

Employment Law

This is a summary of employment law matters of interest, from a litigator's point of view.

Termination of Employment in Ontario in 2019: A Brief Overview

If an employer terminates an employee for cause, an employer has no obligation to provide an employee with notice of termination. It is important to remember that establishing cause to terminate an employment relationship is not easy. The existence of cause will depend on the particular facts of each case. A lawyer from Koskie Minsky LLP can provide advice on whether the facts of a given case may amount to cause for termination.

Generally speaking, an employee is entitled to reasonable notice when his or her employer decides to terminate his or her employment without cause. This can be working notice or pay in lieu of working notice. The amount of notice an employee is entitled to will depend on several factors.

A provincially regulated employee's minimum entitlement to notice of termination of termination pay (in lieu of working notice) is set out in the *Employment Standards Act, 2000* ("the Act")*. The Act currently entitles an employee that has been terminated without cause to in general terms, one week's working notice or pay in lieu of working notice for each full year of service up to a maximum of 8 weeks working notice or pay in lieu of working notice. These amounts may vary depending on how many employees are terminated by an employer at any given time. Employees that have been working with their employer for more than 5 years may also be entitled to additional monies referred to as severance pay under the *Employment Standards Act*. A lawyer from Koskie Minsky LLP can provide advice on what amount of termination pay is owing under the Act and whether an entitlement to severance pay under the Act exists. There are different minimum statutory entitlements if your employment is federally regulated.

However, statutes provide only minimum rights for employees. Absent an employment contract limiting entitlement to the minimum standards under the Act, or otherwise stipulating the entitlement in an enforceable manner, an employee is entitled to reasonable notice of termination of employment in accordance with the "common law". This can be working notice or pay in lieu of working notice. Common

law entitlements refer to the entitlements which are assessed by the courts in Ontario. The amount of reasonable notice to which an employee is entitled pursuant to the common law will depend on a number of factors including: the nature of the employment, the level of responsibility, the length of the employment, the age of the employee, the availability of alternative employment, and the circumstances surrounding the employer's decision to terminate the relationship. It is a highly nuanced assessment. Advice is available as to whether your right to notice is restricted based upon any contract you may have signed, and the estimated amount of reasonable notice to which you are entitled.

To recover the full amount of any entitlement to payment in lieu of notice, an employee that is terminated is required to try to limit and/or "mitigate" his or her losses by actively seeking alternative employment. Any failure on the part of an employee to take steps to mitigate losses may adversely impact the amount of common law reasonable notice to which the employee may be entitled. While this strikes many employees as unfair, the principle is that Courts award only actual losses – damages and do not give windfalls.

Accordingly, earnings during the notice period are deducted from the damages which the employer will have to pay.

While this information is intended as a summary of what areas were covered during our consultation if applicable to you, please feel free to contact one of Koskie Minsky LLP's lawyers from the Employment Law Group at any time to seek further advice on these, or any other employment related issues.

* Note: Employees engaged in work that is federally regulated are subject to different legislation than employees engaged in provincially regulated work, namely the *Canada Labour Code* ("The CLC"). The CLC entitles most employees to two weeks' notice of termination. After 12 consecutive months of continuous employment, employees are also entitled to severance pay equivalent to two days pay for each completed year of employment, with a minimum benefit of five days wages.

The purpose of this newsletter is to provide general information and should not be relied on as legal advice or opinion. If you do not wish to receive the Employment Law Newsletter, or wish to receive it at a different address, please send an e-mail to publications@kmlaw.ca.

Nancy Shapiro, Partner

This edition of Employment Law News was produced and edited by the [Employment Law Group](#)