

TERMINATION AND YOUR RIGHTS

CUPE

When a worker is terminated, they have several rights that may need to be protected in the grievance process. Some of those, including rights to accrued benefits (e.g. vacation pay) and termination notice/pay or severance pay, can be complicated. In the case of termination, always talk to a steward first. CUPE has resources to help them and National Staff Representatives navigate some of the more complex topics covered below.

RIGHT TO ACCRUED ENTITLEMENTS

If terminated, you have a right to any wages you have earned up to the date of termination and to any vacation you have accrued. Particularly for vacation, consult your collective agreement. It will make a difference whether vacation is earned as the year goes along or is given all at once on a specific date.

ENTITLEMENTS TO NOTICE AND SEVERANCE ON TERMINATION

It is a widely held, though mistaken, belief that when termination is done with just cause, there is no entitlement to receive notice of termination (or pay in lieu thereof) or severance pay. While it is true in some cases, it is not true in all.

Except in the case of mass layoffs, workers are generally entitled to notice of termination or pay in lieu of notice. Under the Employment Standards Act, that notice is one week per full year of service up to a maximum of eight weeks. So after three years, you'd be entitled to three weeks of notice or payment in lieu. After eight years or more it would be the maximum of eight weeks. As always, check your collective agreement, as it may have a superior benefit.

Severance is distinct from pay in lieu of notice upon termination. Entitlement to severance pay begins after five years of employment where the employer has a worldwide payroll of \$2.5 million or more.

The legal minimum for severance is one week of pay for every full year of service plus 1/12 week of pay for every month in an incomplete year. So, after six years and six months of service you'd be entitled to 6 ½ weeks of pay. Severance is not the same as damages from an arbitrator that might be awarded in lieu of reinstatement.

In the case of termination for just cause, you might not be entitled to notice or severance. But it's more complicated than that. For an employer to deny notice or severance, they must prove that the employee's misconduct, disobedience or neglect of duty was wilful, that the action/inaction was serious, and that it has not

been condoned by the employer. Your steward should consult with your CUPE National Staff Representative on filing grievances to protect your rights to possible notice or severance entitlement in the case of a just-cause termination.

ENTITLEMENTS PRIOR TO FIRST COLLECTIVE AGREEMENT

For newly organized groups, employers are prohibited from terminating workers unless they have just cause. Anyone terminated without just cause should immediately get in touch with their CUPE representative. For those terminated with legitimate cause, the entitlements are the same as discussed above. If you do not believe the employer has just cause, talk to your CUPE representative immediately.

Union obligations and ability to protect entitlements

The issues raised in the first two sections of this document need to be carefully considered at the time of filing a grievance. Locals have a legal obligation to look at issues around just cause and notice/severance when deciding whether to proceed with a grievance (or filing a complaint to the ORLB if it's in a unit that does not yet have a first collective agreement).

Locals are encouraged to contact their CUPE National Staff Representatives for more information on entitlements, termination notice/pay and severance, particularly in the case of a "just cause" termination that may not meet the "wilful" or "serious" tests, and in cases prior to the signing of a first collective agreement.