

Corporate Counsellor

TILLEKE & GIBBINS

Employees' rights at job termination

Labour Protection Act stipulates procedures

Employers and employees are normally bound by an employment contract, be it oral, written or implied. Employment agreements that violate the Labour Protection Act are void.

Employers may terminate employees with or without cause unless required by law to follow certain procedures, as in the case of employee representatives in a registered employee committee protected under the Labour Relations Act. According to the said Act, employers proposing to punish or terminate such employees must first obtain court approval, otherwise they risk being charged with a criminal offence.

To terminate employment of unspecified duration without cause, employers must give advance notice at or before any time of wage payment, to take effect in the next period of wage payment. Section 17 of the Labour Protection Act and Section 582 of the Civil and Commercial Code stipulate that employers may terminate employees without advance notice, provided that they pay advance wages in lieu of such notice.

Such "payment in lieu" of notice would consist of all wages due from the date of termination through the next wage payment date. If termination occurs within a payment cycle (i.e. termination occurs between wage payment dates), then such payment would have to include (a) the wages due through the next ensuing payment date plus (b) one additional payment period's wages beyond that. In sum, the payment in lieu of advance notice can in no case be less than the sum of one full pay period's wages.

For example, an employer pays monthly wages on the 27th of each month. An employee is terminated without notice effective April 1. That employee would be entitled to his wages through May 30 as payment in lieu of ad. This would be in addition to any severance payment or other benefits to which he would be entitled.

Employees terminated without cause are also entitled to receive severance pay if they have worked at least 120 days. Severance pay varies depending on the length of employment:

- ◆ 120 days but less than one year: 30 days' wages;
- ◆ One year but less than three years: 90 days' wages;
- ◆ Three years but less than six years: 180 days' wages;
- ◆ Six years but less than 10 years: 240 days' wages;
- ◆ Ten years and upward: 300 days' wages.

Also, terminated employees are entitled to payment for unused annual leave except when terminated with cause.

Employers may be taken to the Labour Court for not paying statutory compensation and returning a security deposit and could be ordered to pay such compensation plus 15% interest per year.

Nevertheless, employers need not pay compensation to employees terminated for one of the following:

- ◆ Performing duties dishonestly or intentionally committing a criminal offence against the employer.
- ◆ Intentionally causing damage to the employer.
- ◆ Acting with gross negligence resulting in serious damage to the employer.
- ◆ Violating legitimate and fair orders and policies of the employer after having already been issued a written warning. For serious violations, employers need not give a written warning. A written warning is valid for not more than one year from the commitment of the offence.
- ◆ Neglecting duties for three consecutive workdays without a valid reason, whether or not there is an intervening holiday in that period.
- ◆ Being imprisoned by a final judgment, unless it is for a negligent act or petty crime.

Furthermore, for serious violations of work rules and regulations, employers are not required to give advance written notice, but they must indicate the cause for termination in the termination notice.

Nevertheless, if the wrongdoing does not reach a certain degree of severity, employers are still required to pay severance pay. Severity will be measured based not only on the employer's standards, but also on general workplace practices. For example, an employer may deem an employee's occasional tardiness a serious violation, but it may not be deemed so in normal practice. The Court will take into account the normal practice in other workplaces in making its decision.

In addition, the Court may consider termination as unfair if done without justifiable cause. An example is a firm cutting its workforce to save costs. This is considered unfair termination, and employers may be ordered to reinstate the employees. However, if the employer-employee relationship has turned hostile, the employees may instead be awarded damages in addition to severance pay.

Employees can pursue legal action against employers for unfair termination and other labour issues through the Labour Court. Unlike in other civil courts, employees are not required to pay court fees to the Labour Court.

Finally, to hopefully settle labour disputes before they advance any further, the Labour Court has introduced mediation early in the proceedings. The judge mediates between the parties to try to reach an amicable solution, saving all parties time and money.

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