

Labour Law

Employment Law in Ontario as it relates to non-union employees is governed by two separate areas of law: The Common Law and the Ontario Employment Standards Act (ESA)

Following is an overview of these laws.

THE COMMON LAW

The system of Common Law is a civil system of law inherited from England. It is a function of the Superior Courts and is the basis of the laws of all Canadian provinces except Quebec. The common law treats the employment relationship between the employer & the employee as a contract, an exchange of services for money. Generally there is little in writing in the way of terms of employment, and in the majority of cases this represents an oral contract.

There are two basic types of employment recognized by the common law;

Employment for a Definite Term or task

Means

that the employer and employee have, at the outset of the relationship, agreed that upon completion of a specific project or a particular date, the term of employment will end.

Employment for an Indefinite Term

Means

there has been no specified term as to the length of employment.

DEFINITE TERM EMPLOYMENT

A person employed for a definite term or task can expect to be terminated at the time agreed upon without receiving severance pay. However, if the employer terminates employment without just cause prior to the agreed upon time, the employer may be required to compensate the employee for lost wages & discontinued benefits to the end of the agreed upon time.

Defined term contracts in excess of nine years are not recognized under the common law.

If employment is not terminated at the end of the agreed upon time and the employee is permitted to continue working, the relationship then becomes indefinite term employment.

INDEFINITE TERM EMPLOYMENT

For persons employed for an indefinite term the common law presumes that the employer and employee have agreed not to terminate the relationship without notice, subject to the "just cause" exception. It is implied within this contract that an employer is expected to give reasonable notice of dismissal or provide compensation in lieu of notice. Wrongful dismissal occurs when the employer fails to provide this notice or compensation for such when there is no just cause.

If a contract of employment sets out a specific period of time for notice of termination, then the period of notice will be as specified in the contract and must not be less than the statutory minimum as set out in the Employment Standards Act.

REASONABLE NOTICE OF TERMINATION

If the contract does not directly address notice of termination, then the law presumes that the employer must provide "reasonable" notice of termination. There are many factors considered in any particular situation in determining what is "reasonable" .

The most important of which are:

An employee's age

The employee's length of service

An employee's position and responsibilities

Whether the employee was induced to leave a previous job to work for the employer

The manner of dismissal

The maximum period of reasonable notice almost always falls in the range of 18-24 months (12 months for clerical or unskilled staff), although it can go higher in extraordinary circumstances.

Although Canadian Courts have rejected a universal "rule of thumb" of one month's notice per year of service, this "rule" does give a rough idea of what is often awarded.

THE "JUST CAUSE" EXCEPTION

Unless

the contract of employment states otherwise, an employee can be dismissed without notice if the employer has just cause. In practice, just cause is present in only a very small minority of cases. Even though an employer has legitimate reasons to dismiss an employee, just cause requires that the employee has been guilty of serious misconduct, habitual neglect of duty, incompetence or conduct incompatible with his or her duties.

Lack of

work resulting from loss of business or having a legitimate business reason to terminate an employee is not the same as having just cause.

An

employer's dissatisfaction with the person's attitude, productivity or personality will not be enough, unless the employee has been warned unequivocally about the probability of dismissal and given a reasonable opportunity to improve (and even then the courts tend to side with the employee)Â