



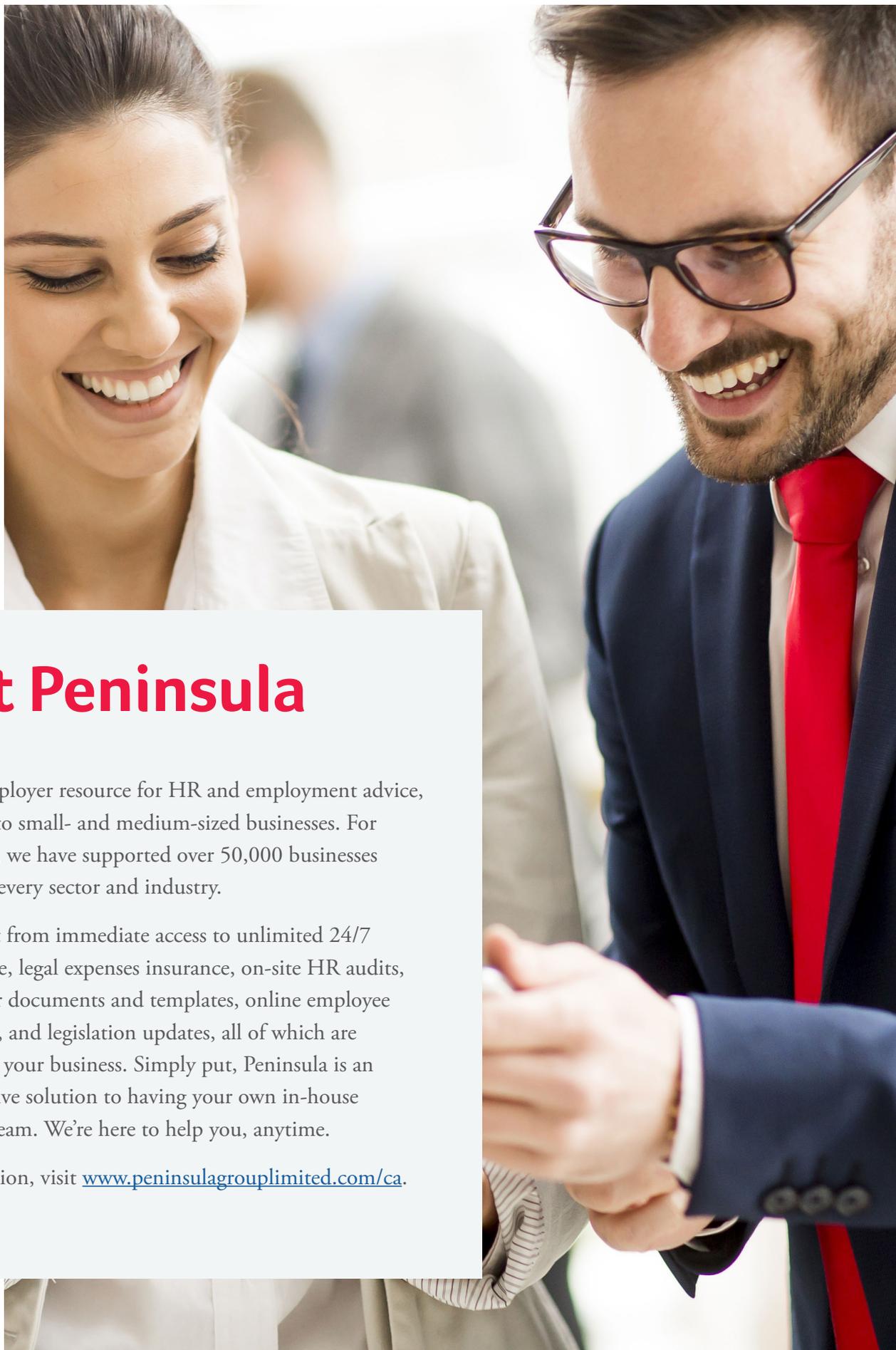
A Guide for Employers

Termination of Employment

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PENINSULA



About Peninsula

Peninsula is an employer resource for HR and employment advice, offering guidance to small- and medium-sized businesses. For over three decades, we have supported over 50,000 businesses worldwide, across every sector and industry.

Our clients benefit from immediate access to unlimited 24/7 employment advice, legal expenses insurance, on-site HR audits, a suite of employer documents and templates, online employee management tools, and legislation updates, all of which are custom-tailored to your business. Simply put, Peninsula is an affordable alternative solution to having your own in-house human resources team. We're here to help you, anytime.

For more information, visit www.peninsulagrouplimited.com/ca.



Who is this guide for?

The essential guide for HR and employment topics dedicated to small business owners.

If you are a business owner or employer, this guide is for you.

The content is designed to address employment-related topics and provides basic information and answers to frequently asked questions.

Use this guide as a reference point for:

- Employer need-to-knows
- HR best practices
- Employment-related facts
- Legislation updates

If you require help to apply this information to your particular situation, please contact Peninsula to speak with our expert HR and employment advisors. Our dedicated employer's advice line is a complimentary service that's available 24/7 at **1(833) 247-3651**.

General Disclaimer: Peninsula is an employer resource for HR and employment advice. Employers are advised that this guide is for informational purposes only. Peninsula is not licensed to practice law in Ontario. The content in this guide is not intended to replace licensed services and the information is not intended to be legal advice.



Termination of Employment

A Resource Dedicated to Employers



This employer guide provides an overview of the basics of employee termination, and offers guidance on how to avoid common pitfalls.

As an employer, employee termination is the leading reason you may find yourself in a challenging legal situation.

This does not mean that you should never dismiss staff. Whether with or without reasonable cause, there are HR best practices and procedures to keep in mind when managing terminations. Hiring, onboarding and dismissing employees are essential to your organization's continued growth.





When it comes to employee dismissals, it is in an employer's best interest to follow HR best practices to prevent any legal challenges from occurring.

Employee termination can happen for many reasons, including re-organization, performance issues, labour needs, or even bankruptcy. Whatever the cause, as an employer, you should be diligent about:

- Understanding the law;
- Drafting effective company procedures;
- Clearly communicating with employees;
- Creating effective Employee Documentation; and
- Training your managers.

Use this guide to create informed and effective company policies and practices. As you review the following pages, think about these priorities:

Protect Your Liability – Carry out your terminations in a proper, fair and professional manner to prevent the aggravation, stress and added work of a wrongful dismissal claim.

Weigh the Costs – Think about your decision to terminate an employee because there will be a cost. As you review these sections, consider when employees are entitled to compensation in lieu of notice or severance pay, and always take into account, the amount of money it will cost to proceed with a termination.

Write Proper Documents – Be thorough with your documentation process. Your detailed understanding of employee termination should be clearly expressed in your company documents, particularly your Employee Handbook and Employee Agreements.

Be a Responsible Employer – Remember, when it comes to employee dismissals, the onus is on the employer to show reasonable grounds that the termination was lawfully justified and properly carried out.



Understanding Employee Termination

Your understanding of employee termination begins with some basic definitions.

Ontario Employment Standards Act, 2000

The **Employment Standards Act, 2000 (ESA)** sets out the minimum standards for the workplace, and this includes the legal terms and conditions for employee dismissals. The ESA defines this under the term, **termination of employment**.

When is a person “employed”?

A person is considered “employed” while they are still working for you, even though they may not actually be at work. (e.g., on sick leave, or on lay-off).

What is “termination”?

“Termination” refers to when an employment relationship is ended. Other expressions for employee terminations include, “let go,” “discharged,” “dismissed,” “fired” or “permanently laid off.”

Under the ESA, a person’s employment is terminated if the employer:

1. Dismisses or stops employing an employee, including when the employment has stopped due to company bankruptcy or insolvency
2. Behaves in such a way (i.e. reduces their pay) and the employee resigns and alleges they have been constructively dismissed.
3. Lays off an employee for a period longer than a temporary lay-off (i.e. more than 13 weeks)

Termination for Just Cause

Incidents of terminating an employee for “just cause” are reserved for serious misconduct, including harassment, fraud, theft of other criminal activity, or long periods of unexplained absences.

Performance issues rarely qualify for just cause termination. It is up to your management team to properly train, guide and encourage your employees, and give them work that meets their skill set. If the employee’s performance is so poor that they must be terminated, then that employee is almost always entitled to notice or compensation in lieu.

What is a “constructive dismissal”?

In addition to fully terminating an employee, a dismissal can occur if an employee resigns in response to organizational changes or conduct by the employer. This is known as a constructive dismissal.

Specifically, these situations may occur when an employer makes a significant change to a fundamental term or condition to employment without an employee’s actual or implied consent.

Constructive dismissals also refer to a series of small changes, which with time, significantly effect an employee’s work and eventually causes resignation.

This area of the law is complex and difficult; we advise employers to ask for expert advice to avoid any challenges.



Proceeding With Employee Termination

As an employer, it is important to understand the rules and regulations around giving notice, severance pay, and employee documentation.

When it comes to employee termination, employees are normally entitled to notice or compensation in lieu of notice. In some cases, your employee may also be entitled to severance pay.

Giving Notice

From an employer’s perspective, the starting point is the employee’s first three months. During those initial three months of employment, an employer can terminate the employee without notice.

Once the employee has been continuously employed for three months, he or she is entitled to a notice of termination, or termination pay in lieu of notice.

How long must you make the notice requirement or termination pay?

The amount of notice to which an employee is entitled depends on his or her “period of employment.” The table below outlines the minimum requirements set out under the Employment Standards Act.

Length of Employment	Notice Required
Less than three months	None
More than three months, but less than one (1) year	One week
One year or more, but less than three years	Two weeks
Three years or more, but less than four years	Three weeks
Four years or more, but less than five years	Four weeks
Five years or more, but less than six years	Five weeks
Six years or more, but less than seven years	Six weeks
Seven years or more, but less than eight years	Seven weeks
Eight years or more	Eight weeks

How to Provide Notice

In most cases, when dismissing an employee, notice must be:

- Given in writing;
- Addressed to the employee; and
- Provided to the employee:
 - In person
 - By mail, where the mail delivery permits verification of delivery;
 - By fax or email;
 - By courier; or
 - In a sealed envelope at the employee's residence with a person who is at least 16 years old.

In some cases, the employment contract or collective agreement may provide seniority rights where a terminated employee can displace ("bump") another employee. In those cases, the employer may post a notice in a conspicuous part of the workplace, setting out the name, seniority, job classification and proposed termination date. This notice is considered the termination notice as of the day it is posting.

Where the Law Prohibits Termination

Remember: the law prohibits employers from terminating an employee for certain reasons, including:

- Asking about or exercising a right under the ESA;
- Refusing to work more than the daily or weekly hours of work maximums; or
- Taking a leave of absence that he or she is entitled to.



Severance Pay

It is important to know that severance pay is not the same as termination pay.

Managing Severance Pay

Severance pay is prescribed by the ESA; it applies to employees who have been employed with the same employer for five or more years, and where the employer has an Ontario payroll of at least \$2.5 million per year. Severance pay is based on the years of service, up to a maximum of 26 weeks.

Severance pay is paid to a qualified employee when the employment is “severed.” Severed employment refers to situations where the employer:

- Dismisses the employee, including in instances of bankruptcy or insolvency
- Constructively dismisses the employee who resigns in response
- Lays the employee off for 35 or more weeks in a 52-week period
- Permanently discontinues all business at a location

Severance pay:

- Compensates for loss of seniority;
- Rewards the employee for the development of firm-specific skills; and
- Recognizes long service.

Writing Effective Employment Documents

Your detailed understanding of employee termination should be reflected in your company documents, particularly your:

- Employee Handbook; and
- Employee Agreements

Where the employer does not have an Employee Agreement or the contract does not have a termination clause, then the employee is entitled to the common-law definition of “**reasonable notice**” or compensation in lieu of that notice.

Employment Agreements must have termination clauses that are clearly worded, enforceable, and set out termination pay. Employee contracts are generally enforceable so long as they comply with the ESA and other rules such as the Ontario Human Rights Code.



Summary

Termination of Employment

As your organization grows, you will be constantly hiring, onboarding, and, as necessary, terminating employees. It's all part of being a responsible employer.

However, you must understand the challenges associated with employee termination. More than anything else, dismissing an employee may result in a legal dispute, and this can be quite costly to your business. As such, it's imperative that you:

- Understand the law pertaining to employee termination
- Write your company documents to clearly communicate your termination policies and practices
- Plan carefully for the protocol of terminating an employee: having the meeting, providing notice, issuing compensation where necessary, and communicating the decision to the employee and the staff

As an employer, the onus is on you. You must always be ready to provide reasonable grounds that an employee termination was justified, and you must show that your company procedures align with legal requirements.

Make sure you're following HR best practices, and move ahead with confidence guiding your organization to success.

Learn More

If you have questions about employment termination as Ontario's Employment Standards Act applies to your organization, contact Peninsula today. We are dedicated to providing small business owners with employment advice and HR support. Call us today.

1(833) 247-3651

We've got you covered.



Employer FAQ's

What are employers asking about employee terminations?

What is the leading cause of legal disputes for employers?

Cases emerging from employee terminations.

Where do courts place the onus to justify an employee termination?

The onus rests on the employer. If you want to terminate an employee, have your case well-documented and properly organized.

When is a person “employed”?

A person is considered “employed” while they are actively still working for you, even though they may not actually be at work. This also extends to any time when they are not working, but the employment relationship still exists (e.g., on sick leave, or on lay-off).

I am preparing to terminate an employee. What is my employee entitled to?

Employees who have worked more than three months are entitled to notice of termination, or compensation in lieu of a notice period. The amount of notice depends on the length of the person's employment period.

Is my employee entitled to severance pay?

Once an employee has worked for three months continuously, he or she is now entitled to either notice of termination or termination pay.

Before working those initial three months, the employee has no right to either notice or termination pay.

Employer FAQ's

...continued

Is termination pay the same as severance pay?

No, the two are different. Termination pay is given in place of the required notice of termination, while severance pay is paid to a qualified employee who has their employment severed.

Severance pay:

- Compensates for loss of seniority;
- Rewards the employee for the development of firm-specific skills; and
- Recognizes long service.

Severance pay is prescribed by the ESA that applies to employees who have been employed with the same employer for five or more years and where the employer has an Ontario payroll of at least \$2.5 million per year. Severance pay is based on the years of service, up to a maximum of 26 weeks.

If I terminate an employee for just cause, are they entitled to notice or compensation in lieu?

Employees who are terminated for just cause are not entitled to notice or the compensation. However, terminations for just cause are reserved only for serious misconduct such as fraud, harassment, theft, fraud or excessive absences. Performance issues are rarely grounds for just cause terminations.



Employer Resources

Get 24-hour access to complete HR support that's affordable, immediate, and right for your business needs.



Are you a small business owner looking for HR advice? You're in the right place.

For additional information, you can continue browsing:

- The [Employment Standards Act, 2000 \(ESA\)](#)
- [Peninsula Employment Services](#)
- [Peninsula's Free Employer Downloads](#)

Or, save time and money with a quick solution. Give us a call, instead - **1(833) 247-3651**