

INVOLUNTARY TERMINATION: Just Cause or Without cause?

Termination for Just Cause

Termination for cause is a termination without notice or pay in lieu of notice. The burden of proving just causes rests with the employer. Just cause includes basic violations of the employment relationship, including criminal acts (such as theft from the employer), gross incompetence, willful misconduct or a significant breach of a workplace policy. An employer may also have just cause to dismiss an employee for repeated minor infractions of workplace rules, or unsatisfactory performance that does not improve despite clear warnings – which should be outlined in a progressive discipline policy. Whether or not you have just cause for dismissal will always depend on the specific circumstances of the case.

If you suspect that you may have to terminate an employee for just cause, it is important that you document and track, in writing, the infractions. Regardless of what your progressive discipline process consists of, it is important to maintain complete records, including dates of meetings and discussions, follow-up training sessions, written and verbal warnings, suspensions and performance reviews.

Document your conversations and who said what to whom. Most progressive discipline processes will include a series of corrective actions that range from informal meetings to suspensions.

Termination without Cause

When dismissing an employee without cause, you are required to provide reasonable notice of termination or “pay in lieu of notice” or “termination pay”. Additionally, the employer can choose to provide a combination of both written notice and pay. Payment must be made within 48 hours of termination.

There are minimum requirements as dictated by BC *Employment Standards Act* (“ESA”) [ESA - Termination](#). However, remember that these are minimum requirements. The employee may be entitled to longer notice or more pay in lieu of notice through common law (standards set by the Courts in wrongful dismissal cases). Entitlement will often depend on the specific circumstances, the age of the employee, how long the employee has worked for the organization, and the position level. There are a few other factors that could be involved, so it is always best to contact an employment lawyer for advice before making a final decision.

Resource: [Just Cause and Performance Management: A Legal Perspective on Employee Dismissal](#)