

## INVOLUNTARY TERMINATION: Just Cause or Without cause?

### Termination for Just Cause

Termination for cause is a termination without notice or pay in lieu of notice. The burden of proving just causes rests with the employer. Just cause includes basic violations of the employment relationship, including criminal acts (such as theft from the employer), gross incompetence, willful misconduct or a significant breach of a workplace policy. An employer may also have just cause to dismiss an employee for repeated minor infractions of workplace rules, or unsatisfactory performance that does not improve despite clear warnings – which should be outlined in a progressive discipline policy. Whether or not you have just cause for dismissal will always depend on the specific circumstances of the case.

If you suspect that you may have to terminate an employee for just cause, it is important that you document and track, in writing, the infractions. Regardless of what your progressive discipline process consists of, it is important to maintain complete records, including dates of meetings and discussions, follow-up training sessions, written and verbal warnings, suspensions and performance reviews.

Document your conversations and who said what to whom. Most progressive discipline processes will include a series of corrective actions that range from informal meetings to suspensions.

### Termination without Cause

In Saskatchewan, employee terminations are governed by the *Saskatchewan Employment Act* and the regulations set by the Saskatchewan Labour Standards. When dismissing an employee without cause, employers must follow the correct procedure. This means giving notice of termination or pay instead of notice. Doing so ensures you are following Saskatchewan's employment standards and keeping your business protected.

#### *Do you need to give termination notice?*

The rules for termination of employment are set by the *Saskatchewan Employment Act*. It states that both workers and employers must give the notice to end the employment relationship. Employers do not have to provide notice for every employee, such as seasonal or task-specific employment. A notice is also not required if the employee worked for the employer for less than 13 consecutive weeks or is being terminated for just cause.

### *Here's what to keep in mind when terminating employment*

If an employee is not allowed to serve their notice period, or notice isn't provided, employers must give pay instead of notice. This means the employee receives their normal weekly wages for the required notice period.

The notice period for termination depends on the length of a worker's employment.

<b>Employee's period of employment</b>	<b>Minimum period of written notice</b>
More than 13 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

### **How to calculate termination pay**

At a minimum, termination pay must equal the wages the employee would have earned had they worked regular hours for the termination period. If an employee's wages vary from one pay period to another, termination pay equals the weekly average of the employee's wages for the 13 weeks in which the employee worked prior to the date of termination.

### **When Is Termination Pay Due?**

When adequate notice is given (either by the employee in the case of a resignation or by the employer in the case of termination) the employee's earnings must be paid 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.

The termination pay must include:

- Regular wages and any banked overtime.
- Public holiday pay.
- Pay instead of notice.
- Vacation pay.

There are also a few extra things to keep in mind when giving termination notice. These are:

- Banked overtime cannot replace a notice period.
- Vacation days cannot replace a notice period.
- Employee's normal hours or wages cannot be reduced during the notice period.

**Please note:**

These are the minimum requirements as dictated by the *Saskatchewan Employment Act*. The employer may be entitled to longer notice or more pay in lieu of notice through common law (standards set by the Courts in wrongful dismissal cases). Entitlement will often depend on the specific circumstances, the age of the employee, how long the employee has worked for the organization, and the position level. If in doubt, contact an employment lawyer for advice.

Resource: [Just Cause and Performance Management: A Legal Perspective on Employee Dismissal.](#)