

You Raise the Issue

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Terminating Probationary Workers

Question: Our organization has hired a number of employees on a probationary basis. Under what circumstances can we terminate their employment without giving them notice?

Answer: The Alberta Court of Appeal recently considered the circumstances in which an employer would be justified to dismiss a probationary employee. An employer need only establish the following:

- it had given the probationary employee a reasonable opportunity to demonstrate his suitability for the job;
- it decided that the employee was not suitable; and
- the decision was based on an honest, fair and reasonable assessment of the employee's suitability, including not only job skills and performance, but character, judgment, compatibility, reliability and future with the employer.

An employer, therefore, does not have to prove just cause before termination in the same manner as in the case of a regular employee, but merely that the employer decided that the employee was unsuitable on the basis of the above criteria. This will be subject, of course, to any terms of the employment contract between the employer and the employee which deal with termination during a probationary period, as well as any applicable collective agreement dealing with the issue of probation.

Resigning Employees Asking to be Filed as Laid Off

Question: One of our employees has advised us that he intends to resign from his position. He has asked that his Record of Employment indicate that he was laid off. Should we agree to the request?

Answer: The employee has likely made the request because the regulations under the Unemployment Insurance Act disqualify employees from receipt of UI benefits in cases where they have voluntarily resigned from their employment. The employee is eligible for these benefits when they have been laid off. An employer, however, is required to complete the Record of Employment in a truthful manner and could face a penalty under the Unemployment Insurance Act for providing a false statement if it fails to do so. Therefore, the employer should make sure that the Record of Employment reflects what in fact occurred.

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Salaried Staff, Overtime Pay

Question: Our employees are paid a monthly salary. Are they entitled to overtime pay?

Answer: Under the Alberta Employment Standards Code all employees are entitled to overtime pay, regardless of whether they are paid on an hourly, weekly or monthly basis. The only exceptions are the following:

- employees who are employed entirely in either a supervisory or managerial capacity or in a capacity concerning matters of a confidential nature and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed;
- where an employee or a group of employees have agreed as part of a collective agreement or a written agreement between the parties that, wholly or in part, the employer will provide and the employee or group of employees will take time off with pay in place of overtime pay;
- employees who are:
 - a) lawyers or students articulated to a lawyer;
 - b) chartered accountants or students articulated to a chartered accountant;
 - c) certified general accountants and certified management accountants;
 - d) certain types of salespersons;
 - e) land agents licensed under the Land Agents Licensing Act;
 - f) registered architects;
 - g) registered chiropractors;
 - h) registered dentists;
 - i) professional members in training as defined in the *Engineering, Geological and Geophysical Professions Act*;
 - j) licensed podiatrists;
 - k) licensed chartered psychologists; 1) licensed veterinarians;
 - m) licensed optometrists; and
 - n) an extra in a film or video production.

You should check with either Alberta Labour or your legal counsel if you have any questions as to whether an employee should be paid overtime or falls within one of the above exceptions.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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