FREE GUIDE · LEXALTICO LLP

Wrongful Dismissal Ontario —Your Rights Explained

Wrongfully dismissed in Ontario? Know your rights under the Employment Standards Act and common law. Notice periods, severance.

Wrongful Dismissal Ontario — Your Rights Explained

If you have been fired or let go in Ontario, you likely have rights that far exceed what your employer offered. This guide explains the difference between ESA minimums and common law notice — and why the gap between them is often worth fighting for.

What's in This Guide

- What wrongful dismissal actually means in Ontario
- ESA minimums vs. common law notice — the critical difference
- How notice periods are calculated
- Just cause dismissal — what it means and how rare it is
- Constructive dismissal — when changes force you out
- What to do immediately after being fired
- Understanding your severance offer
- Frequently asked questions

1. What Wrongful Dismissal Actually Means in Ontario

Many people assume "wrongful dismissal" means they were fired unfairly, without reason, or unjustly. That is a common misconception. In Ontario law, wrongful dismissal has a specific technical meaning:

Ontario is an "employment at will" jurisdiction in a limited sense: employers can terminate without cause. What they cannot do is terminate without providing proper compensation for that termination. The amount of compensation you are owed is determined by two separate legal frameworks — and the difference between them is often very significant.

2. ESA Minimums vs. Common Law Notice — The Critical Difference

This is the most important concept in Ontario wrongful dismissal law. Your termination entitlements come from two different sources:

Employment Standards Act (ESA)

- Statutory minimums set by the Ontario government
- 1 week of notice per year of service (up to 8 weeks)
- Severance pay if service ≥5 years AND employer payroll ≥$2.5M: 1 week per year, up to 26 weeks
- These are the absolute floor — the least an employer can legally give you
- Most severance offers are based on ESA minimums

Common Law Notice

- Determined by courts, not by statute
- Typically 1 month per year of service for many employees
- Maximum of approximately 24 months for most employees
- Factors: age, length of service, position, availability of comparable work
- Almost always higher — often significantly higher — than ESA minimums

3. How Notice Periods Are Calculated in Ontario

Common law notice is not a formula — it is determined by judges based on the specific facts of each case, using what is known as the Bardal factors (from the 1960 Ontario case Bardal v Globe and Mail):

4. Just Cause Dismissal — What It Means and How Rare It Is

“Just cause” dismissal — also called termination for cause — means the employer fires you for serious misconduct, and gives you no notice and no severance whatsoever. Just cause is the “capital punishment” of employment law: it is reserved for the most serious misconduct.

What Can Constitute Just Cause

Just cause typically requires serious misconduct — theft, fraud, serious insubordination, harassment, or a fundamental breach of trust. Minor performance issues, personality conflicts, and single instances of poor judgment generally do not constitute just cause. Courts apply a contextual and proportionality test: did the conduct, in all the circumstances, constitute a fundamental breach of the employment relationship?

Progressive Discipline

Ontario courts generally expect employers to have used progressive discipline before dismissing for cause — warnings, performance improvement plans, escalating consequences. An employer who fires an employee “for cause” without having warned them, documented the issues, or given them a chance to improve is unlikely to successfully defend a just cause claim.

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5. Constructive Dismissal — When Changes Force You Out

Constructive dismissal occurs when your employer makes a significant unilateral change to a fundamental term of your employment — without your consent — that effectively forces you to resign. The law treats this as if you were fired, entitling you to the same wrongful dismissal notice.

Examples of Constructive Dismissal

6. What to Do Immediately After Being Fired

Do not sign anything on the spot

You are almost never required to sign a severance agreement immediately. Take the documents home. You typically have reasonable time — often several weeks — to consider the offer. Ask for the offer in writing if it is not already.

Document everything

Note the date and circumstances of your termination. Save all relevant emails, performance reviews, employment contracts, and communications about the termination. This is your evidence base.

Speak with an employment lawyer

Before signing anything, have an employment lawyer review your severance offer and your employment contract. Most employment lawyers offer a free initial consultation. The cost of reviewing the offer is almost always less than the additional amount you may be entitled to.

Review your employment contract

Your contract may contain a termination clause that limits your entitlements to ESA minimums — or it may not. Many termination clauses are legally unenforceable because they do not comply strictly with the ESA. A lawyer can assess whether yours is valid.

Mitigate — start looking for new work

Ontario law requires terminated employees to take reasonable steps to find comparable employment ("mitigation"). Failing to mitigate can reduce your damages. Start looking, document your job search, and keep records of applications and responses.

Apply for Employment Insurance (EI)

You are generally entitled to EI benefits after a without-cause termination, regardless of whether you accept a severance package. Apply immediately — there are waiting periods, and delays cost you weeks of benefits.

7. Understanding Your Severance Offer

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Severance offers almost always start from the employer's position — which is usually the ESA minimum. Here is what to look for when reviewing a severance package:

8. Frequently Asked Questions

Wrongful dismissal in Ontario occurs when an employer terminates an employee without providing proper notice or pay in lieu of notice. It is not about whether the firing was fair — it is about whether the employer gave you enough compensation for the termination. Most employees are entitled to significantly more than ESA minimums under common law.

Your entitlement has two levels. The ESA sets out minimums of 1 week per year of service up to a maximum of 8 weeks. Common law notice — set by courts — is typically much higher, often around 1 month per year of service, with a maximum of approximately 24 months for most employees. Age, position, and the availability of comparable work are key variables.

Yes. Ontario employers can terminate without cause by providing proper notice or pay in lieu. Being fired without cause is not wrongful dismissal — it only becomes wrongful if the employer fails to provide the required compensation. Just cause dismissal (no notice) requires serious misconduct and is hard to establish.

No. Never sign immediately after being fired. Take the offer to an employment lawyer. Most severance offers significantly understate your legal entitlement. Signing releases your right to sue — often for amounts far higher than what was offered. Review first, sign later (or not at all).

Constructive dismissal occurs when an employer makes a unilateral and significant change to a fundamental term of your employment — a major pay cut, demotion, relocation, or toxic work environment — without your consent. The law treats this as if you were fired, and you are entitled to the same wrongful dismissal notice. Act promptly — you cannot work under changed conditions indefinitely and then claim constructive dismissal.

For most terminations, consulting an employment lawyer is one of the highest-ROI decisions you can make. Initial consultations are free at Lexaltico. The additional severance that good legal advice secures typically far exceeds the legal fees involved. You are not obligated to litigate — often a single lawyer's letter is enough to significantly improve a severance offer.

Just Been Terminated?

Speak with a Toronto lawyer at Lexaltico LLP. No obligation. No pressure. Available 24/7.

NEED TO SPEAK WITH A LAWYER?

Every situation is different. If anything in this guide raises a question about your own matter, speak with a Lexaltico lawyer — the first 30-minute consultation is free and confidential.

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