Your contract or union collective agreement

If you have a contract (usually written) with your employer that contains an agreement about how much notice you'll get if you lose your job, your employer must give you what's in that contract, so long as it's more than what the statute gives you. This applies for union collective agreements too.

If you have a fixed-term employment contract, your notice period should be until the end of the fixed term, unless there was an early termination clause.

3. Common law

If you don't have a contract with your employer, then you get what the common law gives you. Since the 1950s, Canadian courts have consistently applied the same variables with no exceptions. They look at your age, your length of service with the company, the kind of job you had (front-line, supervisor, manager, professional, executive, etc.), and how long it would reasonably take you to find another job.

The first three variables are clear-cut. But the last variable – how long it would reasonably take you to find another job – can be very difficult to prove without a huge up-front investment in research.

Therefore, the courts most often spend a lot of time on the first three variables.

In all cases, courts will compare your age, length of service, and kind of job against previously decided cases and make a judgment call based on precedents set in similar cases.

Our Severance Package Calculator has indexed most, if not all, major wrongful dismissal cases across Canada and gives you clear information about the ranges of damages awarded by courts in previous cases similar to your own. This critical information allows you to compare your case against precedent and make a solid estimate about what kind of notice you should expect from your employer.

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What do you get during the notice period?

Severance pay is intended to put you in the same position you would have been in if you had received proper notice. Severance pay includes lost wages and vacation pay. It may also include other employment benefits (like bonuses) that would have been paid during the notice period. If you have a fixed-term employment contract, severance pay is based on the wages and benefits that you would have got until the end of the fixed term, unless there is an early termination clause.

You can get more than just your cash salary. You should also get benefits and other compensation you would have received if you had kept working up to the end of your notice period. For example, if your employer owes you a notice period of four months, and the employer chooses to pay you a severance package, your payment will be more than four months' salary. It should also include:

- bonuses you would have earned and been paid during the four months
- stock options you would have earned that would have vested during the four months
- RRSP contributions
- medical coverage
- extended medical coverage
- dental coverage
- long-term disability insurance
- short-term disability insurance
- life insurance

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Can I sue for more?

You can try to sue your employer for breaching your employment contract. For example, if you worked six years, most provincial employment standards legislation suggests that you should get at least six week's notice or pay – but you may be entitled to much more. Courts have awarded between 9 and 18 months' severance pay in many cases. Very senior and long-serving executives have received up to two years' severance pay.

However, keep in mind that if you sue your employer, you risk damaging sources of references, contacts, and other sources of work referrals. You could also lose your lawsuit. If you lose, you will have to pay legal fees to your lawyer and your employer's lawyer. You will also be putting significant time and energy into the lawsuit rather than looking for your next opportunity.

As you can see, the decision to sue your employer is not one you should take lightly. That said, in some cases the discrepancy between a fair settlement and what your employer offers may be so large as to require a significant response from you. In those cases, you may need to sue them.

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Can I sue for emotional distress?

If the circumstances of your termination were particularly distasteful (in terms of the manner in which the dismissal itself was carried out), there may be compensation available. The extra compensation is often called bad faith damages. The purpose of bad faith damages is to punish the employer for some type of wrongdoing, rather than to compensate you for the loss of your job. The factors the Courts consider when determining whether an award of bad faith damages is appropriate include:

1. Whether the termination was carried out in a particularly offensive way
2. Whether allegations of cause for termination are maintained without justification
3. Whether you were fairly dealt with upon termination – including such things as all outstanding pay being provided
4. Whether the employer failed to provide you with a letter of reference
5. Whether the employer has taken steps that will impact your ability to find replacement employment

You could also get damages for emotional distress (also called aggravated damages), and punitive damages. However, bad faith, aggravated, and punitive damages are extremely rare in Canada. If you think you should be entitled to one of these forms of damages, consult a lawyer. Be aware that courts *expect* an employee to go through an emotionally difficult time when being dismissed. The fact that an employer has to give you the bad news that you've lost your job is not in itself reason to claim damages for emotional distress. Neither is the fact that the employer may give you some reasons why they've had to let you go. Courts recognize that getting fired is distressful in any situation. Therefore, bad faith, aggravated, and punitive damages are reserved for the truly exceptional cases – cases that some might say border on abusive.

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What do I have to do?

When your employment is terminated, you have a duty to "mitigate" your damages. This means you must do everything reasonable to lessen the amount of losses that you suffer due to the loss of your job.

This requires two things:

- First, if your employer wants you to keep working until the end of your notice period, you are legally obligated to keep working diligently, competently, and honestly until your job ends. The law does not entitle you to a lump sum package unless it's part of an explicit contract between you and your employer. You could lose everything if you choose not to work during the notice period, and you certainly don't want to burn any bridges.
- Second, once your job ends, the courts expect you to work reasonably hard to find a new job – whether you get a package or not. A quick Google search will bring up many websites that offer great advice on how you can search for new jobs.

Depending on the kind of job you had, you may be under legal duties not to talk about your work or your employer. You may have signed confidentiality or non-disclosure agreements. You may have been in a position within the company that exposed you to sensitive information. (This often happens with sales representatives who, after losing their jobs, set up their own sales agencies or work for the previous employer's competition.) You should keep your employer's confidences. You risk exposing both yourself and any new employer to lawsuits from your former employer if you do not.

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What if I belong to a union?

If you belong to a union, your collective agreement will define your rights when you lose your job. It will most likely define how much notice you should get, whether you have bumping rights (bumping someone more junior so that you can stay working), your right to keep your benefits, entitlements to counseling, and other rights.

Your local union shop steward will help you understand your collective agreement and direct you to a lawyer approved by your union – usually the lawyer that helped the union negotiate the collective agreement.

When preparing to meet your lawyer, you can use the database at FiredWithoutCause.com to compare your situation to what you would get if you did not have a collective agreement.

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What if I'm an independent contractor?

In some cases, the courts might treat an independent contractor as an employee. If your employer directed and controlled your work, provided the tools and equipment you needed to do your work, and paid you a regular wage or payment, you should be treated like an employee. FiredWithoutCause.com provides resources and tools to help you understand your rights in this situation.

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What if my employer just changed my job?

Employers can fire employees in several ways. Your boss might actually say, “you’re fired.” Or your boss may fire you in a much more subtle way. In some cases, an employer might change your job so significantly that you are basically forced to quit.

For example, say you are a line supervisor at a factory and you supervise a large production team – say thirty people. Your employer tells you that because of a restructuring, they want you to work as a frontline production worker. You’ll lose your team and your title, and they’ll reduce your pay back down to that of the frontline worker. In this situation, even though your employer may not have said “you’re fired,” you may have the right to say that the changes to your job were so significant that it’s *like* you were fired. Lawyers call this situation “constructive dismissal.” If you were “constructively dismissed,” you may be entitled to the same package you would have received if you had actually been fired. The database and tools at FiredWithoutCause.com can help you find out what you are entitled to.

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What if they gave me a reason to fire them?

Employers can fire employees if they have a good reason. However, this raises two questions. First, just what is a “good reason” to fire someone? Second, if the reason is a good one, did the employee actually behave in the way the employer alleges? Here are some employee behaviours that courts have used to support an employer who fired someone for an alleged “good reason,” otherwise called “just cause”:

- using drugs or alcohol that interfere with your job performance
- ignoring a strict workplace rule of “no alcohol during work hours”
- intentionally disobeying your boss
- consistently refusing to follow a clearly defined chain of authority in a tightly-knit business
- disloyalty to your employer or putting yourself in a conflict of interest (for example, setting up a business to compete directly with your employer)
- ignoring a clear workplace policy, procedure, or rule
- dishonesty about something important, like a bank teller stealing from a bank
- incompetence (for example, if you got a job because you said you could repair automatic transmissions, and it turns out you can't)

Some employers may try to avoid giving you notice or severance pay by saying there is just cause to fire you, even if there isn't. If you are fired and the employer says there was just cause, look very carefully at the employer's reasons. There's no just cause if you are dismissed because your employer is losing money or is reorganized, or because your job becomes redundant or is eliminated by technological change. A personality conflict between you and your boss may not be just cause – it depends on the facts of the case. In all these cases, the employer must give you advance notice or severance pay – or a combination of them. If there is no just cause to fire you, use the database at FiredWithoutCause.com to find out how much of a severance package you are entitled to.

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Special Circumstances

In a few cases with unique circumstances, the court may consider additional variables that could impact a damage award. These situations are not common. An example might be a high-level executive who was convinced to quit a well-paying job with promises of a long, productive, and profitable job with another company, but was dismissed shortly after starting the new job. Again, these special cases are not the norm. In most cases, precedent dictates what you'll get. Some of these variables can include the following:

- Did your former employer give you sweeteners or inducement to leave your previous job?
- Did your former employer give you unconditional guarantees of longevity with the company?
- Did you bring over contacts, sales leads, or other kinds of businesses with you when you came over?
- When you joined your former employer, did you suffer any penalties, that your former employer knew about, when you left the employer before that?
- Did you have to get special training, skills, or make any other kind of investment that you had to bear personally to work at your current job?

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Glossary and Thesaurus

These are not meant to be exhaustive or legal definitions of terms, but provided to help you navigate through FiredWithoutCause.com

Collective Agreement: an agreement between a union and a unionized employer, governed by labour law and administered by union, management, and local labour relations regulator

Constructive Dismissal: where employer keeps employing employee, but where employer changes the terms or nature of the employment such that it amounts to a termination of former employment and creation of new employment relationship; if employee does not accept new role, may still amount to a Wrongful Dismissal

Employer: a person who retains an employee

Employee: a person who agrees to provide labour to an employer in exchange for compensation under some form of exclusive relationship, though relationship need not be absolutely exclusive; that is, employee can work for multiple employers simultaneously though there is an expectation of some form of loyalty to employer

Dismissal: termination of employment relationship, also referred to as lay-off, termination, “fired”, “let go”

Independent contractor: a person who provides labour to an employer in exchange for compensation without the expectation of permanency or exclusivity;

Temporary Lay-off: suspension of employment relationship with intention and agreement that employee will return to work at a future date, not a dismissal under the law

Wrongful Dismissal: employer dismisses employee without a valid legal reason and without providing employee with sufficient notice that employment will end

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Useful Links for Employment Law

Useful links to help you know your rights.

We've gathered important links to employment statutes (laws passed by government) and employment cases (laws decided by courts) that will help you understand your rights.

Employment Law Statutes and Employment Regulators

Landmark Common Law Cases on Employment

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Employment Law Statutes and Employment Regulators

Click on Employment Standards Legislation links to find your basic entitlements to notice periods when you get fired. If you have a problem with the way you've been fired, you can also contact your local Employment Standards regulator. This office goes by different names in different Canadian provinces. In most cases, the office will go by a name like Director, Employment Standards or Employment Standards Office, or something like that. Similarly, we have included a link to local Human Rights Commissions in case your dismissal might have involved a discrimination or harassment complaint.

Province/Region	Employment Standards Legislation	Employment Standards regulator	Human Rights regulator
British Columbia	http://www.bclaws.ca/Recon/document/freeside/--%20E%20--/Employment%20Standards%20Act%20%20RSBC%201996%20%20c.%20113/00_96113_01.xml?siteId=freeside&docId=00_96113_01	http://www.labour.gov.bc.ca/esb/welcome.htm#	http://www.bchrt.gov.bc.ca/
Alberta	http://www.canlii.org/ab/laws/sta/e-9/20080818/whole.html	http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1224.html	http://www.albertahumanrights.ab.ca/default.asp
Saskatchewan	http://www.canlii.org/sk/laws/sta/l-1/20080818/whole.html	http://www.labour.gov.sk.ca/LS/	http://www.shrc.gov.sk.ca/default.html
Manitoba	http://www.canlii.org/mb/laws/sta/e-110/20080818/whole.html	http://www.gov.mb.ca/labour/standards/index.html	http://www.gov.mb.ca/hrc/english/index.html
Ontario	http://www.canlii.org/on/laws/sta/2000c.41/20080821/whole.html	http://www.labour.gov.on.ca/english/index.html	http://www.hrto.ca/NEW/home.asp
Quebec	http://www.canlii.org/qc/laws/sta/n-1.1/20080818/whole.html	http://www.cnt.gouv.qc.ca/	http://www.cdpcj.qc.ca/en/home.asp
Newfoundland and Labrador	http://www.canlii.org/nl/laws/sta/l-2/20080818/whole.html	http://www.hrle.gov.nl.ca/lra/default.htm	http://www.justice.gov.nl.ca/hrc/
New Brunswick	http://www.canlii.org/nb/laws/sta/e-7.2/20080818/whole.html	http://www.gnb.ca/0308/index-e.asp	http://www.gnb.ca/hrc-cdp/
Nova Scotia	http://www.canlii.org/ns/laws/sta/r1989c.246	http://www.gov.ns.ca/	http://www.gov.ns.ca/

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Scoti a	/20080818/whole.html	lwd/	a/humanrights/
Princ e Edwa rd Islan d	http://www.canlii.org/pe/laws/sta/e-6.2/20080818/whole.html	http://www.gov.pe.ca/commcul/lair-info/index.php3	http://www.gov.pe.ca/humanrights/
Yuko n	http://www.canlii.org/yk/laws/sta/72/20060728/whole.html	http://www.community.gov.yk.ca/labour/esa.html	http://www.yhrc.yk.ca/
Nort hwes t Territ ories	http://www.canlii.org/nt/laws/sta/2007c.13/20080818/whole.html	http://www.ece.gov.nt.ca/Divisions/Labour/index.htm	http://www.nwthumanrights.ca/
Nuna vut	http://www.canlii.org/nu/laws/sta/l-1/20070904/whole.html		http://www.gov.nu.ca/Nunavut/English/p/hone/justice.shtml

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Landmark Common Law Cases on Employment

Canadian courts have spent a lot of time deciding cases between employers and employees. We created FiredWithoutCause.com to help you find the ones most relevant to you.

We wanted to share with you links to the most important cases in Canadian employment law. These cases form the core of the law governing how courts define notice periods. In our Know Your Rights section, we've summarized the most important principle. If you want to know more, here are the links:

Machtinger v. HOJ Industries, [1992] 1 S.C.R. 986 • (1992), 7 O.R. (3d) 480 • (1992), 91 D.L.R. (4th) 491 • [1992] 40 C.C.E.L. 1 • (1992), 53 O.A.C. 2001

(<http://www.canlii.org/en/ca/scc/doc/1992/1992canlii102/1992canlii102.html>): if an employment contract creates minimum notice period that is less than what an employment statute requires, the courts will imply that the parties intended to put in a term of "reasonable notice".

Wallace v. United Grain Growers Ltd., 1997 CanLII 332, [1997] 3 S.C.R. 701 • (1997), 152 D.L.R. (4th) 1 • (1997), [1999] 4 W.W.R. 86 • (1997), 3 C.B.R. (4th) 1 • (1997), 123 Man. R. (2d) 1

(<http://www.canlii.org/en/ca/scc/doc/1997/1997canlii332/1997canlii332.html>):

Bardal v. Globe & Mail Ltd. [1960] O.W.N. 253, (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) (case too old to have online, cited at length in any major employment law decision like *Machtinger* and *Wallace*): the case that defined the basic law that employers must give employees without a specific employment contract notice of their termination; it also created the basic list of factors that courts will use to define a reasonable notice period in a wrongful dismissal