

## **Publication**

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## **Fired or Let Go??**

At Actus we deal with different types of “divorces” – marital and employment – the latter happens when someone loses their job.

Losing your job can be as emotional and traumatic as a marital separation. Our jobs are part of our identity and our social entourage. So when someone loses their job, they often feel like they’ve lost part of their identity.

First, let’s talk “lingo”. A number of expressions are commonly used to describe situations when someone’s employment comes to an end. These include being "let go," "discharged," "dismissed," "fired", “terminated” and "permanently laid off." Regardless of the terms used the result is the same; the person has lost his or her job. What is important, however, is to determine the circumstances that brought about the end of the employer – employee relationship.

If someone was “fired”, they may have been dismissed “with cause”, meaning that the employer had valid reasons to terminate the person’s employment, related to the employee’s performance and/or conduct at work. If the employer truly has “cause” for terminating the employee, then the employee is not entitled to receive advance “notice” of his or her dismissal or financial compensation “in lieu” (instead of) such notice. However, the employer must give written reasons to the employee for his or her dismissal. If no written reasons are given, the employer may not be able to maintain that it had “cause” for the employee’s dismissal.

If someone is “laid off”, it may be due to a lack or shortage of work, cuts or downsizing by the employer. In such cases, it usually follows that the employer does not have “cause” for termination, meaning that the employer either needs to give “reasonable notice” to the employee or provide the employee with financial compensation instead of giving such notice. We often hear about people getting a “Severance Package”, which is the equivalent of receiving compensation in lieu of notice. Some exceptions apply. For example, for “seasonal employees”, such as people working in fisheries or the construction industry, the employer can lay-off the employee without notice or compensation, provided, however, that there is a reasonable expectation to call the employee back to work at some point.

If an employee “quits” his or her job, then usually the employee is not entitled to any compensation or “Severance Package” as he or she has voluntarily left the place of employment. This applies regardless of the length of employment.

However, there are exceptions, and this is where it gets “interesting” for us lawyers. For example, if someone leaves his or her employment as a result of the employer’s conduct or as a result of a “fundamental change” in the person’s employment, then this can be considered as a “dismissal” in disguise and, in such cases, the employee would be deemed to have been let go “without cause”. Lawyers refer to this type of situation as a “constructive dismissal”. Examples

of this would be an employee being demoted by the employer, which may or may not include a reduction in wages or salary, or changes implemented by the employer resulting in a “fundamental change” to the person’s employment role or employment conditions, including a reduction of the person’s compensation or change to important work benefits. It can also result from the inappropriate conduct of the employer creating a “poisonous working environment”, therefore forcing the employee to leave the place of employment. In all of these cases, the employee would be entitled to compensation in lieu of reasonable notice even though the employee may have been the one who left the place of employment, provided however that the “constructive dismissal” can be proven, which can be a challenge and should only be advanced as a “last resort”.

Okay, so we have determined that you have been let go “without cause” and your employer may or may not have given you reasonable notice or compensation in lieu of such notice. So how do you determine if you have been given sufficient notice or have been sufficiently compensated? You may have heard that the “rule of thumb” relative to notice is “one month per year of service”..... easy then, you don’t need a lawyer right? Not so fast. Although using this rule is not a bad start, there are many things to consider when determining how much “notice” you are entitled to. The most common factors are the length of employment, your age, your education, the type of employment, the industry you were working in and the availability of other similar employment in the area. In essence, all of these factors are considered in order to determine how long it may take you to find similar employment after being let go from your job. In other words, the reason employers need to give “reasonable notice” is because it is a known fact that it can take a certain amount of time for someone to find another “similar” job, i.e. similar in terms of the type of work and similar in terms of compensation and benefits.

For some individuals it may take them longer to find another job. For example, if a 20 year employee who is close to the age of retirement and working in a very specialized area is let go from his job, it goes without saying that it will be more difficult for that individual to find comparable employment and, consequently, that individual would be entitled to receive additional notice of his or her dismissal. Is it 20 months? More or less?

The answer is: it depends.

If you are a union member, then the rules are different and the above comments probably don’t apply to your case as your employment rights are set out in the collective agreement between your union and the employer. In such a case, contact your union representative or a Labor Law lawyer to determine what your rights are.