

YOU'VE LOST YOUR JOB...

NOW WHAT?

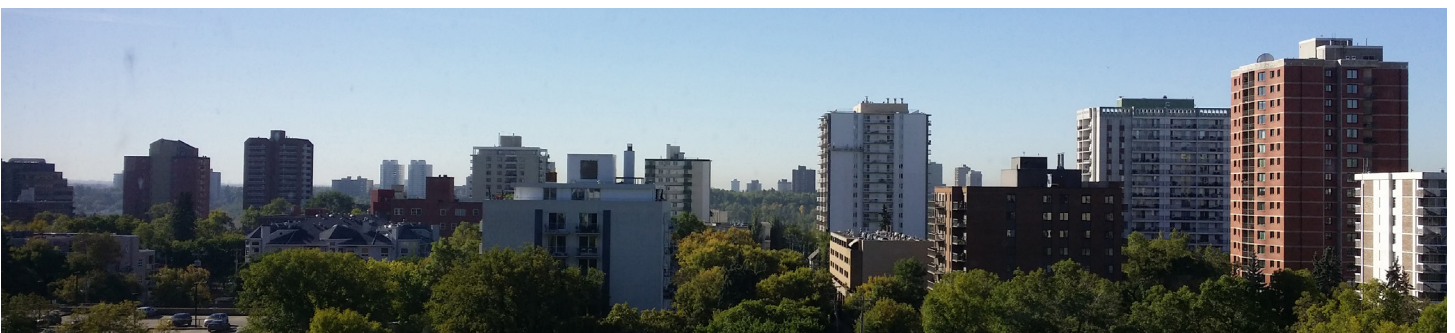
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IN THIS GUIDE

This guide is for employees working in Alberta and covered under Alberta's *Employment Standards Code*.

It is not meant for employees on a fixed term contract, workers in a union, or independent contractors. You should consult with an employment lawyer if you are unsure if you are an employee or a contractor.

The law for employees is very complex and depends on the circumstances of your unique situation. This guide provides an overview of some of the things you should think about if you lose your job. **It provides information only, not legal advice.** If you have questions about your specific situation, you should contact an employment lawyer for advice.



DISCLAIMER

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

The information contained in this booklet was correct at the time it was produced. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it. The Legal Resource Centre of Alberta Ltd. will not be responsible for any loss arising from reliance on or action taken (or not taken) as a result of this information.

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Unions

The terms of the collective agreement sets the rules for unionized employees. You should review the collective agreement and talk to your union representative if you have any questions or concerns, including about your termination.

The law is different sometimes for employees governed by federal laws rather than provincial laws.

Look for the boxes labeled “Federal” for more information.

FEDERAL

The *Canada Labour Code* applies to work related to shipping and navigation, railways, airports and airlines, radio broadcasting, telecommunications, banks, the federal government, and First Nations administrations. To find out if you are a federally-regulated employee, contact: a lawyer, Alberta's Employment Standards office, or Canada's Labour Program.

WHY DID YOU LOSE YOUR JOB?

The first step is to understand **why** you lost your job.

- If you receive a letter from your employer, it should say why your employment is ending.
- If you are terminated verbally and not given a letter, make notes of what was said or ask for a notice in writing.
- If you are unsure why you lost your job, you can respectfully ask your employer to explain further.

Losing your job is an emotional experience but anger does not help the situation. Sometimes it helps to take a day or two to cool off before asking your employer for more information.

What's in a term?

We use different terms in our culture to say that we have lost our job: 'canned', 'fired', 'let go', 'dismissed'. They are not legal terms and describe very different situations. For example, you might say you were fired from your job. This suggests that you lost your job because you did something wrong but, in fact, it could be no fault of your own.

In this booklet, we discuss two types of termination:

1. Termination without cause; and
2. Termination with cause.

Termination without cause: Your employer is terminating your employment even though you have not done anything wrong. It is legal for your employer to do this in Alberta, as it is legal for you as an employee to quit your job by giving notice, even if things are going well. Your employer must give you notice that you are being terminated (there are some exceptions). Notice can be working notice or pay in lieu of notice.

FEDERAL

If you were terminated without cause, have worked for 12 consecutive months for your employer and are not part of a union, then you can make an **unjust dismissal complaint** to Canada's Labour Program. Your complaint will not be accepted if you were laid off because there is no work or if your job was discontinued. You must file an unjust dismissal complaint within 90 days of your last day of work.

Termination with cause: Your employer is terminating your employment because of your misconduct. It is legal for your employer to do this in Alberta if your misconduct is severe. Some examples of severe misconduct are theft, continuous harassment of a co-worker, unexcused absences from work, illegal behavior, or constant neglect of your duties.

Wrongful dismissal claim: A lawsuit against your employer if your employer did not terminate you correctly. This could mean your employer did not give you enough notice of your termination without cause or that your misconduct was not severe enough to justify termination with cause.

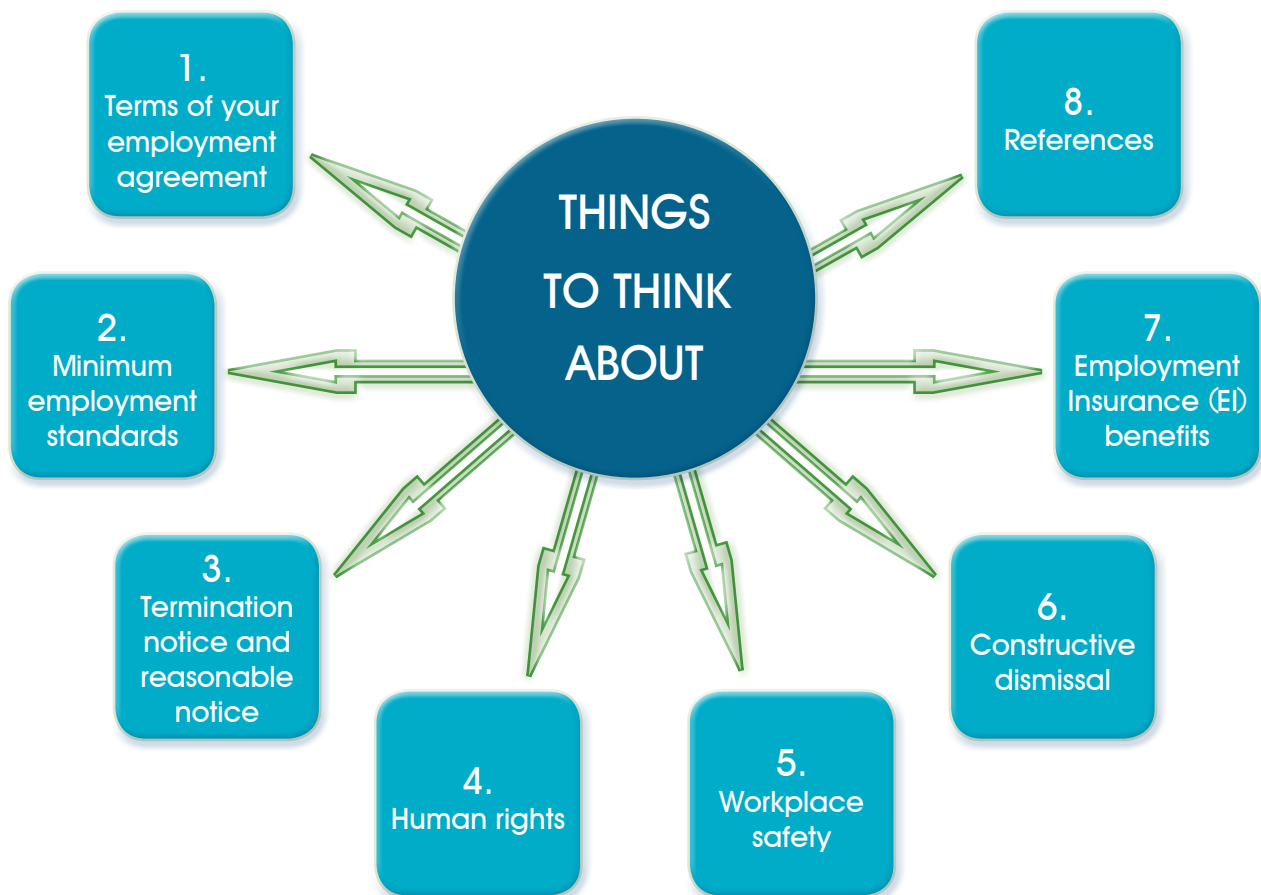
Did you quit your job because you felt forced to or because your employer changed an important part of your employment, like your salary or job duties?

If so, you may have been **constructively dismissed**.

See page 13 for more information on constructive dismissal.

NEXT STEPS

To protect your rights, there are several things you should consider and steps you should take if you lose your job:



1. What does your employment agreement say about termination?

An employment agreement exists between every employer and employee. There is no standard form for an employment agreement. Agreements are written or verbal. Written agreements can be in the form of an email, an offer letter, or a formal employment contract. Your employer's policies or rules may also form part of your employment agreement. You should ask to see copies of these policies or rules. If nothing is written down, then the terms of your employment agreement are what you and your employer discussed. A verbal agreement can be harder to enforce, especially if you and your employer do not agree on what the terms of the agreement are.

Employment agreements may include terms about termination. Sometimes you agree beforehand how much notice you will be given or how much you will be paid if your employment is terminated. The employment agreement might also say what behavior the employer considers serious enough to justify termination with cause. It is important to review your employment agreement when your job ends to make sure your employer followed the terms you agreed to.

Even if the written employment agreement addresses termination notice or pay in lieu of notice, it may be worth having the agreement reviewed by an employment lawyer to see if it is enforceable. An employment agreement must comply with employment standards legislation.

2. Has your employer complied with employment standards?

Every province and the federal government have laws setting out minimum standards that employers must obey. In Alberta, there are standards about minimum wage, hours of work, overtime, vacations and holiday pay, maternity leaves and other types of leaves, termination of employment, and employing children.

In Alberta, the law is the *Employment Standards Code* and the *Employment Standards Regulation*. The Code and the Regulation apply to all employees in Alberta except employees whose work is regulated by the federal government. For federally-regulated employees, the standards are in the *Canada Labour Code*.

You must file a complaint with Alberta Employment Standards within six months of your last day of work.

FEDERAL

The *Canada Labour Code* standards are slightly different from Alberta's employment standards. Contact Canada's Labour Program for more information.

If you are claiming unjust dismissal, you must file a complaint within 90 days of your last day of work. All other complaints must be filed within 6 months of when the claim arose.

The law sets out when you must be paid and when earned benefits, such as vacation or holiday pay and overtime, must be paid.

If you have questions about these standards you can contact Alberta's Employment Standards office. You can also file a complaint with Employment Standards against your employer if they have not complied with the *Employment Standards Code*.

3. Have you been given proper notice of termination?

If you are terminated without cause, Alberta's *Employment Standards Code* says that your employer must give you notice that you are being terminated. This notice is meant to give you time to find a new job. The amount of notice depends on how long you have worked for your employer.

Notice Period	Length of Employment
1 week	More than 90 days but less than 2 years
2 weeks	2 years or more but less than 4 years
4 weeks	4 years or more but less than 6 years
5 weeks	6 years or more but less than 8 years
6 weeks	8 years or more but less than 10 years
8 weeks	10 years or more

Notice can be **working notice** or **pay in lieu** or a combination of the two. Working notice is where your employer gives you notice in advance of your last day of work and lets you work for the period in between. Pay in lieu of notice is where your employer pays your wages for the time you were supposed to work but does not require you to work. Your employer must give you working notice or pay in lieu of notice equal to the minimum notice period set out in the Code.

Some employees are legally entitled to more notice than the minimum set out in the law. This is called “**reasonable notice**” and is calculated according to the common law (or judge-made law) in Canada. You may be deserving of more notice depending on your age, length of service, type of employment, and whether similar employment is available. For example, an employee in a specialized field who has served a company for many years is likely entitled to more notice than the minimum set out in the *Employment Standards Code*.

Termination notice

Minimum amount of notice

Set out in employment standards laws

Depends on length of service

Does not apply to all workers
(see page 10)

Cannot be limited by an employment agreement

Reasonable notice

Depends on your age, length of service, type of employment, availability of similar employment

Determined by the common law
(judge-made law)

No formula to calculate

Applies to all employees

Can be limited by an employment agreement

You might agree ahead of time, in an employment agreement, how much notice you will get if your employer wants to terminate you. You can agree to receive more notice than the minimum notice set out in the Code but **you cannot agree to less notice than the minimum.**

Certain employees are exempt from receiving the minimum notice set out in the law.

Alberta's *Employment Standards Regulation* says that the following employees do not have to be given notice:

- construction workers, unless you perform ongoing maintenance only;
- workers who clear trees and brush for the purpose of clearing land (not for the purpose of harvesting timber);
- employees employed for 90 days or less;
- employees employed for a fixed term or task of less than one year;
- seasonal employees;
- employees refusing an offer of reasonable alternative work;
- employees refusing work available through a seniority system;
- employees not working because of a strike or lockout;
- employees whose employer cannot fulfil the employment agreement because of unforeseeable or unpreventable circumstances;
- employees on a temporary layoff who do not return to work within 7 days of being recalled by the employer.

However, you may still be eligible for reasonable notice under the common law.

If you have been terminated with cause, you do not qualify for notice of termination or reasonable notice. You will only be paid for hours worked and benefits earned to the time of termination.

FEDERAL

Termination notice and severance pay are different under the *Canada Labour Code*. Contact Canada's Labour Program for more information.

For more information on whether you have received enough notice under *Alberta's Employment Standards Code*, contact Alberta's Employment Standards office.

You must file a complaint within six months of your last day of work.

For more information on whether you are entitled to more notice than the minimum set out in law, contact an employment lawyer.

You must start a wrongful dismissal claim within two years of the date you were terminated.

4. Have your human rights been violated by your employer?

Every province and the federal government have laws that ban employers from discriminating against an employee for certain reasons (called "protected grounds"). In Alberta, this law is set out in the *Alberta Human Rights Act*.

The protected grounds in Alberta are:

race	age
religious beliefs	ancestry
colour	place of origin
gender	marital status
gender identity	source of income
gender expression	family status
physical disability	sexual orientation
mental disability	

For example, this means that your employer cannot fire you because you are pregnant. This would be discrimination on the basis of gender. Your employer also cannot fire you if you have a disability, unless your employer cannot accommodate your disability to the point of undue hardship. 'Disability' includes mental health illnesses or substance abuse issues, like alcoholism, along with physical disabilities.

Employers have a duty to accommodate to the point of undue hardship. Accommodation means your employer must take reasonable steps, such as changing a policy or the physical working environment, to make sure your protected grounds (such as a disability) are not negatively impacted. Undue hardship exists where accommodation becomes a burden for your employer, such as high financial costs or serious disruption to business. You and your employer are expected to work together to agree on reasonable accommodation. You are not legally entitled to immediate or perfect accommodation. If an agreement cannot be reached, you can make a complaint to the Alberta Human Rights Commission.

For more information on your human rights at work, or to make a complaint against your employer, contact the Alberta Human Rights Commission.

You must file a complaint with the Commission (Alberta or Canada) within one year after the act or treatment you are complaining about took place.

The Alberta Human Rights Commission has the power to investigate complaints about human rights. If you and your employer cannot resolve the issue with the Commission's assistance, the matter can go to a Human Rights Tribunal for a decision. The Human Rights Tribunal can order that your employer:

- stop the discriminatory behavior and not do it again in the future (such as by changing workplace policies or providing workplace training); or
- pay you money for wages or income lost because of your employer's discrimination; or
- give you back your job (but this is very rarely awarded because the relationship between you and your employer is often damaged by the complaint process).

FEDERAL

The Canadian Human Rights Act applies to federally-regulated employees. The protected grounds are: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction of an offence for which a pardon has been granted or in respect of which a record suspension has been ordered. Contact the Canadian Human Rights Commission for more information about your human rights or to make a complaint.

5. Do you have concerns about workplace safety? Do you feel your employer terminated you for raising concerns about workplace safety?

In Alberta, all workplace parties have an obligation to keep a workplace safe, including workers, supervisors, employers, contractors and suppliers. The laws about workplace safety are set out in the *Occupational Health and Safety Act*, the *Occupational Health and Safety Code*, and the *Occupational Health and Safety Regulation*. There are also rules for farming and ranchers and penalties for not obeying the laws.

A safe workplace includes:

- understanding existing or potential work site hazards;
- not having to perform dangerous work (work that constitutes a danger to your health and safety or to the health and safety of another worker or person);
- being free from harassment and violence; and
- reporting serious injuries, incidents, and deaths.

If you have concerns about workplace safety, you can file a complaint with Alberta Occupational Health and Safety (OHS).

You cannot be disciplined for acting according to the law, including refusing to perform dangerous work or reporting issues of workplace safety, harassment or violence. If you believe your employer has taken actions against you for doing so, you can also file a complaint with OHS.

For more information about filing a complaint with OHS, visit

<https://www.alberta.ca/file-complaint-online.aspx> or call 1.866.415.8690

6. Have you been constructively dismissed?

Constructive dismissal occurs when you leave your job because your employer has significantly changed a fundamental term of your employment agreement without you having any say. Constructive dismissal can also exist where the work environment becomes so hostile that you feel you have to quit.

Some examples of the fundamental terms of an employment agreement can include job description, salary, hours of work, or location of work. An example of a hostile work environment is where you are being sexually harassed or bullied and your employer is not doing anything about it even after you reported your concerns to them.

EXAMPLE Sally was hired to be a Communications Manager for a manufacturing company. Sally has a business diploma from NAIT. Her job was to manage the company's social media accounts and create brochures for the company's products. After three years, the company tells her that her job will now be to operate one of the company's machines. Her hours of work and salary will be the same. Sally asks her boss why her role is changing and is told that she has no choice but to accept the new role. This new role is significantly different from Sally's previous role as Communications Manager and does not match Sally's skills and training. She quits her job. Even though it was Sally who terminated her employment, not her employer, she still has a claim for constructive dismissal. Sally's job description was a fundamental term of her employment, and her employer changed it significantly without any notice to her.

Constructive dismissal does **not** exist where:

- your employer makes small or reasonable changes to your job. For example, your employer asks that you take on one task and stop doing another task that is still related to your role at the company; or
- you accept the changes your employer proposes. For example, everyone at the company agrees to a decrease in salary so that the company does not have to lay anybody off during tough financial times.

Constructive dismissal claims can be difficult to prove. You should consult a lawyer if you think you have been constructively dismissed.

In Alberta, you must start a lawsuit within two years of the date you were terminated or constructively dismissed.

7. Can you apply for Employment Insurance (EI) benefits?

As soon as you lose your job, you should contact Employment Insurance to see if you are eligible to receive Employment Insurance (EI) benefits.

You may be eligible for EI benefits if you were terminated without cause. However, you may not be eligible for EI benefits if you were terminated with cause.

Your employer must submit a **Record of Employment (ROE)** before your EI benefits can be calculated. Your employer can issue your ROE on paper or electronically.

- If your employer issues a paper ROE, then you must get it within five calendar days of your last day of work.
- If your employer submits your ROE electronically to Service Canada, then the ROE must be submitted within five calendar days after the end of the pay period which you worked (unless you get paid monthly or every four weeks). In this case, your employer does not have to give you a paper copy.
- If you are unsure if your employer has submitted an ROE electronically, you can ask your employer or Service Canada for confirmation or log onto your My Service Canada Account: <https://www.canada.ca/en/employment-social-development/services/my-account.html>

For more information about EI benefits or your ROE, contact Service Canada.

8. Can you ask for a reference?

If you were terminated without cause and have a good relationship with your employer, you can ask for a reference. A reference can be:

- permission to include your employer's name and contact information on your resume or other job applications; or
- a letter from your employer about your work with them.

A reference can be very helpful in applying for new jobs and shows potential employers that you left the old job on a positive note. However, your employer has no obligation to provide you with a reference.

RESOURCES

Law Society of Alberta Lawyer Referral Service

Provides names of three lawyers. Each lawyer to provide half-hour consultation free of charge.

Toll-free: 1.800.661.1095

<http://bit.ly/2K2fYcs>

Alberta's Employment Standards

Toll-free: 1.877.427.3731

<https://www.alberta.ca/employment-standards.aspx>

Canada's Labour Program

Toll-free: 1.800.641.4049

<https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour.html>

Alberta Human Rights Commission

Northern Regional Office Confidential Inquiry Line: 780.427.7661

Southern Regional Office Confidential Inquiry Line: 403.297.6571

<https://www.albertahumanrights.ab.ca/Pages/default.aspx>

Canadian Human Rights Commission

Toll-free: 1.888.214.1090

<https://www.chrc-ccdp.gc.ca/eng>

Alberta Occupational Health and Safety (OHS) Centre

Toll-free: 1.866.415.8690

<https://www.alberta.ca/ohs-complaints-incidents.aspx>

Service Canada – Employment Insurance

Toll-free: 1.800.206.7218

<https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit.html>

Workers' Compensation Board (WCB) – Alberta

Alberta: 1.866.922.9221

Canada-wide: 1.800.661.9608

www.wbc.ab.ca

Workers' Resource Centre

1.844.435.7972

<https://www.helpwrc.org/>

Alberta Workers' Health Centre

1.888.729.4879

<https://workershealthcentre.ca/>

Centre for Public Legal Education Alberta

Employment Law Publications:

<https://www.cplea.ca/EmploymentLaw>

Employment Law FAQs:

<https://www.law-faqs.org/alberta-faqs/>

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NOW WHAT?
