



# STATUTORY RULES FOR TEMPORARY LAYOFFS ACROSS CANADA

Many of our clients are considering the use of temporary layoffs to deal with the impact of the coronavirus on their businesses. For ease of reference, we have outlined below the rules under the provincial employment standards legislation across Canada, and for federally regulated employers, the federal *Canada Labour Code*.

Please note that there is some risk that a temporary layoff could trigger a constructive dismissal where there is no term in an employee’s contract allowing for such, a company policy providing for such, or a past practice of temporary layoffs at the company.

Statutory Temporary Layoffs Across Canada (Current to December 23, 2020)	
Jurisdiction	Rules Regarding Temporary Layoffs
Federal	<p><b><u>Standard Requirements</u></b></p> <p>Section <b>230(3)</b> of the <i>Canada Labour Code</i>: An employer will be deemed to have terminated an employee’s employment when it lays off that employee.</p> <p><b>Section 30</b> of the <i>Canada Labour Standards Regulations</i>: A layoff of an employee does not amount to a termination where:</p> <ul style="list-style-type: none"> <li>(a) the lay-off is a result of a strike or lockout;</li> <li>(b) the term of the lay-off is 12 months or less and the lay-off is mandatory pursuant to a minimum work guarantee in a collective agreement;</li> <li>(c) the term of the lay-off is three months or less;</li> <li>(d) the term of the lay-off is more than three months and the employer               <ul style="list-style-type: none"> <li>(i) notifies the employee in writing at or before the time of the lay-off that he will be recalled to work on a fixed date or within a fixed period neither of which shall be more than six months from the date of the lay-off, and</li> <li>(ii) recalls the employee to his employment in accordance with subparagraph (i);</li> </ul> </li> <li>(e) the term of the lay-off is more than three months and               <ul style="list-style-type: none"> <li>(i) the employee continues during the term of the lay-off to receive payments from his employer in an amount agreed on by the employee and his employer,</li> <li>(ii) the employer continues to make payments for the benefit of the employee to a pension plan that is registered pursuant to the <i>Pension Benefits Standards Act</i> or under a group or employee insurance plan,</li> <li>(iii) the employee receives supplementary unemployment benefits, or</li> <li>(iv) the employee would be entitled to supplementary unemployment benefits but is disqualified from receiving them pursuant to the <i>Employment Insurance Act</i>; or</li> </ul> </li> <li>(f) the term of the lay-off is more than three months but not more than 12 months and the employee, throughout the term of the lay-off, maintains recall rights pursuant to a collective agreement.</li> </ul>



**COVID-19 Related Modifications (In effect as of December 23, 2020):**

- For employees laid off for a period of 3 months or less prior to March 31, 2020, the time is extended by 9 months after the day on which it would otherwise end; therefore, an employer has up to 12 months to recall the employee.
- For layoffs between March 31, 2020 and December 31, 2020, the employer has until March 31, 2021 to recall the employee before the layoff is deemed a termination of employment.
- If the employee was laid off with an expected recall date prior to March 31, 2020, the date specified in the agreement will be extended by 9 months or to March 31, 2021, whichever is earlier.
- If the employee was laid off with an expected recall date during the period between March 31, 2020 and December 31, 2020, the employer has until March 31, 2021 to recall the employee, unless a later recall date was provided in a written notice.

These changes are temporary and will not apply to layoffs occurring after December 31, 2020. The extension also does not apply to employees:

- covered by a collective agreement containing recall rights or a minimum work guarantee;
- on strike or a lock out
- receiving employer payments (for example, employer continues to provide payment for retention purposes);
- receiving employer benefits (for example, pension plan or insurance plan);
- receiving or eligible for supplementary unemployment benefits; or
- terminated prior to June 22, 2020, or before November 9, 2020 because the employer chose not to apply the previous extension.



<p><b>British Columbia</b></p>	<p><b><u>Standard Requirements</u></b></p> <p><b>Section 1</b> of the British Columbia <i>Employment Standards Act</i>: a temporary layoff includes any layoff period that does not exceed 13 weeks within a 20-week period.</p> <p><b>Section 62</b>: a week of layoff occurs where there is a reduction of 50% or more of an employee's regular weekly wages, averaged over the previous 8 weeks.</p> <p>An employee who is temporarily laid off is not entitled to statutory notice or termination pay unless and until the layoff exceeds 13 weeks in a 20-week period of time. Any layoff exceeding the temporary layoff period set out above would be considered a termination of employment.</p> <p>The Employment Standards Branch's Policy Interpretation Guidelines on this subject provide that an employer may only temporarily lay off an employee if the right to do so exists within the employment relationship; either by a term of the employment agreement, by a well-known industry practice, or with the consent of the employee. In the absence of these factors, a reduction of hours of work may be considered by the Branch to be a substantial alteration of employment which constitutes a termination of employment.</p> <p><b>Section 63(5)</b>: If a temporary layoff exceeds 13 weeks in a 20-week period, the termination date will be deemed to be the first date of the temporary layoff, and any entitlements owing to the employee should be calculated based on this date.</p> <p><b>Section 65(1)(d)</b>: Statutory termination pay is not required to be paid in a situation where the contract is "impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the <i>Bank Act (Canada)</i> or a proceeding under an insolvency Act."</p> <p>Businesses who need a further extension may consider applying for a variance under Section 72 of the <i>Employment Standards Act</i>. This provision allows an employer and a majority of their affected workers to apply for a variance to certain sections of the Act, including a time period specified in the definition of "temporary layoff."</p> <p>To apply for a variance, a letter must be delivered to the Director of Employment Standards with the following information:</p> <ul style="list-style-type: none"><li>• the provision of the Act the Director is requested to vary;</li><li>• the variance requested;</li><li>• the duration of the variance;</li><li>• the reason for requesting the variance;</li><li>• the employer's name, address and telephone number; and</li><li>• the name and home phone number of each employee who signs the letter.</li></ul> <p><b>NOTE: The period during which the temporary layoff period was extended to 24 weeks expired on August 30, 2020.</b></p>
<p><b>Alberta</b></p>	<p><b><u>Standard Requirements</u></b></p> <p><b>Section 62(1)</b> of the Alberta <i>Employment Standards Code</i>: An employer who wishes to maintain an employment relationship without terminating the employment of an employee may temporarily lay off the employee only by giving the employee a written layoff notice.</p> <p><b>(3) <u>The layoff notice must</u></b></p> <ul style="list-style-type: none"><li>(a) state that it is a temporary layoff notice,</li><li>(b) state the date that the layoff is to commence,</li><li>(c) include a copy of this section and sections 63 and 64, and</li></ul>

(d) include any other information provided for in the regulations.

**Section 63(1):** The employment of an employee who is laid off for one or more periods exceeding, in total, 90 days within a 120-day period is deemed to have been terminated unless

- (a) during the layoff the employer, by agreement with the employee,
- (i) pays the employee wages or an amount instead of wages, or
  - (ii) makes payments for the benefit of the laid-off employee in accordance with a pension or employee insurance plan or similar plan, **or**
- (b) there is a collective agreement binding the employer and employee containing recall rights for employees following layoff.

**(2)** When payments under subsection (1)(a) cease or recall rights under subsection (1)(b) expire, the employment of the employee terminates and termination pay is payable.

**(3)** For the purposes of determining the amount of termination pay payable under subsections (1) and (2), the amount is to be calculated as if section 57(1) applies.

**(4)** Subsections (1) and (2) do not apply if different provisions for termination after temporary layoff are agreed to under a collective agreement.

**Section 64(1):** An employer may request an employee to return to work by providing the employee with a recall notice.

**(2)** A recall notice must

- (a) be in writing,
- (b) be served on the employee, and
- (c) state that the employee must return to work within 7 days of the date the recall notice is served on the employee.

**(3)** If an employee fails to return to work within 7 days of being served with the recall notice, the employee is not entitled to termination notice or termination pay if the employer decides to terminate the employee's employment as a result of the employee's failure to return to work in accordance with the notice.

**(4)** Subsection (3) does not apply to an employee bound by a collective agreement containing recall rights for employees following a layoff.

**Section 55(2):** "Termination notice is not required [...] (h) if the contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer

Layoffs extending beyond the above dates will be considered to be ended, and the employer must pay termination pay if the employee is entitled to same. The period of temporary layoff can be extended beyond the maximum days if the employer makes regular payment to or on behalf of the employee, such as continuing to pay wages, employee pensions or benefits and the employee agrees to these payments in lieu of a firm limit of the length of the layoff. Termination pay is payable when payments in lieu cease.

**COVID-19 Related Modifications (In effect as of December 23, 2020):**

- For layoffs unrelated to COVID-19 and which took place on or after June 18, 2020, the maximum length of layoff is 90 days in a 120-day period.
- For layoffs related to COVID-19 which began on any date, the maximum length of layoff is 180 consecutive days from the initial layoff date.



<b>Saskatchewan</b>	<p><b><u>Standard Requirements</u></b></p> <p>Normally, a “layoff” is a temporary interruption by an employer of the services of an employee for a period exceeding six work days. Notice of termination obligations apply to a layoff.</p> <p><b><u>COVID-19 Related Modifications (In effect as of December 23, 2020):</u></b></p> <p>Despite the provisions of <i>The Saskatchewan Employment Act</i> that a “layoff” means the temporary interruption by an employer of the services of an employee for a period <u>exceeding six consecutive work days</u>, section 44.2 of <i>The Employment Standards Regulations</i> provides that employers can issue layoffs as part of their response to a public emergency during an order of the chief medical health officer or an emergency declaration by the Government of Saskatchewan.</p> <p>Employers do not have to provide notice or pay instead of notice for layoffs that will occur during and up for up to two weeks after a public emergency period. The additional two weeks are provided for employers and employees to prepare for the employee to return to work. Employees are to be scheduled on or before the end of the two weeks, otherwise their employment is considered to be terminated and <a href="#">pay instead of notice</a> is due. Pay instead of notice would be calculated from the date the employee was originally laid off.</p> <p>During the layoff, employees are still considered employees, but are able to immediately access supports being provided through provincial and federal programs. Please note those programs will vary depending on the current situation.</p> <p>Layoffs without notice or pay instead of notice of this duration can only be issued during a public emergency period.</p> <p>These are minimum standards that may be superseded by an employment contract or Collective Bargaining Agreement provided the agreement offers at least what is available through the employment standards legislation.</p>
<b>Manitoba</b>	<p><b><u>Standard Requirements:</u></b></p> <p><b>Section 23(1)</b> of the <i>Employment Standards Regulations</i>: The employment of an employee who is laid off for one or more periods exceeding, in total,</p> <ul style="list-style-type: none"><li>(a) 8 weeks within a 16-week period; or</li><li>(b) any greater number of weeks within a longer period as specified by the director upon application by the employer;</li></ul> <p>is deemed to have been terminated unless:</p> <ul style="list-style-type: none"><li>(c) in the business in which the employee is employed, employees are subjected to regular and recurring lay-offs, and the employee was told about it when he or she was hired; or</li><li>(d) during the lay-off the employer, by agreement with the employee, continues<ul style="list-style-type: none"><li>(i) to pay wages to the employee, or to make payments to the employee in place of wages, or</li><li>(ii) to make payments for the benefit of the employee to a pension plan or group or employee insurance plan or, where the employee has a pension plan and a group or employee insurance plan, to both.</li></ul></li></ul> <p><b>Section 23(2)</b>: When a lay-off is deemed by subsection (1) to be a termination of employment,</p> <ul style="list-style-type: none"><li>(a) the employee's employment is deemed to have been terminated without notice on</li></ul>



	<p>the first day of the lay-off; and</p> <p>(b) the employer must pay the employee a wage in lieu of notice in accordance with section 77 of the <i>Code</i>.</p> <p><b>Section 62(1)(f)</b> of the <i>Employment Standards Code</i>: statutory termination pay is not required to be paid in a situation where “the employee is employed under an agreement or contract of employment that is impossible to perform or has been frustrated by a fortuitous or unforeseeable circumstance.”</p> <p><b><u>COVID-19 Related Modifications (In effect as of December 23, 2020)</u></b></p> <p>On March 27, 2020, the provincial government announced a temporary exception to the layoff rules above. Specifically, any period of layoff occurring after March 1, 2020, will not be counted toward the period after which a temporary layoff would become a permanent termination. The province will suspend the exception when the province begins to recover economically.</p>
<p><b>Ontario</b></p>	<p><b><u>Standard Requirements:</u></b></p> <p>Pursuant to <b>section 56(1)(c)</b> of the Ontario <i>Employment Standards Act, 2000</i>, if an employer lays the employee off for a period longer than the period of temporary layoff, then the layoff is deemed to be a termination and it triggers various obligations for an employer.</p> <p><b>Section 56(3.1)</b> : a "week of layoff" is a week in which the employee earned less than half of what he or she would ordinarily earn (or earns on average) in a week.</p> <p>A week of layoff does not include any week in which the employee did not work for one or more days because the employee was not able or available to work, was subject to disciplinary suspension, or was not provided with work because of a strike or lockout at his or her place of employment or elsewhere.</p> <p><b>Section 56(2)</b>: a temporary layoff is:</p> <ul style="list-style-type: none"><li>(a) a lay-off of not more than 13 weeks in any period of 20 consecutive weeks;</li><li>(b) a lay-off of more than 13 weeks in any period of 20 consecutive weeks, if the lay-off is less than 35 weeks in any period of 52 consecutive weeks and,<ul style="list-style-type: none"><li>(i) the employee continues to receive substantial payments from the employer,</li><li>(ii) the employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan,</li><li>(iii) the employee receives supplementary unemployment benefits,</li><li>(iv) the employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if that were not so,</li><li>(v) the employer recalls the employee within the time approved by the Director, or</li><li>(vi) in the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee; or</li></ul></li><li>(c) in the case of an employee represented by a trade union, a lay-off longer than a lay-off described in clause (b) where the employer recalls the employee within the time set out in an agreement between the employer and the trade union.</li></ul> <ul style="list-style-type: none"><li>• <u>a layoff longer than the above periods is deemed to be a termination.</u></li></ul>



	<p><b>Section 2(1) of O. Reg. 288/01:</b> Statutory termination pay is not required to be paid in a situation where the “contract of employment has become impossible to perform or has been frustrated by a fortuitous or unforeseeable event or circumstance.”</p> <p><b>Section 9(2) of O. Reg. 288/01:</b> Statutory severance pay (if applicable), is not owing to an employee whose contract of employment has become impossible to perform or has been frustrated, unless, the impossibility or frustration is as a result of a permanent discontinuance of all or part of the employer’s business because of a fortuitous or unforeseen event.</p> <p><b><u>COVID-19 Related Modifications (In effect as of December 23, 2020)</u></b></p> <p>For non-unionized employees, O. Reg. 228/20: Infectious Disease Emergency Leave, has modified the above by providing that these timelines do not apply to an employee whose hours of work are temporarily reduced or eliminated by the employer, or whose wages are temporarily reduced by the employer, for reasons related to the coronavirus (COVID-19) from March 1, 2020 to July 3, 2021. Instead, such employees are considered to have been placed on <a href="#">Infectious Disease Emergency Leave</a>, provided the employee was not terminated before May 29, 2020. Further, this reduction or elimination of hours will not constitute a constructive dismissal under the ESA for non-unionized employees. All other ESA rules apply as usual.</p>
Quebec	<p><b><u>Standard Requirements:</u></b></p> <p><b>Sections 82, 83 and 83.1</b> of the <i>Act Respecting Labour Standards</i>: notice of termination obligations apply if an employee is laid off for six months or more.</p> <p>An employee who is laid off for a period of 6 months or more must receive, within the time periods stipulated in the Act, a notice of termination of employment. The employer does not have to pay the vacation indemnity (4% or 6%) at the time of layoff, if the employee’s vacation was not planned in this period.</p> <p>A notice of termination of employment given to an employee during the period when they are laid off is of no effect, except in the case of seasonal employment that usually lasts for not more than six months each year.</p>
New Brunswick	<p><b><u>Standard Requirements:</u></b></p> <p><b>Section 30(1)</b> of the <i>Employment Standards Act</i>: An employer shall not terminate or lay off an employee without having given at least:</p> <ul style="list-style-type: none"> <li>(a) two weeks notice in writing, where the employee has been employed by the employer for a continuous period of employment of six months or more but less than five years; and</li> <li>(b) four weeks notice in writing, where the employee has been employed by the employer for a continuous period of employment of five years or more.</li> </ul> <p><b>Section 31(1):</b> An employer may lay off an employee without notice when:</p> <ul style="list-style-type: none"> <li>(a) there is a lack of work, due to any reason unforeseen by the employer at the time notice would otherwise have been given, for such period as the lack of work continues due to that reason; or</li> <li>(b) for any reason, for a period of up to six days.</li> </ul>
Nova Scotia	<p><b><u>Standard Requirements:</u></b></p> <p><b>Section 72</b> of the <i>Labour Standards Code</i> requires an employer to provide an employee with notice of layoff equivalent to the employee’s entitlements on notice of termination. Additional notice may be required where ten or more employees are laid off within a four week period.</p>



	<p>(3) Subsections (1) and (2) do not apply to</p> <ul style="list-style-type: none"><li>(a) a person whose period of employment is less than three months;</li><li>(b) a person employed for a definite term or task for a period not exceeding twelve months;</li><li>(c) a person who is laid off or suspended for a period not exceeding six consecutive days;</li><li>(d) a person who is discharged or laid off for any reason beyond the control of the employer including complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, cancellation, suspension or inability to obtain orders for the products of the employer; fire, explosion, accident, labour disputes, weather conditions and actions of any governmental authority, if the employer has exercised due diligence to foresee and avoid the cause of discharge or lay-off;</li><li>(e) a person who has been offered reasonable other employment by his employer;</li><li>(f) a person who, having reached the age of retirement established by the employer on the basis of a bona fide occupational requirement for the position in which that person is employed, has his employment terminated;</li><li>(g) a person who is laid off in circumstances established by regulation as an exception to subsection (1) or (2);</li><li>(h) a person employed in the construction industry;</li><li>(i) a person employed in an activity, business, work, trade, occupational profession, or any part thereof, that is exempted by regulation.</li></ul> <ul style="list-style-type: none"><li>• Where a laid off employee's employment is terminated (due to continued layoff or otherwise), the employee must be paid termination pay as though they had been terminated without notice on the first day of the layoff.</li></ul>
<p>Prince Edward Island</p>	<p><b><u>Standard Requirements:</u></b></p> <p><b>Section 29</b> of the <i>Employment Standards Act</i>. Notice of termination obligations apply to layoffs, except where:</p> <ul style="list-style-type: none"><li>• the layoff does not exceed six days;</li><li>• the employee is laid off for any reason beyond the control of the employer, including the complete or partial destruction of a plant, the destruction or breakdown of machinery or equipment, the inability to obtain supplies and materials, or the cancellation or suspension of, or inability to obtain, orders for the products of the employer, if the employer has exercised due diligence to foresee and avoid the cause of termination or layoff.</li></ul>





<p><b>Newfoundland &amp; Labrador</b></p>	<p><b><u>Standard Requirements:</u></b></p> <p>A “temporary layoff” means a layoff of not more than 13 weeks in a period of 20 consecutive weeks. A day during those 20 consecutive weeks for which an employee receives pay shall not be counted in calculating the 13-week layoff period. Once the duration of the layoff exceeds this time period, the employee is considered to have been terminated at the beginning of the temporary layoff.</p> <p><b>Section 52</b> of the <i>Labour Standards Act</i>: An employer shall not temporarily lay off an employee unless written notice of the temporary lay-off is given by or on behalf of the employer to the employee in accordance with the period required by the Act.</p> <p><b>Section 53:</b> Notice of layoff is not required where:</p> <ul style="list-style-type: none"> <li>• the layoff does not exceed one week;</li> <li>• the employee rejects an offer of reasonable alternative employment of a similar nature requiring similar abilities that would enable the employee to earn a comparable total wage for a comparable number of hours as that earned by the employee under the contract of service;</li> <li>• the layoff results from the destruction of or breakdown of plant machinery or equipment, or climatic or economic conditions that are beyond the foreseeable control of the employer and that necessitate declaration of redundancy;</li> <li>• the contract of service between employer and employee has existed for less than 30 days; or,</li> <li>• the employee works in the construction industry.</li> </ul> <p><b><u>COVID-19 Related Extension (NOW EXPIRED)</u></b></p> <p>On June 12, 2020, in an effort to maintain the employer-employee relationship and provide employers with additional time to recall their employees during the COVID-19 pandemic, the government announced an extension to the time period that converts a temporary layoff into a permanent termination. The Government of Newfoundland and Labrador has extended the period that an employee can remain temporarily laid off to 26 weeks in a period of 33 consecutive weeks. The time period for making a complaint to the Director of Labour Standards has also been temporarily extended to 12 months from its previous six months.</p> <p>Both extensions were retroactive to March 18, 2020 and <b>ended on September 18, 2020.</b></p>
<p><b>Yukon</b></p>	<p><b><u>Standard Requirements:</u></b></p> <p>A “temporary layoff” is an interruption of an employee’s employment for a period not exceeding 13 weeks of layoff in a period of 20 consecutive weeks, or exceeding 13 weeks of layoff if the employer recalls the employee within a time set by the director.</p> <p><b>Section 49(1)(e)</b> of the <i>Employment Standards Act</i>: Notice of termination does not apply to an employee on temporary layoff.</p> <p><b>Section 53(1):</b> if a layoff exceeds the time period for a temporary layoff, the employee is deemed to have been terminated at the start of the temporary layoff, and the employer shall pay the employee pay in lieu of notice of termination as required by the Act. The employer may seek leave from the board to extend the period of the temporary layoff.</p>
<p><b>Northwest Territories</b></p>	<p><b><u>Standard Requirements:</u></b></p> <p><b>Section 42</b> of the <i>Employment Standards Act</i>: Written notice of temporary layoff is required, which must indicate the expected date on which the employer will request the employee to return to work. If such notice is not provided, the employer will be deemed to have terminated the employment of the employee on the last day of the layoff. A temporary layoff cannot exceed 45 days during a period of 60 consecutive days.</p> <p><b>Section 43:</b> An employment standards officer may extend a temporary layoff to a period exceeding 45 days if satisfied that special circumstances justify the extension, and that the</p>



	employee will be recalled.
<b>Nunavut</b>	<p><b><u>Standard Requirements:</u></b></p> <p>A “temporary layoff” means an interruption of employment for a period not exceeding 45 days of layoff in a period of 60 consecutive days, or exceeding 45 days of layoff, where the employer recalls the employee to employment within a time fixed by the labour standards officer.</p> <p><b>Section 14.05</b> of the <i>Labour Standards Act</i>: An employer wishing to temporarily lay off an employee must give the employee written notice of temporary layoff and must indicate in that notice the expected date on which the employer will request the employee to return to work.</p> <p><b>Section 14.06:</b> If the layoff exceeds the duration of a temporary layoff, the employment of the employee shall be deemed to have been terminated on the last day of the temporary layoff, and the employer shall pay the employee termination pay as required by the Act.</p>