



Employment Standards Branch FACTSHEET

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and Regulation for purposes of interpretation and application of the law.

October 2016

Just Cause

The purpose of this factsheet is to help employers and employees understand the meaning of just cause as it applies under the *Employment Standards Act*.

Employees who feel they are terminated without just cause may sue for wrongful dismissal through the courts. That is different than a complaint made to the Employment Standards Branch under the Act. Those who wish to consider an action for wrongful dismissal should seek legal advice. The Employment Standards Branch cannot provide this advice.

Employer's Right to Fire

An employer has the legal right to terminate an employee. The Act requires an employer to give the employee written working notice, compensation in lieu of notice, or a combination of the two. The amount is determined according to the employee's length of service. For this reason the Act refers to compensation paid in lieu of notice as "compensation for length of service." More information is available in the factsheet *Termination of Employment*.

An employer does not have to give written notice or compensation for length of service to an employee who is dismissed for "just cause."

Burden of Proof

In order to be relieved of the requirement to give written notice or to pay compensation for length of service upon terminating an employee, the

employer must prove that just cause for termination exists.

Serious Infractions

Serious infractions such as theft, fraud, dishonesty, assault or harassment of co-workers, breach of company rules or practices, conflict of interest or wilful misconduct may require only one provable incident to justify dismissal without written notice or compensation for length of service.

Whether a single act of misconduct constitutes just cause is considered on a case-by-case basis. One consideration may be whether it can be said that the employee behaved in a manner totally inconsistent with the continuation of employment. A mistake or error in judgment is usually not enough.

Unsatisfactory Performance / Minor Misconduct

Unsatisfactory performance or instances of minor misconduct such as absenteeism or tardiness do not normally relieve an employer of the requirement to give written notice or to pay compensation for length of service when terminating an employee.

Where an employer seeks to rely on instances of minor misconduct to prove just cause, it must show that:

continued ...

- A reasonable standard of performance was established and communicated to the employee;



Employment
Standards Branch

For more information:

Phone: 1 800 663-3316

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- The employee was clearly warned that his or her performance was below the established standard and that continued failure to meet the standard would result in dismissal;
- The employee was given a reasonable amount of time and assistance to meet the required standard of performance; and
- The employee still failed to meet the standard.

An employee's inability to meet the requirements of the job does not constitute just cause.

Condoning Unsatisfactory Behaviour

An employer must clearly set out its policies and practices and apply them consistently. An employer will be unlikely to prove just cause if it terminates an employee for behaving in a way the employer has permitted in the past or permits in other employees, or for breaking rules the employee has not been made aware of.

If an employer has forgiven misconduct, or if it fails to take action at the time it occurs, it cannot later use that misconduct to prove just cause. In order to rely on serious misconduct as proof of just cause, the employer must dismiss the employee at the time, or within a reasonable amount of time after conducting an investigation.

Example:

An employee is caught stealing money from the employer's till. The employee explains that she needed to pay her child's school fee, and that she intended to replace the money on the next payday. The employer decides not to terminate the employee. A month later, the employee is late for work two days in a row and is terminated. The employer cannot use the theft to prove just cause for terminating the employee.