

Did You Know? Employment Law for Certified Dental Assistants

Entitlement to Notice or Severance on Termination of Employment

By Employment Lawyer Dean Crawford of Coutts Pulver LLP

Employees are often shocked to learn of their dismissal from employment. After years of service to the same employer, it can be upsetting, to say the least, to learn suddenly that you are without work or a pay cheque.

The level of anxiety will often be increased when the dismissal is immediate or provided with little notice. In many cases, the letter of dismissal may tell the employee that she will be paid severance “as per the Employment Standards Act.” Depending on your length of service, severance under the Act can be as little as a few weeks and at most eight weeks. This amount does not provide much of a financial cushion while looking for new employment.

Unfortunately, many employees will simply accept the amount being offered from the employer even though, at law, they may be entitled to significantly more severance than what is set out under the Employment Standards Act.

In British Columbia, most employees are also entitled to what is known as “common law” notice or severance. Common law entitlements are determined by an employee’s length of service with the employer, age, character of employment and the availability of similar alternate employment, amongst other factors.

The difference between entitlement to severance under the Employment Standards Act and under the common law can be significant. For example, a certified dental assistant with six years’ service with the same employer would be entitled to six weeks’ notice of dismissal or severance under the Act. Under the common law, however, that same employee may be entitled to perhaps *five to eight months*, depending on a number of factors.

Not every employee is entitled to common law severance on dismissal. First, an employer can avoid severance altogether by providing appropriate working notice of dismissal. In that case, severance is not owed under either the Act or the common law.

Second, an employer can always dismiss “for cause” immediately and without any notice or severance. To demonstrate “cause” for dismissal, an employer must establish serious misconduct such as theft or other forms of dishonesty.

Third, an employer can limit notice or severance to what is set out in the Employment Standards Act by entering into a written employment contract with the employee that establishes such a limit. Under such an agreement, the employer and employee effectively agree to “oust” the common law and limit the employee’s rights on dismissal to what is set out in the Act. Many, if not most employees, however, do not have such an agreement in place, and so employees retain the right to common law severance or notice of dismissal.

Often, when dismissing an employee, the employer will offer payment in exchange for the employee signing a release. The amount offered may be a small amount higher than what is required under the Employment Standards Act but significantly below what is required under the common law.

It often will be worth your while to have an initial consultation with legal counsel after being dismissed from employment and before signing a release so you are fully aware of your rights. In many cases, a reasonable settlement agreement can be negotiated without having to commence a lawsuit.



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