



## Notice of Dismissal, Layoff or Termination

**Special update regarding COVID-19, see question 4.**

### 1. How are the terms dismissal, layoff, termination, suspension, and period of employment defined in the New Brunswick Employment Standards Act?

**dismissal** – the termination of the employment relationship for cause at the direction of the employer.

**layoff** – a temporary interruption of the employment relationship at the direction of the employer because of lack of work.

**termination** – the unilateral severance of the employment relationship at the direction of the employer.

**suspension** – a temporary interruption of the employment relationship other than a layoff at the direction of the employer.

**period of employment** – the period of time from the last hiring of an employee by an employer to the termination of his/her employment, and includes any period of layoff or suspension of less than 12 consecutive months.

### 2. What are the requirements should an employer choose to dismiss an employee for cause?

When an employer dismisses an employee for cause, the employer must give the employee the reasons for the dismissal in writing. The *Employment Standards Act* does not have any provisions as to when this notice should be provided, however the Labour and Employment Board has established criteria in this regard. As such, the notice should be provided upon dismissal or within a reasonable time depending on the circumstances. The employer will need to prove that the employee received a dismissal notice.

Where the employer does not provide the reasons in writing, the dismissal becomes a termination and for an employee employed with an employer for 6 months or more, the employer will be required to pay the employee what he would have earned during the applicable notice period.

### 3. What are the requirements should an employer choose to terminate or layoff an employee?

Where an employee has been employed with an employer for *less than six months*, the employer is not required to give the employee advance notice of the termination or layoff.

Where an employee has been employed with an employer for a period of at least *six months but less than five years*, the employer must give the employee at least *two weeks* written notice of the termination or layoff.

Where an employee has been employed with an employer for a period of *five years or more*, the employer must give the employee at least *four weeks* written notice of the termination or layoff.

The employer may choose to pay the employee the wages the employee would have earned during the applicable two or four week notice period instead of providing a written notice.

Period of employment	Layoff or termination
Less than 6 months	No notice required
More than 6 months, less than five years	2 weeks notice in writing, or 2 weeks pay
5 years or more	4 weeks notice in writing, or 4 weeks pay

**4. Are there any exceptions to the requirement noted above for an employer to give an employee a written notice of termination or layoff?**

Yes, an employer can terminate or lay off an employee without notice where:

- the termination of employment is due to the completion of a definite assignment the employee was hired to perform over a period not exceeding 12 months;
- the employee has completed a term of employment fixed in the employment contract, unless the employee is employed for a period of three months beyond that period;
- the employee retires under an established retirement plan;
- the employee is doing construction work in the construction industry;
- the termination or layoff results from the normal seasonal reduction, closure or suspension of an operation; or
- the employee has refused reasonable alternative employment offered by the employer instead of being terminated or laid off.

In addition, an employer can lay off an employee without notice where:

- the layoff is for a period not exceeding six days, or
- there is lack of work due to any unforeseen reason: Please contact the Employment Standards Branch for clarification of "unforeseen reason".

**COVID-19 falls within the exemption of the requirement of notice above under unforeseen reasons. As such, employers are not required to provide notice to their employees or pay in lieu thereof, nor are they required to provide notice to the Minister of Post-Secondary Education, Training and Labour for group terminations or layoffs within a 4 week period (more than 10 employees if they represent at least 25% of the employer's employees).**

**5. Can the employer pay the employee what he would have earned during the notice period instead of giving him a written notice?**

Yes, instead of providing the employee with a written notice, the employer can pay the employee what he would have earned during the applicable notice period.

**6. Is an employee required to give notice to his employer when quitting?**

No, an employee is not required to provide notice to his employer when quitting a job. It is recommended that the employer keep a copy of the employee's notice of quit in their file.