

Layoff Notice in the Saskatchewan Construction Industry

Saskatchewan is rather unique among the provinces when it comes to notice requirements for layoff. Unlike many other jurisdictions, the construction industry is not exempt from the requirement under employment standards legislation to provide advance notice of layoff, or pay instead of that notice.

The Construction Labour Relations Association of Saskatchewan (“CLR”) has prepared this document to assist employers new to Saskatchewan, and those who have not had to issue layoffs for quite some time, to navigate this process successfully while satisfying obligations owed under the law.

What does ‘Layoff’ mean?

The *Saskatchewan Employment Act* (“SEA”) defines “layoff” as the temporary interruption by an employer of the services of an employee for a period exceeding six (6) consecutive work days.¹ If an employee will be laid off for longer than six (6) consecutive work days, the employer must therefore give the same minimum notice as if the employee was being terminated. Depending on how long an employee has worked for an employer, the minimum period of notice required changes.² Notice must be given in writing.

Period of Employment	Minimum Written Notice
More than thirteen weeks but one year or less	One week
More than one year but three years or less	Two weeks
More than three years but five years or less	Four weeks
More than five years but ten years or less	Six weeks
More than ten years	Eight weeks

Notice is not required in a termination situation that is based on just cause (e.g. job abandonment, disciplinary offence, etc.) Employers who wrongly terminate an employee on the basis of just cause can be subjected to legal remedies. Should you be faced with a situation where you believe just cause for termination exists, but you would like help before proceeding, call the CLR for assistance.

What does ‘period of employment’ mean?

‘Period of employment’ refers to any period of employment not interrupted by more than 14 consecutive days.³ Correctly calculating an individual’s period of employment is necessary in order to calculate the proper amount of minimum notice they must be provided. Consider these examples:

Example: Bob works for ABC Company for six months. In June 2016, Bob is laid off after being given one week’s notice (per the legislative requirement). However, 12 days later,

¹ The *Saskatchewan Employment Act*, section 2-1(L) [SEA].

² SEA, section 2-60.

³ SEA, section 2-60(2).

Bob is re-hired due to the company getting a contract extension. In January 2017, Bob receives another layoff notice.

In this example, for the January 2017 layoff, Bob is owed two (2) weeks' notice under the SEA. This is because Bob's period of employment is over one (1) year. When Bob's period of employment was interrupted as a result of his 12 day layoff in June 2016, the interruption was less than 14 days. As a result, his period of employment resumed counting when he was re-hired 12 days later.

Example: *Bob works for ABC Company for six months. In June 2016, Bob is laid off after being given one week's notice. Bob is re-hired 16 days after his layoff. Bob then works until he receives a layoff notice in January 2017.*

In this example, for the January 2017 layoff, Bob is owed one (1) week's notice. This is because his period of employment was interrupted by more than 14 days. After 14 days, if he is re-hired, his period of employment resets and counting restarts from the date of his re-hiring. Here, the calculation of his period of employment would be about seven (7) months, running from June 2016 to January 2017. As per the legislation, an employee of less than one (1) year's period of employment is obligated to receive one (1) week's notice.

Importantly, vacations and approved leaves of absences are not considered interruptions for the purposes of calculating the period of employment. Care should be exercised in calculating the period of employment. Should you have questions, contact the CLR.

What form can notice take?

An employer may provide either notice of a pending termination or layoff and have the employee work through that period ("working notice"), or instead, may pay out the employee what they normally would earn during that period ("pay instead of notice").

WORKING NOTICE

The employer may be able to look ahead and see that the work is coming to an end. In such cases, employers can give the employees 'working notice' – a written document advising the employee that their employment will end on a certain date. The employee is then expected to work until that date and the employer continues to pay them their usual wages.

Although it is referred to as 'working notice', the notice period may include some days which the employee is not working. For example, if an employee has a standing shift cycle (e.g. 14&7, 11&3), has furloughs, or other regularly scheduled days off, these days can be included in the notice period. However, vacation days cannot form part of the notice period.

Example: *Cheryl has been employed with ABC Company for one year and six months. During her employment, she has been working a "14 on, 7 off" (14&7) schedule. Her next rotation is scheduled to start August 1st and work will be until August 14th. Her seven days off will be August 15th-21st. Her employer gives her working notice on August 14th.*

Since Cheryl's period of employment is over one (1) year, she is owed two (2) weeks' notice. From August 14th, Cheryl's working notice period would end on August 28th. During the period, she would work her normal schedule; i.e., she would have her seven (7) days off, and then be required to work the remaining seven (7) days she would normally be scheduled (August 22-28).

***Example:** Andrew has been employed with ABC Company for one year and six months. During his employment, he has been working a "11 on, 3 off" (11&3) schedule. He is scheduled to work August 1st until August 11th. His rest days are August 12th-14th. His employer gives him working notice on August 8th.*

Since Andrew's period of employment is over one (1) year, he is owed two (2) weeks' notice. From August 8th, his notice period would end August 21st. During that period, he would work as normal on August 8-11, have his regular days off on August 12-14, and then work for the remainder of the notice period as scheduled (August 15-21).

It is important to emphasize that **vacation days cannot form part of the notice period.**⁴ This is true even if the vacation days were scheduled before the working notice is given. Vacation days are different than furlough or regularly scheduled non-working days.

***Example:** Steven has been employed with ABC Company for seven months. Steven already received approval to take part of the first week of September as vacation. He has been working an "11 on, 3 off" (11&3) schedule. He is scheduled to work August 21-31st. He was planning to enjoy his regular days off Sept 1-3, and then use vacation time for Sept 4-7. Steven's employer gives him notice on August 31st.*

Steven's period of employment is less than one (1) year, therefore he is owed one (1) week's notice. Steven's working notice period would include his regular days off, Sept 1-3. However, it cannot include the vacation time of Sept 4-7. So, Steven's working notice would then resume counting for four more days after his vacation – as a result, his notice period end date would be September 11. Steven would be required to work his regularly scheduled work days on September 8-11.

In some circumstances, an employee may be entitled to more wages than they actually receive during the working notice period. This occurs where the working notice period does not reflect what an employee would 'normally' work. See the "Calculating Termination/Layoff Pay" section, below.

Lastly, when incorporating regularly scheduled (i.e. non-vacation) days off in the working notice calculation, **the final day of employment should be a paid working day.** Otherwise, if the last day of working notice falls on a scheduled day off, then the employer will likely be responsible for paying the worker pay-in-lieu of notice for the difference between the last paid day of work and the termination date. This is because termination pay is calculated on the basis of "normal wages", discussed below.

⁴ SEA, section 2-60(4).

PAY INSTEAD OF NOTICE

Employers are allowed to pay employees instead of giving them working notice. This can be beneficial in situations where an employer's contract is cancelled unexpectedly and the employer does not have the opportunity to give the employees working layoff and does not have another job site to send the employees to.

To calculate the required amount of pay instead of notice, the employer must first calculate the required working notice period based on the employee's period of employment. **The employer must pay at least the value of what the employee would have been "normally" entitled to had they worked through the working notice period.** This is explained in the next section.

An employer can also use a combination of working notice and pay instead of notice. This combination is still subject to the requirement that the employee makes at least as much as they would "normally" have for the period.

How much do I have to pay? When?

CALCULATING TERMINATION/LAYOFF PAY

The method of calculation will depend in part on whether the employee is subject to a collective agreement or not. The pay owed to an employee on termination or layoff will minimally include wages (inclusive of salaries, commissions, and other forms of monetary compensation) as well as holiday pay. Vacation pay is also required to be paid, but is calculated separately.

Calculating the proper amount of termination/layoff pay, and vacation pay, can be difficult. Seeking advice is recommended. For additional assistance, contact the CLR.

Employees Not Subject to a Collective Agreement

An employee not bound by a collective agreement must receive the greater of:

- i. The sum earned by the employee during their period of notice, or
- ii. The sum equivalent to the employee's normal wages for that period.

"Normal wages" are the employee's average weekly wage, not including overtime pay, for the 13 weeks the employee worked preceding the date the notice was given.⁵ If the employee was not given notice, this calculation occurs from the date of termination.⁶ In exceptional cases, it may be possible to go beyond the 13 prior weeks in efforts to calculate the "normal wage".⁷

⁵ If the employee is not given notice, this date is based on either the date the termination/layoff occurred, or as otherwise prescribed by legislation.

⁶ SEA, section 2-61(2).

⁷ This would only be where the previous 13 weeks didn't truly represent the employee's usual contributions, such as if they were on a medical leave over that period.

Regardless if the employee actually works through the notice period or not, this “normal wages” calculation should be completed by the employer to ensure the correct termination/layoff pay instead of notice is provided to the employee.

Employees Subject to a Collective Agreement

Where an employee is bound by a collective agreement, the employee must receive the “entitlements” provided in the collective agreement for the duration of the working notice period, or receive a payment equivalent to that package of entitlements.⁸ As with non-union employees, employees under a collective agreement must also be paid out their vacation pay.

If the collective agreement provides for less than the minimum specified by the *SEA*, the *SEA*’s minimums will apply.

VACATION PAY & TRANSPORTATION

In addition to the above, employees must receive their vacation pay entitlement within 14 days of their employment ending.⁹ As well, if an employer terminates the employment of an employee working at a remote site, the employer must provide and pay for transportation for the employee to the nearest point where regularly scheduled transportation services are available (e.g. an airport). Further transportation expenses upon termination may also be required under the relevant collective agreement.

“Rolling Notice” and Alteration of Notices

The CLR often gets asked whether an employer may give notice every Monday, on the off-chance the work dries up (especially during an economic downturn). The short answer is no.

Employers may however have the opportunity to alter notice once it has been given, provided the employer acts reasonably in doing so. For example, an employer may not give notice every week for a layoff that may or may not happen. However, if the employer gives one week’s notice to an employee on Monday, and then realizes there may be an extra day or two of work needed, the employer may be able amend the notice by a day or two. Provided the employer acts reasonably, there is some limited leeway that comes with the legislative notice periods.

Group Terminations

Employers should be cautioned about the group termination provisions under the *SEA*. A group termination is any series of terminations which results in 10 or more employees at one place of employment being terminated within a four (4) week period. The following notice periods apply to group terminations¹⁰:

Employees Terminated in Four Week Span	Minimum Written Notice
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⁸ *Otis Canada Inc and IUEC, Local 102 (Markwart), Re*, 2016 CarswellSask 523 at paras 86-87 (WL Can), 128 CLAS 154 (Sask Arb) (Zuck).

⁹ *SEA*, section 2-29(1).

¹⁰ *The Employment Standards Regulation*, section 31(1).

10 to 49 employees	Four weeks
50 to 99 employees	Eight weeks
100 or more employees	Twelve weeks

There are some exceptions to these provisions. One exemption is specific to the construction industry. Under that exemption, group termination notice is not required for construction industry workers where the employees are employed for a special project with a completion date that is reasonably foreseeable.¹¹ Note that **this construction industry exception does not apply to any office-based employees working on the construction process.** As well, remember this is an exception to the *group* termination provisions – individual termination notice is still required.

Where a group termination is intended by the employer, a written notice must be provided to each employee affected, as well as to the Minister of Labour, and any Union(s) representing any of the terminated employees. The notice must include mention of the total number of employees who are or will be terminated as a group.

Note that the “group” notice requirements are separate and in addition to those “individual” notice obligations. Both sets of obligations must be observed, however the group notice may be given concurrently with the individual notice. In a situation of pay instead of notice, the calculation of an employee’s entitlement will be based on their individual notice period, not their group notice period.

Final Considerations

This bulletin is intended to assist you in handling layoff scenarios you may encounter. It is intended to provide general guidance and is not legal advice. Should you need any further assistance regarding layoffs, or any other employment issue, please do not hesitate to call the CLR offices.

¹¹ *The Employment Standards Regulation*, section 31(2)(d).