

What to Expect in a Termination: A Guide for the Public

Being terminated from your employment can be a stressful, confusing, and difficult experience. This resource outlines what to expect in a termination if it is being conducted by a registered Human Resources Professionals Association (HRPA) member, firm or student.

Since there is a high risk of potential harm if a termination is conducted incorrectly, HRPA has developed a [Practice Guideline: Terminations Checklist](#) to support HR professionals before, during and after terminations and ultimately to reduce harm and risk to employees who will be terminated. Additionally, our [Code of Ethics and Rules of Professional Conduct](#), includes references related to terminations in the workplace. All registered HRPA members, firms and students are expected to comply with the *Code of Ethics and Rules of Professional Conduct*.

We have developed the FAQs below to answer important questions you may have about what you can expect in a workplace termination being conducted by a registered HRPA member, firm, or student. You can determine whether your workplace termination involves a registered HRPA member, student or firm by searching our [Public Register](#).

It is important to note that this Guide for the Public is meant to focus on terminations of non-executive, non-unionized Ontario-based employees. Additionally, the focus of this guide is on circumstances where the employer is the initiator of the termination for an active employee. This is not an exhaustive guide on all elements of a termination, and each termination is unique.

DISCLAIMER: The information provided in this resource is in respect of the law of the Province of Ontario and is intended for general information only. This resource is not provided for the purpose of providing legal advice or a complete statement of the law on the particular topics. Every situation is unique and involves specific legal issues. Please seek legal advice, as applicable, if needed on the topic of workplace terminations. Further, this resource is to be read in conjunction with the applicable employment standards, occupational health and safety, and human rights legislation and does not supersede or replace the legal requirements set out in the legislation.

What does it mean if I am being terminated for “just cause”?

Under the *Employment Standards Act (ESA)*, just cause is “wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer”. Notice of termination or a severance package is not provided where the circumstances support a finding of just cause under the ESA.

A just cause termination may be based on various forms of misconduct. For example, if an employee’s conduct is in **significant violation** of an organization’s policies or they have presented a danger to other employees, termination for just cause may occur. The Ontario Court of Appeal states that just cause may exist if the employee is “guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer’s business, or if he has been guilty of wilful disobedience to the employer’s orders in matter of substance.” In the case of a just case termination, the employee remains eligible for their statutory minimum termination and severance entitlements under the ESA, but there is no entitlement to a separation package beyond their statutory entitlements.

As this type of termination is considered the “capital punishment” of employment law, employers are required to meet a high threshold before they can successfully assert there is just cause for the dismissal. The employer in these cases must have evidence that the employee’s conduct was so serious and of such a degree to support the need for terminating for just cause (as opposed to without cause).

What does it mean if I am being terminated “without clause”?

Most dismissals in Ontario are done on a without cause basis. [Ontario-regulated employers](#) have the right to terminate the employment of a non-unionized individual employee without a cause, so long as the termination does not violate the *Ontario Human Rights Code*. Under this type of termination, the employee being terminated, if they have been employed continuously for at least three months or more, is entitled to a minimum period of advance notice of termination complying with the ESA or pay in lieu of notice. Examples of circumstances that might lead an employer to terminate an employee without cause could be business slow downs, restructuring or poor performance to name a few.

What are examples of being wrongfully or illegally terminated that I should be aware of?

An employee's situation should be fully evaluated before making the decision to terminate them – including, but not limited to, determining if the employee's conduct or performance could be related to workplace discrimination or harassment or an underlying medical condition, including a psychological or mental disability.

The ESA specifies that penalizing an employee, including terminating their employment without cause, cannot occur if any part of the reason is due to an employee asking questions or exercising any rights under the ESA. Additionally, termination without cause cannot occur if the reason could be linked to a protected ground under the *Ontario Human Right Code* or employee rights under the *Ontario Health and Safety Act (OHSA)*.

In the case of potential or actual discrimination or harassment, termination should only proceed after a workplace investigation appropriate in the circumstances has been completed. In the case of an ill or disabled employee, termination should not proceed unless the organization has provided *Code*-related accommodation to the point of undue hardship and the form (e.g. frustration of contract) and basis of termination has been discussed with legal counsel.

Ultimately, terminations based on discrimination or reprisal should never be conducted.

What are the legal minimum requirements for proper notice of termination and/or pay in lieu of notice that I should expect to receive when I am being terminated without cause?

For Ontario-Regulated Workplaces:

As of the time of writing (March 2023), under the ESA the following **minimum** notice of termination is required (**Note: special rules determine the amount of notice needed for mass terminations of 50 or more employees being terminated within a four-week period**):

- Less than 1 year: 1 week
- 1 year but less than 3 years: 2 weeks
- 3 years but less than 4 years: 3 weeks

- 4 years but less than 5 years: 4 weeks
- 5 years but less than 6 years: 5 weeks
- 6 years but less than 7 years: 6 weeks
- 7 years but less than 8 years: 7 weeks
- 8 years or more: 8 weeks

As of June 2022, as quoted directly from the [Ontario Ministry of Labour's website](#), severance pay should be provided in addition to the above notice requirements if the employee has:

- “worked for the employer for five or more years (including all the time spent by the employee in employment with the employer, whether continuous or not and whether active or not) **and**
- Their employer:

Has a global payroll of at least \$2.5 million; **or** severed the employment of 50 or more employees in a six-month period because all or part of the business permanently closed.”

The [Ontario Ministry of Labour's webpage](#) on severance pay also provides details on calculating the amount of severance pay owed.

For Federally Regulated Workplaces:

Please refer to federal laws and statutes, as the scope of this document is limited to Ontario only. Federally regulated workplaces may include banks, railways, airlines, airports, telecommunication companies, federal government employees, and more where the *Canada Labour Code (CLC)* applies and must be followed.

What type of documentation or key information should I expect to receive from my employer when being terminated (e.g. in a severance and/or termination package)?

While this is not an exhaustive list, you should expect to receive the following documentation/key information upon being terminated, as applicable:

- Information on how to access your Record of Employment;
- Benefit and benefit conversion information, if applicable;
- Payment amounts and dates for all that is owed to you, as applicable– this includes correct amounts of what is owed to you from the period of the

termination date to the end of the statutory termination notice period (including salary, vacation pay, commission, incentives, bonuses, notice pay, severance pay, benefits, pensions, RRSPs, stock options, loans, advances, etc. as applicable);

- Termination letter;
- Confidentiality requirements; and/or
- How to access pay statements.

What should I expect if my employer is asking me to sign a Release form?

If an employer is asking you to sign a Release form, we recommend you seek independent legal counsel to help understand your rights and the terms of the release.

What should I expect during the actual termination meeting?

During a termination meeting that involves a registered HRPAs member, student or firm conducting the meeting, you should expect:

- The termination to be done professionally, respectfully and privately;
- The termination meeting being led by those appropriately trained to do so (e.g. trained and knowledgeable of all applicable employment laws and trained in conducting terminations with fairness and respect);
- Your personal property to be returned to you either at the meeting or in a timely manner post-termination;
- Clearly explained details about any payout packages, an explanation of notice pay and severance pay (as applicable), how your Record of Employment will be coded and when/how you will receive it, details on the use and conversion rights of employee benefits, what will be included in your final pay, etc.;
- The opportunity to ask questions during the meeting and being notified of who you can ask questions to after the termination meeting; and
- You should not be encouraged, enticed or coerced during the termination meeting to sign a release of liability before leaving the meeting. Instead, you are entitled to take the opportunity, with sufficient enough time, to receive independent legal advice on the termination and severance package before signing any sort of release or termination contract.

How can I submit a complaint if a registered HRPA member, student or firm is acting unethically during a workplace termination?

We understand that potential professional misconduct by an HR professional can be extremely challenging. If you believe that an HR professional has acted unethically or unprofessionally, then we would strongly encourage you to consider filing a complaint with HRPA.

First, check the [public register](#) to confirm the HR professional is registered with HRPA. Unfortunately, HRPA can only accept and investigate complaints against a registered member, student or firm.

Second, review the [Code of Ethics and Rules of Professional Conduct](#) and note any sections that you believe may have been breached by the registered HR professional's actions.

Third, complete the professional complaints form to share your experience – what happened, when did it happen, who may have witnessed the situation and what supplementary documents do you have that may support your statements. You can find a copy of the professional complaints form [here](#).

Once you've written out your experience, link your allegations and any supporting documents or witness statements to the sections of the [Code of Ethics and Rules of Professional Conduct](#) you had previously identified as having been breached.

Finally, submit your assembled complaints package to registrar@hrpa.ca.