

## Termination of Employment

Employment relationships can be ended by either an employer or employee. In most cases, the legislation requires the person ending the employment to give notice.

### Is a layoff the same as termination?

No. A lay-off is a temporary break in employment where employees are likely to return to work. Employers do not need to provide notice to employees that they are being laid off. However, if the lay-off is longer than 8 weeks in a 16 week period, the lay-off becomes a termination and notice is required.

In the following circumstances, lay-offs do not become terminations even if they are longer than 8 weeks in a 16 week period:

- When employers continue to pay wages or payments instead of wages to employees, or
- When employers continue to make payments to pension plans and/or group insurance plans on behalf of employees.

Temporary help employees are subject to additional rules when determining a layoff period, see Temporary Help Agency fact sheet.

### How does the declared state of emergency affect the layoff period?

The time an employee is on layoff during the period between March 1, 2020 and October 21, 2021 will not count toward the 8 weeks out of a 16-week period used to determine when a temporary layoff is deemed a termination.

The state of emergency does not affect when the first day of the layoff occurred. The state of emergency simply paused the counting of the 8 weeks.

The state of emergency ended on October 21, 2021 at 4:00 pm.

### If a layoff started before March 1, 2020, does that time count towards the 8 weeks?

**Yes.** Any period of time that employees were laid off prior to March 1, 2020 will count towards the 8 weeks.

If the layoff is longer than 8 weeks, without including the period between March 1, 2020 and the date the state of emergency ends, the layoff becomes permanent (i.e. termination), and wages in lieu of notice must be paid.

The employment is deemed to have been terminated without notice on the first day of the layoff.

### If a layoff starts after March 1, 2020 or any time during the state of emergency, does this time count towards the 8 weeks?

No. Any period of time employees are laid off during the state of emergency (between March 1, 2020 and the end of the declared state of emergency) does not count towards the 8 weeks.

However, counting does begin on the date the state of emergency ends. If the layoff reaches 8 weeks in a 16-week period, the layoff becomes permanent (i.e. termination) and wages in lieu of notice must be paid.

The employment is deemed to have been terminated without notice on the first day of the layoff.

## **What happens when the current state of emergency ends and a layoff becomes a deemed termination?**

Employers must pay wages in lieu of notice based on the employee's length of service.

Wages in lieu of notice must be paid within 10 working days from the date on which the deemed termination was triggered.

\*\*Remember termination is triggered after an employee is laid off for a total of 8 weeks within a 16-week period.

## **What is notice of termination?**

Notice of termination is the period of time an employee or an employer is required to give the other before ending employment. Employees continue to work their regular hours and perform their regular duties at the same rate of pay during the notice period.

## **Do employees need to give notice of termination?**

Yes. The amount of notice depends on how long the employee has been employed by the same employer:

<i>Period of Employment</i>	<i>Notice Period</i>
At least 30 days but less than one year	One week
At least one year	Two weeks

## **Do employers need to give notice of termination?**

Yes. The amount of notice depends on how long the employee has worked for the same employer.

<i>Period of employment</i>	<i>Notice period</i>
At least 30 days but less than one year	One week
At least one year and less than three years	Two weeks
At least three years and less than five years	Four weeks
At least five years and less than ten years	Six weeks
At least ten years	Eight weeks

Employers can either allow the employee to work out this notice period, or pay wages in lieu of notice for the same number of weeks, or a combination of both.

## **What is a period of employment?**

The period of employment is the length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave), seasonal employment, and when an employee returns to work for the same employer after a break of less than two months.

Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

### **Layoffs and Periods of Employment**

It is important to know how to determine an employee's period of employment because wages in lieu of notice is based on their length of employment.

When layoffs are longer than 8 weeks in a 16-week period, they become terminations and wages in lieu of notice is required. The employment is deemed to have been terminated without notice on the first day of the layoff.

The actual date on which a layoff began does not change because a state of emergency is declared or a state of emergency ends. For example:

- If an employee was laid off on February 18, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on February 18, 2020.
- However, if an employee was laid off on July 8, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on July 8, 2020.

## **Is there a period when no notice is needed?**

Yes. Employers and employees do not need to give notice of termination when the employee has been employed for less than 30 days. Employers are not allowed to extend or change this period unless it is negotiated in a

collective agreement with a union.

## **Can employers pay wages instead of providing notice of termination?**

Employers can pay the amount of wages employees would otherwise have received had they worked out the notice period (often called wages in lieu of notice). Employers can also allow employees to work for part of the notice period and pay wages in lieu of notice for the remainder.

Employees who work the same hours every week receive their regular earnings for wages in lieu of notice. For employees who work varying hours every week, wages in lieu are based on the average of the earnings for regular weekly hours worked over the last 6 month period. Vacation wages and overtime wages are not added to wages paid in lieu of notice.

## **Are there situations when employers or employees do not need to give notice of termination?**

The following are some cases where notice of termination is not required:

- When employees are placed on a temporary layoff period of no more than 8 weeks in a 16 week period. There are additional considerations for determining the layoff period for temporary help employees. See [Temporary Help Agency](#) fact sheet.
- When the employee works in the construction industry
- When the employer can prove just cause, see [Just Cause](#) fact sheet
- When employment is for a specific length of time or a specific task or job
- When the employee has substantial control over whether or not to accept work and is not penalized by the employer for choosing not to work, except for temporary help employees who are entitled to notice if they regularly work more than 12 hours per week
- If the employer acts in a manner that is improper or violent toward the employee
- Under *The Elections Act*, election workers can be terminated for specific reasons by the person who appointed them. The worker can appeal to the Legislative Assembly

Employers must consider each situation on a case by case basis if deciding not to provide a notice period to an employee.

## **Can employers keep employees' wages if employees terminate without notice?**

No. Employers must pay out all wages the employee has earned up until the last day worked. Employers must pay employees all earned wages within 10 business days of the last day of work. An employer can pursue any lost money through civil court.

## Can employers have a different notice policy?

Employers cannot give less than the required notice period. These are the minimum standards for notice and any agreement between an employee and employer that is less than the minimum is not valid.

The only exclusion is in a unionized workplace where a collective agreement exists.

## Do other laws affect termination?

Employers are not allowed to terminate employees because they have taken or requested a legislated leave of absence from work. More information can be found on the [Unpaid Leaves](#) fact sheet.

*The Human Rights Code, The Workplace Safety and Health Act, and The Labour Relations Act* all deal with issues around ending employment. More information about other government departments can be found on the [Other Government Support](#) page.

There is also civil employment law covering termination issues. Employers and employees should consult a lawyer if they have questions about civil law.

## How much notice must employers give to terminate a large group of employees?

Employers who intend to terminate a group of 50 or more employees within four weeks must notify the Minister of Labour and Immigration and provide more notice than for an individual termination.

Number of Employees	Notice Required
50 to 100	10 weeks
101 to 299	14 weeks
300 or more	18 weeks

## Are employees who are laid off required to be paid?

No. Employers are only required to pay employees for hours worked.

Employers can provide greater benefits such as paid sick leave or family leave but are not required to do so.

## **For more information contact Employment Standards:**

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards)

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Employment Standards Code, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

### **Offered in alternate formats.**

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