

COVID-19 -Temporary Amendments to Termination of Employment Regulations

Businesses and industry in Manitoba are responding to COVID-19 in a number of different ways. This situation creates new challenges for both employers and employees.

To assist in easing the economic burden for business and to provide certainty for workers during these uncertain times relating to COVID-19, Manitoba has introduced changes to The Employment Standards Regulation relating to the deemed termination provisions.

Is a lay-off the same as termination?

No. A lay-off is a temporary break in employment where employees are likely to return to work. Employers do not need to provide notice to employees that they are being laid off. However, if the lay-off is longer than 8 weeks in a 16 week period, the lay-off becomes a termination and notice is required.

In the following circumstances, lay-offs do not become terminations even if they are longer than 8 weeks in a 16 week period:

- When employers continue to pay wages or payments instead of wages to employees, or
- When employers continue to make payments to pension plans and/or group insurance plans on behalf of employees.

Temporary help employees are subject to additional rules when determining a layoff period, see Temporary Help Agency fact sheet.

Are employees who are laid off required to be paid?

No. Employers are only required to pay employees for hours worked.

Employers can provide greater benefits such as paid sick leave or family leave but are not required to do so.

Are layoffs longer than 8 weeks in a 16-week period deemed terminations even during a declared state of emergency?

No. The time an employee is on layoff during the period that begins on **March 1, 2020, and ends on the day on which the declaration of a state of emergency was declared under The Emergency Measures Act concerning COVID-19 is terminated**, will not count toward the eight weeks out of the 16-week period used to determine when a temporary layoff is deemed a termination.

If a layoff started before March 1, 2020, does that time count towards the 8 weeks?

Yes, any period of time prior to March 1, 2020 will count towards the 8 weeks. If the layoff is longer than 8 weeks, **minus the exemption period between March 1, 2020 and the date the state of emergency ends**, the layoff becomes permanent (i.e. a termination), and wages in lieu of notice must be paid.

Can employers terminate employees during the COVID-19 declared state of emergency?

Yes, an employer is still able to exercise their right to terminate employees during this time.

What is notice of termination?

Notice of termination is the period of time an employee or an employer is required to give the other before ending employment. Employees continue to work their regular hours and perform their regular duties at the same rate of pay during the notice period.

Do employers need to give notice of termination?

Yes. The amount of notice depends on how long the employee has worked for the same employer.

<i>Period of employment</i>	<i>Notice period</i>
At least 30 days but less than one year	One week
At least one year and less than three years	Two weeks
At least three years and less than five years	Four weeks
At least five years and less than ten years	Six weeks
At least ten years	Eight weeks

Employers can either allow the employee to work out this notice period, or pay wages in lieu of notice for the same number of weeks, or a combination of both.

Is there a period when no notice is needed?

Yes. Employers and employees do not need to give notice of termination when the employee has been employed for less than 30 days. Employers are not allowed to extend or change this period unless it is negotiated in a collective agreement with a union.

Can employers pay wages instead of providing notice of termination?

Employers can pay the amount of wages employees would otherwise have received had they worked out the notice period (often called wages in lieu of notice). Employers can also allow employees to work for part of the notice period and pay wages in lieu of notice for the remainder.

Employees who work the same hours every week receive their regular earnings for wages in lieu of notice. For employees who work varying hours every week, wages in lieu are based on the average of the earnings for regular weekly hours worked over the last 6 month period. Vacation wages and overtime wages are not added to wages paid in lieu of notice.

How much notice must employers give to terminate a large group of employees?

Employers who intend to terminate a group of 50 or more employees within four weeks must notify the Minister of Finance and provide more notice than for an individual termination.

Number of Employees	Notice Required
50 to 100	10 weeks
101 to 299	14 weeks
300 or more	18 weeks

For more information contact Employment Standards:

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code*, *The Construction Industry Wages Act*, *The*

Worker Recruitment and Protection Act, or contact Employment Standards.

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