What is “wrongful dismissal”? 

In Ontario, according to the common law (judge-made law), an employer must give an employee reasonable notice of any dismissal without “just cause”. There are exceptions for written contracts to the contrary and for employment for a fixed term only (i.e., six months or one year). If an employer fails to give an employee reasonable notice of dismissal in the absence of just cause, then it has committed a “wrongful dismissal”.

What is “just cause”? 

“Just cause” is a legal term used by our courts to describe circumstances in which an employer is justified in dismissing an employee without any notice. In order to constitute just cause for dismissal at law, an employee must have engaged in a course of conduct that constitutes a “repudiation of the employment relationship” which the employer may accept by terminating the employee’s contract. In other words, if an employer terminates an employee for just cause, it must be able to show that the employee engaged in some form of serious misconduct, such as theft, chronic insubordination or workplace violence.

How does “reasonable notice” work? 

The primary purpose of reasonable notice is to cushion economic hardship by giving an employee an opportunity to search for alternate employment while continuing to receive a paycheque from the employer who has given the notice of dismissal.

An employee’s common law (or “reasonable”) notice period is essentially a moving target and is assessed on a case-by-case basis taking into consideration the following factors, as determined by our courts:

- The character of the employee’s employment with the employer;
- The employee’s length of service with the employer;
- The age of the employee at the time of dismissal;
- The rate of the employee’s compensation; and
- The availability of similar employment, taking into consideration the employee’s education, experience, training and qualifications.

Statutory entitlements 

Most employees in Ontario are entitled to a minimum notice period, and in some instances, additional severance pay, pursuant to the provisions of the Ontario Employment Standards Act (“ESA”). However, it is important to emphasize that these are minimum standards only. Providing a dismissed employee with his or her entitlements under the ESA will not shield an employer from a wrongful dismissal suit because an employee’s common law entitlements almost always exceed the minimum amounts required by the ESA.

Furthermore, because ESA entitlements are “statutory minimums”, they are included in, and not in addition to, an employee’s entitlements at common law.

What are “wrongful dismissal damages”? 

If an employee is wrongfully dismissed – that is, if his or her employer terminates their employment without just cause and without adequate notice, or no notice at all – the employee is entitled to sue his or her employer for the total compensation that they would have otherwise received if the employer had given proper notice of dismissal. This compensation, which typically includes all salary, bonuses, benefits and related forms of pay, constitutes the employee’s “damages”.

In addition, you should note that damages for failure to provide reasonable working notice are not concerned with whether the dismissal was “right” or “wrong” in any moral sense; rather, with rare exceptions, an employer is allowed to dismiss an employee at any time provided that he either has “just cause” to dismiss the employee without notice or, alternatively, he has provided the employee with proper notice of dismissal.

What is the “duty to mitigate”? 

An employee who has been wrongfully dismissed is required by law to make reasonable efforts to search for a new job during his or her common law notice period. In formal legal terms, this obligation is known as “the duty to mitigate”. In practical terms, this duty means that a wrongfully dismissed employee must “cut his or her losses”. The duty to mitigate should be taken seriously because, if a wrongfully dismissed employee fails to make reasonable efforts to find new work, then it is possible that a court will reduce the amount of any award of wrongful dismissal damages made against the employer.

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This pamphlet is not intended to be a substitute for legal advice. We recommend that you speak with a lawyer concerning your circumstances.