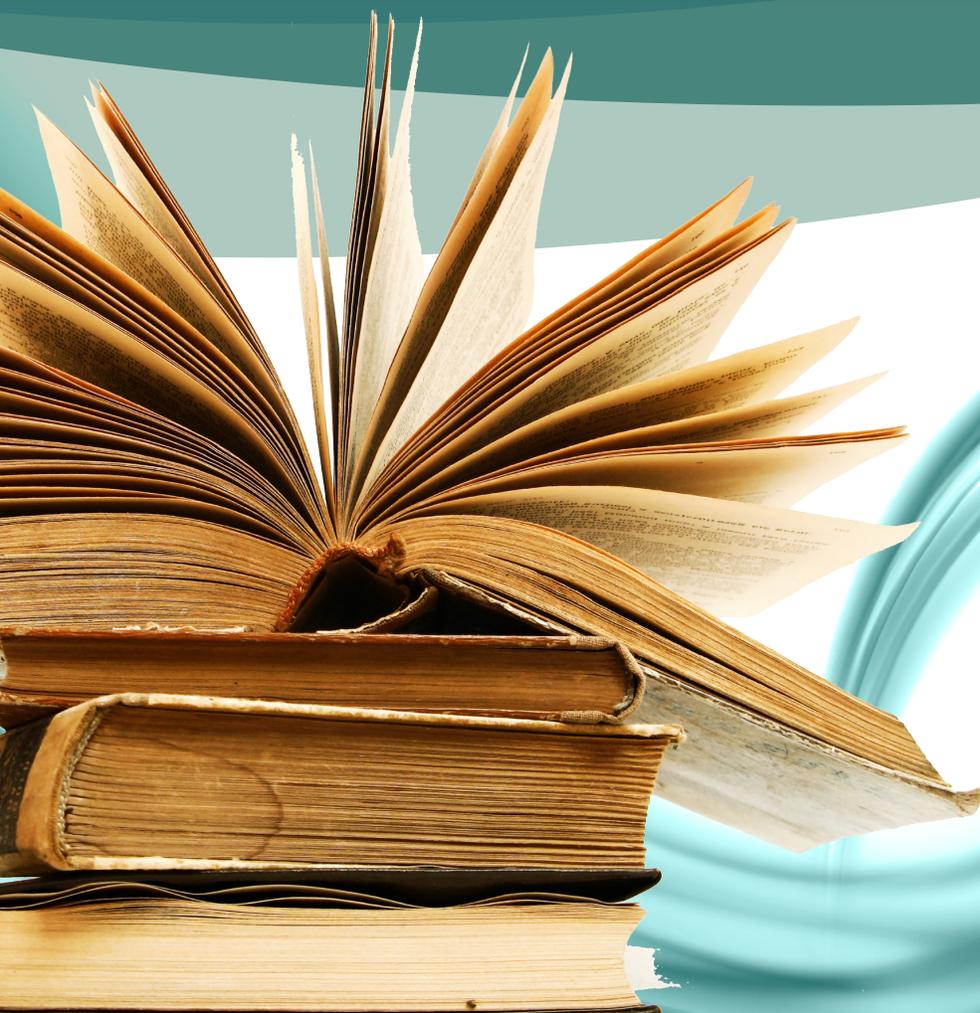




Saskatchewan Guide to Termination



A Guide to Termination: Saskatchewan

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Executive Summary

Terminating an employee, for any reason, can be a very stressful situation for both managers and human resources personnel. Job loss is a major event for an employee and the loss of an employee can have a significant impact on the team or department, as well.

Proper preparation prior to the termination can help to ensure it is done in a way that allows the employee(s) to leave with dignity, while mitigating risk to the organization. It is also important to maintain confidentiality about the reason for termination, while providing sufficient information to the staff to minimize disruptions internally. This requires preparation, and possibly scripting, to assist managers with dealing with awkward questions about the situation.

Sometimes, it is necessary to eliminate a position that has become redundant, or layoff employees due to business slowdowns. Other times, terminations may be due to poor performance or inappropriate conduct. Regardless of the reason, it is important to terminate the business relationship in a professional manner, with appropriate notice, and in a way that meets at least the minimum legislative requirements for Saskatchewan.

No matter how much preparation you do, or how many policies or procedures you put in place, terminating an employee is never a pleasant task. Even though there are many steps you can take to make the process more effective and efficient, and you may get better at handling these uncomfortable situations, most managers and human resources personnel still consider it to be one of the least liked parts of the job.

This Termination Guide is intended to be a resource to human resource professionals and managers. It begins by outlining the current, 2011, Saskatchewan legislation that is in place with respect to terminations and then delves into specific termination topics and the associated best practices to consider.

Saskatchewan Termination Standards

- Compliant as of March, 31 2011
- Labour Standards Act
- <http://www.qp.gov.sk.ca>

Termination Notice

Written Notice - Employer

Employers must provide written notice to employees when they are terminating their employment. The minimum written requirements are generally based on the tenure of the employee. However, some employees may be entitled to a greater notice period than the minimum standards legislated as a result of common law court decisions.

Minimum written standards are as follows (s.43):

- | | |
|--|-------------|
| • More than three months but less than one year: | one week |
| • One year or more but less than three years: | two weeks |
| • Three years or more but less than five years: | four weeks |
| • Five years or more but less than ten years: | six weeks |
| • Ten years or more: | eight weeks |

A period of notice may not form part of any annual holiday, nor may payment of annual holiday pay to the employee be considered as pay in lieu of notice (s. 36).

Continuity

The employment of an employee is deemed to be continuous and uninterrupted when a business, undertaking or other activity or part of it is sold, leased, transferred or merged or if it continues to operate under a receiver or receiver-manager (s.83).

When Notice is Not Required

Employers are not required to give termination notice (or pay in lieu) to employees if:

- the employee is discharged or laid off for just cause other than shortage of work;
- the employee has completed less than three continuous months of service;
- the layoff does not exceed six consecutive days (s.43).

Termination Pay

Rather than provide notice, an employer can opt to provide payment in lieu of notice. This amount must be in the amount the employee would have received if they had worked their regular hours and received regular wages during the notice period.

Employers may also choose to offer a combination of termination notice and termination pay. In this case, the termination pay must be at least equal to the regular wages the employee would have earned for the period not covered by the notice (s.44).

Employer Payment Responsibilities

Upon termination of employment of an employee for any reason, the employer must pay to the employee all wages due, including any annual holiday pay to which the employee is entitled, within 14 days after the effective date of termination (ss.35,48(2)).

Conditions of Employment

After the employer has given termination notice, the employer must continue to pay the employee, at minimum, the employee's normal wage excluding overtime for the notice period.

Temporary Layoffs

Maximum duration of a temporary layoff -- an employee's employment is deemed to be terminated, and the employer must pay termination pay, after the 6th day of a temporary layoff (s.2(h)).

An employer may not lay off or discharge an employee because of a shortage of work where the employee has been employed at minimum 13 continuous weeks, without giving the employee at least one week's written notice for each year of employment or a portion of a year of employment with the employer, to a maximum of 10 weeks' notice (s. 43.1).

Group / Collective Terminations

A termination is deemed a group or collective termination when 10 or more employees at a single location within a 4-week period are terminated. In this case, employers have specific requirements under the Labour Standards Act. Saskatchewan legislation requires employers to provide employees with written notice of termination or termination pay in lieu of notice based on the number of employees affected by the group termination.

- 10-49 employees: 4 weeks
- 50-99 employees: 8 weeks
- 100 employees or more: 12 weeks

Individual Notice of Termination:

- Individual notice of termination or layoff, under the LSA, must also be given to each affected employee in a group termination.
- Notice of group termination may be given concurrently with an individual notice of termination or layoff.

The Minister of Human Resources and Employment must be provided with written notice of the termination including the number of employees being terminated as well as the effective date of

the termination. Employers are exempt from providing this notice to the Minister if the employees are employed on a seasonal basis or for a definite term or task.

Illegal Terminations

An employer must not dismiss, layoff, suspend or otherwise discriminate against an employee because she is pregnant, she is temporarily disabled because of pregnancy, or she has applied for maternity leave in accordance with the LSA (s. 27(1)).

An employee who has been employed for a minimum of 13 consecutive weeks may not be dismissed for taking bereavement leave or for an absence due to illness or injury to which he/she is entitled (s. 29.3(2), 44.2).

An employee may not be discharged or laid off only because a garnishee summons issued under *The Attachment of Debts Act* was served on the employer with respect to the employee (s. 81).

Additionally an employer may not discharge, threaten to discharge or discriminate in any manner against an employee because they have reported or proposed to report an activity that contravenes or is likely to contravene provincial or federal legislation, or has testified or may be called on to testify in an investigation or proceeding under provincial or federal legislation; however, this protection does not apply where the actions of an employee are vexatious (s. 74).

A Guide to Effective Terminations

Types of Terminations

Terminations can affect an individual employee or can be widespread throughout an organization. The reasons for terminating employment can be classified as administrative, voluntary or involuntary. Administrative terminations generally refer to situations where the employment relationship ends as a result of retirement, permanent or long-term disability, or death. Voluntary terminations occur when an employee resigns from the organization, such as to pursue other opportunities, or is considered to have resigned as a result of job abandonment. Involuntary terminations include reasons such as poor performance, misconduct or economic slowdowns, where the employer must take steps to end the business relationship.

Most companies have a specific policy and a set of procedures to ensure that terminations are carried out as professionally as possible, while mitigating risk to the organization. Please refer to the HR Downloads ***Termination of Employment Policy*** template.

Administrative and Voluntary Terminations

As part of the natural employment life cycle, employees will leave your organization. Sometimes, employees feel that they cannot meet their personal career goals, or reach their maximum potential, in their current position. If they do not see an opportunity for advancement within your organization, these employees start to seek external opportunities and resign to accept another offer of employment when the opportunity arises. You can increase the likelihood of retaining these valued employees by offering career counselling, working with employees to learn and develop skills necessary for internal advancement, and maintaining open communication. However, some employees will still decide to spread their wings and accept external offers.

Another reason employees will leave an organization is due to internal conflict, or feelings of unfair practices. Sometimes these reasons are unfounded, but you may find that a higher turnover in one department or team could be caused by ineffective management or poor working conditions. Similar reasons can also increase the instances of employee absences and lost productivity.

Employees who are absent as a result of illness or injury may end up severing the employment relationship:

- to find more suitable work to accommodate their disability,
- due to a permanent disability, or
- death.

Such losses are often unavoidable but can still have a long-lasting impact in the workplace.

Another common reason for voluntary terminations is retirement. Most employees will retire as soon as they can withdraw their pension, or have saved sufficient funds to provide them with an adequate retirement income. This may be the least disruptive cause for voluntary termination as

employees usually plan ahead for retirement. Often, employees will provide employers with a long notice period so that the position can be filled and a new employee trained prior to the retirement date. Sometimes, retirement can also be used as a way of reducing excess supply of labour by encouraging early retirements rather than laying off employees. This can make staff reductions much easier for an employer.

Involuntary Terminations

Economic Reasons

When times are tough, layoffs and plant closures or business bankruptcies can lead to temporary or permanent employment disruptions for many employees. As an HR professional, large-scale terminations can be extremely difficult, and compounded when it happens at certain times of the year, such as Christmas. However, finding the right balance, between demand for labour and internal supply, is a critical part of any human resources position.

Layoffs can be temporary, indefinite or permanent. A temporary layoff occurs when the employer stops the employee's work due to economic circumstances without severing the employee relationship. In this case, it is expected that the employee will be called back to work at a later date. Sometimes, the employer will layoff employees for a stated period of time, such as 2-4 weeks, or it could be indefinite depending on the situation. A permanent layoff would result in the employee being eligible for termination pay since the relationship is being severed and it is not expected that the employee will be called back to work at a later date.

When large scale layoffs, or company closures, are the reason for terminating employment, it is important to adhere to legislation pertaining to such situations. For example, the Labour Standards Act includes mass termination rules stipulating different notice periods depending on the number of employees to be terminated.

A series of written notice templates for layoffs are available for download from the website.

Performance Issues

When you first hire an employee, it is important to set out your expectations so that the employee knows the standards to be met, and you have a standard of performance to measure against. Ongoing feedback is the key to ensuring the employee knows how they are doing, and has the opportunity to improve performance or seek additional training when performance is lacking.

Whether formal or informal performance reviews are conducted, it is important to document all reviews and provide a copy of your notes to the employee. For informal sessions, this can be done by a simple email summary of the discussion.

Upon the first signs of poor performance, you should take action. You can start with a conversation with the employee to determine if there is an underlying problem affecting work performance. However, you should review your company's policies to ensure that the steps you take are in line with such policies, as well as the employment offer letter or collective agreement.

Establish reasonable standards of conduct and clearly communicate this to the employee. These standards should be provided in writing, stated clearly, and should contain a place for the employee to sign as acknowledgement of receipt and understanding. Encourage the employee to ask questions if anything is unclear. These written standards should also include mention of the fact that failure to adhere to policies or uphold standards could eventually lead to termination. Signing such a document often helps the employee to recognize the severity of the situation and the commitment they are making to improve their performance or behaviour.

All communications with the employee should be documented, including the date and time of the discussion, and any feedback provided during the meeting. If you suspect a meeting will go badly, or just want moral support, it is a good idea to have someone else present in the meeting. However, since all discussions should remain confidential, it is not appropriate to include the employee's colleagues in the meeting, but possibly another manager or Human Resources representative.

Progressive Discipline Process

In the event that an employee violates company policy, exhibits problematic behaviour, or underperforms as per expected standards, a system of progressive discipline should be utilized.

Generally, employees are provided three opportunities to correct the undesirable behaviours, with the final step being severance of the employment relationship.

Reference to the progressive discipline process often occurs even before an employee joins your organization. Some employment contracts specifically state the steps to be included in the disciplinary process, and the obligations for both the potential employee and the employer when terminating the employment relationship. Similar information is often included in the employee handbook, provided to the employee either prior to joining the organization or during the orientation session. For more information about disciplinary procedures, refer to the HRdownloads [Progressive Discipline Policy](#).

In general, the steps in the disciplinary process include:

- Verbal Warnings;
- Written Warnings;
- Suspension With/Without Pay; and
- Termination.

The verbal warning is usually the first step in the disciplinary process. Although it is a verbal warning, you should document the date, time, and details of the conversation with the employee.

Make note of the incident or undesirable behaviour and any recommendations made during the discussion. This provides a paper trail for further disciplinary action.

The second step in the process is usually the written warning, implemented when the verbal warning did not achieve desired results or when the behaviour is of a more serious nature. In addition to documenting the information above, as used for the verbal warning, this also details the corrective actions to be taken and serves as a final notice that such behaviour cannot, and

will not, be tolerated. It also states that further deterioration of performance, or incidence of undesirable behaviour, can result in termination of employment.

Some companies will use suspensions as a third step in the disciplinary process. Suspensions can be paid or unpaid time away from work to allow the employee to think about his or her behaviour and decide how to rectify the situation rather than face termination. You should always review the Saskatchewan Labour Standards Act regarding the impact of unpaid suspensions, as this can sometimes be viewed as constructive dismissal. Different rules are also applied depending on whether the workplace is a unionized, or non-unionized environment.

Terminations for Cause

Although the above steps are the ideal process to terminate an employee, some situations arise that require immediate action. In the case of misconduct such as theft, sexual or other violent assault, termination often occurs immediately. Following the above steps in such situations could put the business, or other employees, at severe risk so it would not be appropriate to continue the employment relationship. This immediate termination is often based on “just cause”.

To terminate employment with “just cause”, an employer should be able to demonstrate that:

- The employee was aware of performance standards, the standards were reasonable and were clearly communicated;
- The employee was notified of inappropriate conduct or poor performance in a timely manner, with adequate paper trail showing the discussions and steps taken to try to rectify the issues;
- It was clearly communicated to the employee that reasonable timeframes were being provided to improve behaviour or performance, and the possibility of termination could result unless standards were met or there were no further incidents of inappropriate conduct; and
- After all reasonable attempts to work with the employee, the standards were not met, or the undesirable behaviours were repeated, and termination was the only alternative.

Proving “just cause” for termination is very difficult to define, or uphold, but generally includes behaviour of a very serious nature such as:

- Criminal acts;
- Wilful misconduct or disobedience;
- Deliberate neglect of duty or gross incompetence; or
- Significant breach of a workplace policy.

Such action must be of such a critical nature that it effectively undermines the employment relationship. In terminating an employee with “just cause” the onus is on the employer to prove that termination was the only alternative based on the misconduct. Should it be found that the employer cannot prove “just cause”, the terminated employee may be entitled to damages for wrongful dismissal.

Terminations Not for Cause

As mentioned earlier, sometimes terminations are not caused by any specific action of misconduct, or based on performance issues of employees. Terminations can happen for a variety of reasons, and often occur due to circumstances outside the control of the employer. Not every employee is going to be a perfect organizational fit, and sometimes they will become redundant. Where a termination is required due to economic reasons, layoffs, work shortages or elimination of the position, or where there is a management decision to remove the staff member without any specific cause, these forms of termination are referred to as “Terminations Not for Cause”. If the reasons for termination are based on economic decisions, it is important to reassure the employee that it has nothing to do with their performance. Offer to provide a reference, or even prepare a reference letter, to assist with future job searches.

In any case, when terminating staff members without cause, employers are required to provide appropriate notice, or payment in lieu of notice, and ensure that the termination meets all legislative requirements under the Saskatchewan Labour Standards Act.

The Saskatchewan Labour Standards Act specifies the amount of notice or payment in lieu of notice that employers are required to provide workers who have been terminated without cause. Notice or pay in lieu requirements are generally based on the tenure of the employee. Amounts required for payment will increase incrementally based on the employee’s years of service.

While terminations are always a difficult task, by handling them appropriately, they can be managed effectively, with dignity, and a minimum of trouble.

The Termination Meeting

Preparation Time

It is important to take time to review the personnel file and any previously documented meetings before the actual termination meeting. Think carefully about what would be appropriate to say and try to avoid anything that may be considered inappropriate. You may think that the employee is lazy, for instance, but that would not be appropriate to say during this discussion. Stick to the facts, avoid personal or character attacks, keep your emotions in check, and try to keep the meeting as brief as possible. When an employee is being released from a middle management or senior management position you may wish to consider having an “Outplacement Counselor” on site to assist in this transition.

Since termination meetings can be very emotional, be prepared with a checklist of company property that must be obtained from the employee as well as security measures you must take such as those outlined below. You don’t want to forget any of these important items if the discussion does not go as well as expected.

Property to Obtain:

- Keys, for office, desk, building
- Cell phone, or other technological devices such as laptops
- Security pass

- Company identification
- Company credit cards
- Company intellectual property such as handbooks, manuals, publications, training materials

Security Measures to Take:

- Disengage all IT Network access including all usernames and passwords
- Disengage access to phone systems
- Disengage building alarm code or reset

A terminated employee will go through a range of emotions. You should be prepared with a box of tissues, a glass of water, and even money for a taxi home if the individual is too shaken up to drive. Extending such an offer can go a long way to showing support for the employee.

Treatment of the Employee during the Termination Process

Termination meetings should be carefully thought out and planned. In most cases, the disciplinary process has been carried out, or previous discussions have taken place, and the employee should be very aware of the circumstances leading to the termination. A termination checklist can help to ensure that all steps are carried out in the proper sequence, and nothing gets overlooked during the emotional part of the process. Consider using the [Checklist for Employee Departure](#).

The meeting should take place in a private office or meeting room that is free of distraction. If you feel that the meeting will be very difficult, or the employee has been known to demonstrate violent behaviour, security staff should be on guard or available to offer assistance, as required. You may also want another manager or human resources representative to be present for morale support.

The timing of the meeting is also important. It is often advisable to avoid terminations on Fridays because it can be difficult for the employee to seek legal advice or support services over the weekend. Terminations should be conducted at the beginning of the shift so that the employee doesn't later feel resentful for having worked a full day and then being terminated at the end of the shift. It is also easier for those involved in delivering the termination letter as you don't have to spend the day stressing about how the meeting will go, and it also allows time throughout the day to address the remaining employees.

The written termination letter should be prepared before the meeting and provided to the employee promptly. The discussion should start by stating that the decision is final and you are not here to discuss it. Clearly state the effective date of the termination, whether immediate or at some later date, and the reasons for this decision. There is no need to go into a detailed description of the reasons, or rehash previous discussions – if the disciplinary process was carried out effectively, then this discussion should not come as a surprise to the employee. You should, however, be willing to answer any questions about the process as the employee reacts to the termination. This reaction is often based on fear and anxiety, so show empathy towards the situation. Termination can be detrimental to an employee's financial circumstances, and significantly impact their family and even their health.

If the reasons for termination are based on economic decisions, it is important to reassure the employee that it has nothing to do with their performance. Offer to provide a reference, or even prepare a reference letter, to assist with future job searches.

An effective termination meeting allows the employee to preserve dignity, while providing as smooth a transition out of the organization as possible. Even the most experienced managers find termination meetings to be a source of stress and anxiety, but planning for the meeting and following a well-designed process can help to alleviate costly mistakes. It is also recommended that you keep the meeting as brief as possible, to reaffirm that the decision has been made and talking about it will not change your mind. Be very cautious to avoid saying anything that can be used against you in any future legal proceedings.

After the meeting has ended, you will want to document how the meeting went for your records and retain these notes for reference should the former employee take legal action.

Employee Questions

Employees may be overwhelmed by the situation and may not be thinking clearly. Be prepared to answer a number of questions. The employee may be concerned about tying up loose ends for work in progress, may want an opportunity to say good-bye to colleagues, and will want to collect their personal belongings. You should have a plan for how to address these aspects of the situation before the termination meeting begins.

Other questions the employee will have will be about the financial consequences of your decision. The amount of the final payment, including vacation pay, severance pay, payment in lieu of notice, and accumulated sick time should be available to discuss with the employee, if payment is not enclosed with the termination letter. Also, provide a copy of the Record of Employment (ROE), or commit to the date it will be available and agree on how you will provide the ROE to the employee. Employers must provide the ROE no later than five calendar days after employment is terminated or if the ROE is submitted electronically to Service Canada five calendar days after the completion of the pay period.

The employee may be concerned about future references from the company. Again, depending on the circumstances, you may want to provide a reference letter, or offer to provide a reference to assist with the employee's job search.

After the Termination Meeting

Outplacement Services

One way that employers try to assist employees impacted by involuntary job loss is by providing outplacement services. Such services typically include onsite termination support, career counseling, skills analyses, resume and interview preparation, job search and job placement assistance. The intent is to help the former employee transition from their previous job into the next phase of their career. The employer will generally offer such services as part of a severance package and pay all resulting costs.

Often, the outplacement counselor is invited to be present, or onsite, at the time of the termination meeting to offer support to the employee and ensure the employee has safe

transportation home. At this time, the counselor will set up a next meeting with the employee to offer continued support for their job search. In assessing the individual's skills, it is possible to help the former employee seek out positions better suited to their abilities and build a successful career.

Appropriate Communication Strategies

Once the termination meeting has concluded, the next step is to advise staff, and possibly clients, of the employee's departure. It is critical that details regarding employee discipline and terminations are discussed only with those who absolutely need to be aware of the situation and the information shared must be limited to what that individual needs to know. Conversations with other department personnel and clients should never disclose facts about the reasons for termination, or that the former employee was in fact terminated. Simply state that the employee is no longer with the company and provide information about who to contact for tasks previously completed by that individual.

Effective communication is also key in order to avoid morale issues. Oftentimes when a fellow employee is terminated, there is an emotional impact on remaining employees and a burden felt as a result of additional duties needing to be taken on. If the termination is not communicated in a sensitive way, addressing how the workload will be managed, how the vacancy will be filled and addressing employee concerns, morale issues may affect the engagement and productivity of employees.

Conducting Exit Interviews

Voluntary terminations can become very expensive for an employer so it is important to identify the reasons employees are leaving the organization. Exit interviews are a great way to obtain feedback from employees at a time when they are willing to be very honest and feel they have nothing to lose from a candid discussion about their perception of the organization, management, and their position. Such interviews are often conducted when employees voluntarily terminate employment, but some organizations conduct exit interviews with all departing personnel regardless of the circumstances.

Although some employees may be bitter upon leaving the organization, exit interviews can identify trends such as poor management, ineffective compensation strategies, or undesirable working conditions that result in higher turnover. Such information can help human resources personnel to review and revise policies, work with management to improve performance, or revise job descriptions or working conditions to help reduce turnover rates.

Providing Proper Termination Packages

An employer has the right to terminate employment at any time, for any reason, as long as it does not breach an employment contract or collective agreement, and is done within legislated parameters. When an employee is being terminated without "just cause", non-unionized employees are eligible to receive reasonable notice of termination or payment in lieu of notice.

Please reference the Saskatchewan Labour Standards Act with respect to the requirement to maintain benefits coverage during required Notice periods.

In cases where the employee has engaged in behaviour that can be considered “cause” for dismissal, employers are generally not required to provide payment in lieu of notice. It is important to know, and understand, the employer’s obligations under the Saskatchewan Labour Standards Act. If the minimum payment is not provided, the employer can face further damages over and above the legislated payment for “in lieu of notice”.

Under employment standards legislation, the minimum notice ranges from one week to eight weeks. The notice period, or amount of compensation in lieu of notice, is based primarily on the service period with the employer.

The Common Law

Regulations of Saskatchewan Labour Standards Act surrounding notice and payment in lieu of notice are considered minimum requirements. Employers may be required to provide longer reasonable notice periods under Common Law. Employment legislation in Alberta is based on Statute – Saskatchewan Labour Standards Act, its regulations, and Common Law, which is comprised of legal decisions made in the courts interpreting the regulations of the LSA. The purpose of giving notice under common law is to allow employees the opportunity to find another job. What is considered reasonable notice will vary and require consideration of other factors such as the employee's age, years of service, or the nature of their employment. These considerations are those that will impact the length of time an employee may require in order to find comparable alternative employment. These factors can become a critical part of the equation, especially if challenged for wrongful dismissal.

Sometimes, the savings on salary expenses from the termination is lost when legal costs are escalated, so it may be in your best interest to pay slightly more than the required amount up front and avoid legal action.

In Summary

Understanding the reasons why employees are leaving your organization, can help to identify changes necessary to improve the overall working environment and retain those top performers that you spend so much time recruiting. The success of hiring a great employee can be short-lived unless the necessary steps are taken to retain this talent.

Terminations caused by poor performance can be disruptive to the department, but are often required to preserve employee morale. Some employers will avoid conflict situations as long as possible, including putting up with inappropriate conduct or poor performance from an employee, rather than starting the disciplinary process. Unfortunately, a disruptive employee, or one that does not seem to pull their weight, can have a negative effect on the rest of the staff.

When employees see that an underperforming colleague is allowed to continue down such a path, the top performers may become resentful and the result can be lower productivity or higher turnover.

Poor performance or inappropriate conduct should be addressed as soon after the incident as possible, or upon noticing deteriorating performance. In some cases, working with the

employee can help to turn things around without having to take further disciplinary action. However, if the results are still not acceptable it is critical to act quickly, document all discussions and adhere to legislated requirements for your jurisdiction before terminating employment.

As stated above, terminating employees, regardless of the reason, is not an easy task. However, it is a situation that all managers, and human resources representatives, must deal with from time to time. Avoiding costly legal mistakes, and allowing employees to leave with dignity to pursue the next phase of their career, is the best possible outcome for all involved.