

Author: Simon Kent, Kent Employment Law

I've Been Fired - Now What?

Losing your job is a dramatic and often devastating life event. Because many people spend more time at the workplace than they do with their spouse, it makes sense that being fired can have emotional effects that match or exceed the feelings felt in divorce. The challenge for many fired employees is to navigate their way through the legal issues of wrongful dismissal while coping with these feelings of loss. To do this, it often makes sense to get legal advice from a lawyer who specializes in employment law.

Employment contracts can be written or oral. Unless you have been fired for "cause" (more on cause below), you are most likely entitled to receive from your employer sufficient notice of when your employment relationship will end. Failure to provide you with such notice, or payment in lieu of such notice (severance), may be a breach of your employment contract and you may sue your employer for damages. The idea behind "notice" or severance is to give you time to find a similar job with similar pay. Severance payments by employers are often made as a lump sum, but can be made as "salary continuance", which means that you will receive your salary during the notice period. In British Columbia, the courts are moving away from the concept of salary continuance but you can still accept that form of payment in an agreement with your employer.

How Much Notice Am I Entitled To?

Most provinces have some form of employment legislation - these are the laws that govern certain aspects of your employment relationship with your employer. In British Columbia (where I practice) we have the Employment Standards Act. One of the things this act covers is how much notice, or money in lieu of notice, an employer must give to a dismissed employee under this legislation. Again, when I say "dismissed" I am assuming that your dismissal has been without "cause".

One of the difficulties for employees relying on this legislation is that the maximum notice period it provides is eight weeks (for employees with eight years of service or more). Many employees are entitled to much higher awards of severance under the common law doctrine of wrongful dismissal developed in our court system.

The common law on the assessment of reasonable notice in our courts was developed in the case of *Bardal v. The Globe and Mail Ltd.*, a 1960 decision from the Ontario High Court. The judge in this case stated:

"There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant."

When you contact a lawyer, he or she will obtain this information about you and your job and will be able to give you a range of severance that a judge may award in your case based on past cases that have gone to court. This is not an exact science! Two different judges faced with your same fact scenario might award different amounts of severance. Employment lawyers know this, which is why many employees and employers often reach a settlement agreement without ever going to court.

My Employer Says They Had Cause To Fire Me

Sometimes an employer will say that they had "just cause" to fire you. If this is proven to be true, the employer does not have to give you any notice of your dismissal or pay you any severance in lieu of such notice. However, proving "just cause" in court can be an uphill battle for employers. In fact, if an employer argues that there was "just cause" such as theft, and the court ultimately decides that the employee did not actually commit theft, the employee may be entitled to an even higher severance award. Figuring out whether an employer had "just cause" to fire you is another inexact science but certainly contacting an employment lawyer is the first thing you should do when faced with this situation.

But I Was Doing Such A Good Job!

One of my clients' most common initial reactions to being fired is surprise. People are surprised when, after receiving a performance bonus in March, they are fired in April without any warning. The reality is that employers can dismiss any employee they choose so long as the reason for dismissal does not violate human rights or employment-related legislation and the employer gives the employee a reasonable amount of notice that the employee will be dismissed or pays the employee severance in lieu of that notice. Remember, employers pay you a salary for the hard work you do and at the end of the day, when the employment relationship is over, don't expect more than a reasonable amount of severance - but don't expect less either!

Simon Kent is a lawyer with Kent Employment Law in Vancouver, BC. He can be reached by e-mail at simonk1@telus.net.