

September 2014 (Updated August 2016)

If you lose your job in Ontario you usually have the legal right to working notice OR pay instead of notice. You may also have a right to “severance pay.”

The *Employment Standards Act* (ESA) gives the *minimum* standards for working in Ontario. The ESA says that you have a right to notice unless

- you lost your job because you did something you knew was wrong or you quit; and
- you have worked for the employer for 3 months or more

If your employer does not give you the amount of notice required by the ESA, the employer must pay you the amount of money you would have earned during the notice period. For example, if you had a right to 1 week of notice but did not get it, the employer has to pay you the amount you usually make in a week. This payment is called “termination pay.”

You may also have a right under the ESA to an additional payment called “severance pay” if

- you have worked for the same employer for 5 years or more AND
- you are part of a group of 50 or more employees losing their jobs within 6 months OR you work for an employer that pays more than \$2.5 million in wages in Ontario in a year

If your employer has not paid the amount that you are entitled to, you can make an Employment Standards claim against your employer to the Ministry of Labour. A guide to making an Employment Standards Claim is available online at www.labour.gov.on.ca/english/es/pubs/guide/esclaim.php.

Find tools for calculating termination and severance pay at www.labour.gov.on.ca/english/es/tools/index.php.

Remember, the ESA states only the *minimum* notice you should get when you are going to lose your job. You may be able to get more money (pay instead of notice) by going to court. A court can order your employer to pay you “common law pay in lieu of notice.” For more information on suing for pay in lieu of notice, visit http://www.communitylegalcentre.ca/legal_information/Tips/WR/SELF-HELP-KIT-WRONGFUL-DISMISSAL.pdf.

You *cannot* make a claim to the Ministry of Labour and sue in court. You must choose one or the other. There is a Fact Sheet to help you decide which option is right for you: <http://www.workersactioncentre.org/know-your-rights/>.

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Your community legal clinic

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Figuring out how much notice or pay you should get if you are losing your job can be complicated. It's usually a good idea to speak to a lawyer. Contact your local legal clinic or find a lawyer by calling the Law Society Referral Service at 1-800-268-8326 or online at <http://lsrs.lsuc.on.ca/lsrs/>.

If you lose your job, remember:

- You never have to sign anything to get ESA termination pay or severance pay.
- You may have a right to be paid more than minimum ESA termination pay.
- You should be given time to talk to a lawyer before signing an agreement or a "release" for a payment. If your employer doesn't offer you time to talk to a lawyer, ask for it!

For more information regarding your employment rights, see:

- <http://yourlegalrights.on.ca/legal-topic/employment-and-work>
- <http://www.workersactioncentre.org/>
- http://www.communitylegalcentre.ca/legal_information/WR/ES/Links.htm

This column is not intended to provide legal advice. It provides general legal information and is written by the staff of community legal clinics, student legal aid societies, volunteer local lawyers and Legal Aid Ontario. The law can change. You should contact a lawyer to determine your legal rights and obligations. If you are living on a low income, you may be eligible for free legal help from Legal Aid Ontario (criminal, family or immigration) or your local community legal clinic (income security programs, employment law, tenants' rights, consumer law, or human rights). You can reach Legal Aid Ontario at 1-800-668-8258 or visit them online at www.legalaid.on.ca. Contact the Community Advocacy & Legal Centre at 1-877-966-8686 for more information or visit www.communitylegalcentre.ca.

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