

Cross-jurisdictional guide of layoffs in Canada

June 12, 2020



Please find below a chart that outline some of employers' most important obligations regarding layoffs, in every jurisdiction in Canada. Please note that this chart provides you with a high-level overview of employers' layoff obligations, as they relate to notice requirements and the permissible length of time for layoffs, after which time the layoff will generally be deemed a dismissal under applicable legislation. To understand the subtleties and stark differences of the legal requirements on employers across jurisdictions in Canada, it would be advisable to seek proper legal advice before laying off any employee.

Preliminary comments

As a preliminary matter, we note that:

- **In the common law provinces:** Common law may not permit a temporary layoff unless the same has been contractually agreed to or if the employee consents to it. If a policy containing the right to a temporary layoff does not expressly incorporate the policy as a term of employment, or if a policy states that it is not an employment contract, then that policy may not suffice as a contractual term. An assessment of mitigation in the circumstances may very well lead to the conclusion that the employee should mitigate damages by staying on rather than foregoing continued employment. As a practical matter, it may be that few employees in the current context would exercise any right to advance a constructive dismissal claim. For more information and commentary on layoffs as they operate in various common law jurisdictions, please click [here](#).
- **In the province of Quebec:** The employer always has the right to lay off employees so long as the reasons for the layoff are justified (e.g.: economic reasons) and not simply a pretext. Consequently, if the "layoff" is a pretext, it could indeed be considered a constructive dismissal and the employee(s) could then file a claim pursuant to the *Civil Code of Quebec* or a claim at the *Commission des normes, de l'équité, de la santé et de la sécurité au travail* (Quebec's labour commission) for prohibited practice or unjust dismissal. For more information and commentary on layoffs as they operate in the province of Quebec, please click [here](#) and [here](#).
- **Group terminations:** In addition to the information detailed in the chart below, employers will also need to be mindful of the group termination provisions in the provinces in which they operate, as these may be triggered if a significant and set number of employees are laid off within a stipulated timeframe (which varies by province).

Central Canada

	Ontario	Quebec
Governing legislation	<i>Employment Standards Act, 2000 (Loi de 2000 sur les normes d'emploi)</i>	<i>An act respecting labour standards (Loi sur les normes du travail)</i>
Notice of layoff requirements	<p>No notice required</p> <p>Formal notice is not required in Ontario.</p>	<p>No notice required for layoffs that are less than 6 months</p> <p>There are <u>no notice requirements</u> for temporary layoffs that are <u>less than 6 months</u>.</p> <p>Notice required for layoffs of 6 months or more</p> <p>That being said, the employer must give <u>written notice</u> to the <u>employee</u> before laying him off for <u>6 months or more</u>. Guidance from Quebec's <i>Commission des normes, de l'équité, de la santé et de la sécurité au travail</i> clarifies that "notice" in this case means "notice of termination of employment".</p> <p>However, notice is <u>not required for employees</u>:</p> <ul style="list-style-type: none"> • who have less than 3 months of uninterrupted service; • whose contract for a fixed term or for a specific undertaking expires; • who have committed a serious offence; and • for whom the end of the contract of employment or layoff is a result of superior force. <p>The legislation specifically mentions that Section 82 (notice of layoff requirements) does not deprive employees of a right granted to them under another Act.</p> <p>Required notice period</p> <p>The notice shall be:</p> <ul style="list-style-type: none"> • <u>No notice</u> if the employee has <u>less than 3 months of interrupted service</u>; • <u>One week</u> if the employee is credited with <u>3 months to one year of uninterrupted service</u>; • <u>2 weeks</u> if he is credited with <u>1 year to 5 years of uninterrupted service</u>; • <u>4 weeks</u> if he is credited with <u>5 years to 10 years of uninterrupted service</u> and • <u>8 weeks</u> if he is credited with <u>10 years or more of uninterrupted service</u>.

	Ontario	Quebec
<p>Notice of layoff requirements</p>		<p>Prohibition to provide an employee with a notice of termination</p> <p>Under the legislation, a notice of termination of employment given to an employee during the period in which he is laid off is absolutely null, except in the case of employment that usually lasts for not more than 6 months each year due to the influence of the seasons.</p> <p>Compensatory indemnity</p> <p>An employer who does not lawfully give notice, or who gives insufficient notice, must pay the employee a <u>compensatory indemnity</u> equal to his regular wage excluding overtime for a period equal to the period or remaining period of notice to which he was entitled.</p> <ul style="list-style-type: none"> • <u>When to pay the indemnity</u>: The indemnity must be paid at the time the employment is terminated or at the time the employee is laid off for a period expected to last more than 6 months, or at the end of a period of 6 months after a layoff of indeterminate length, or a layoff expected to last less than 6 months but which exceeds that period. • <u>Employees paid by commission</u>: The indemnity to be paid to an employee remunerated in whole or in part by commission is established from the average of his weekly wage, calculated from the complete periods of pay in the 3 months preceding his layoff. <p>Indemnity for unionized employees entitled to recall privileges for more than 6 months</p> <p>In the case of an employee who, under a collective agreement, is entitled to recall privileges for more than 6 months, the employer is bound to pay the compensatory indemnity only from the first of the following dates:</p> <ul style="list-style-type: none"> • the expiry of the recall privileges of the employee; • one year after the layoff. <p>However, these employees are <u>not entitled</u> to the compensatory indemnity if:</p> <ul style="list-style-type: none"> • they are recalled before the date on which their employer is bound to pay the indemnity and if subsequently they work for a period equal to or longer than that of the prescribed notice period; • if they are not recalled due to superior force.

Central Canada

	Ontario	Quebec
Layoff requirements	<p>Special COVID-19 measures affecting layoffs under <i>Ontario Regulation 228/20 Infectious Disease Emergency Leave</i> ("Regulation")</p> <p>Application: These special measures apply only to non-unionized employees, including those who are assignment employees. Moreover, the Regulation only applies during the COVID-19 period. Under the Regulation, the "COVID-19 period" means the period beginning on March 1, 2020, and ending on the date that is six weeks after the day that the emergency declared on March 17, 2020, pursuant to section 70.1 of the Emergency Management and Civil Protection Act is terminated or disallowed.</p> <p>Non-unionized employees with reduced or eliminated hours of work, or reduced wages: Under the Regulation, employees whose hours of work are reduced or eliminated, or whose wages are reduced, are no longer considered to be on a temporary layoff under sections 56 (what constitutes termination) and 63 (what constitutes severance) of the ESA.</p> <p>Reduction of hours: Hours of work are considered to be "reduced" in the following circumstances:</p> <ul style="list-style-type: none"> • If the employee has a regular work week, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than they worked in the last regular work week before March 1, 2020.* • If the employee does not have a regular work week, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than the average number of hours they worked per work week in the period of 12 consecutive work weeks that preceded March 1, 2020.* • If the employee was not employed by the employer during the entire work week that immediately preceded March 1, 2020, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than they worked in the work week in which they worked the greatest number of hours. <p>*The Regulation states that if the employee was on vacation, not able to work, not available for work, subject to a disciplinary suspension or was not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere for any part of the last work week before March 1, 2020, then the work week to be applied is, instead, the last regular work week before March 1, 2020 in which such conditions did not apply for any part of the work week.</p>	

Central Canada

	Ontario	Quebec
Layoff requirements	<p>Reduction of wages: Wages are considered to be “reduced” in the following circumstances:</p> <ul style="list-style-type: none"> • If the employee has a regular work week, the employee’s wages are considered to be reduced if the employee earns less regular wages in the work week than they did in the last regular work week before March 1, 2020.* • If the employee does not have a regular work week, the employee’s wages are considered to be reduced if the employee earns less regular wages than the average amount of regular wages they earned per work week in the period of 12 consecutive work weeks that preceded March 1, 2020.* • If the employee was not employed by the employer during the entire work week that immediately preceded March 1, 2020, the employee’s wages are considered to be reduced if the employee earns less regular wages than they did in the work week in which they earned the most regular wages. <p>*The Regulation states that if the employee was on vacation, not able to work, not available for work, subject to a disciplinary suspension or was not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere for any part of the last work week before March 1, 2020, then the work week to be applied is, instead, the last regular work week before March 1, 2020 in which such conditions did not apply for any part of the work week.</p> <p>Deemed emergency leave: This means that some affected employees may no longer have the option to be on a temporary layoff during the COVID-19 period. Practically speaking, for employees with a reduced or eliminated number of hours, the Regulation will instead provide for the protection of these employees’ employment by deeming them to be on emergency leave (COVID-19 infectious disease emergency) for any period of time during the COVID-19 period where they met the leave’s qualifying criteria. Employees with a reduction in wages, but with no reduction or elimination of hours, are not, under the Regulation, deemed to be on COVID-19 infectious disease emergency. On the ground, employees with reduced wages may therefore continue working, or, where possible, consider other options. It should be recalled that under the Regulation, a reduction or elimination of hours, or a reduction in wages, will not be considered a constructive dismissal for the purposes of the ESA during the COVID-19 period.</p>	

Central Canada

	Ontario	Quebec
Layoff requirements	<p>Complaints deemed not filed: All complaints filed with the Ministry of Labour alleging that a temporary reduction or elimination of an employee's hours of work, or a temporary reduction in an employee's wages, constitutes a termination and severance of employment will be deemed <i>not</i> to have been filed if the below-noted conditions are met:</p> <ul style="list-style-type: none"> • The temporary reduction or elimination of the employee's hours of work, or the temporary reduction of their wages, must have occurred during the COVID-19 period; • The reduction or elimination of the employee's hours of work, or the reduction of the employee's wages must be for reasons related to COVID-19; • The employment is terminated because the employer allegedly laid the employee off for a period longer than the period of a temporary lay-off; • If the employee is entitled to statutory severance, the employment is severed because the employer has allegedly laid the employee off for 35 weeks or more in any period of 52 consecutive weeks; and • The complaint must allege that the employee's employment was terminated and, if applicable, severed, on or after May 29, 2020. <p>Exception: For the purposes of determining an employee's termination and severance entitlements, the Regulation provides for one exception where an employee can be on layoff. This arises when the following two conditions are met:</p> <ul style="list-style-type: none"> • The employer terminates the employment of an employee by laying the employee off for a period longer than the period of a temporary lay-off under the ESA before May 29, 2020; and • If applicable, the employer severs the employment of an employee by laying the employee off because of a permanent discontinuance of all of the employer's business at an establishment before May 29, 2020. <p>Should this specific situation materialize before May 29, 2020, employers will have to ensure that all applicable termination and severance requirements under the ESA are met.</p>	

	Ontario	Quebec
<p>Layoff requirements</p>	<p>Permissible duration of layoff</p> <p>Under the legislation, a “temporary layoff” means:</p> <ul style="list-style-type: none"> • a layoff of not more than <u>13 weeks</u> in any <u>period of 20 consecutive weeks</u>; <ul style="list-style-type: none"> — If for <u>more than 13 weeks in any period of 20 consecutive weeks</u> employees who <u>do not have a regular work week</u> and <u>earn less than one half of the average amount they earned per week in the period of 12 consecutive weeks that preceded the 20-week period</u>, they will be considered to have been laid off for a period longer than the period of a temporary layoff; — For employees who do not have a regular work week, an <u>excluded week</u> shall not be counted as part of the 13 or more weeks but shall be counted as part of the 20-week period (see below for the definition of “excluded week”); and — For employees who do not have a regular work week, if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. • a layoff of <u>more than 13 weeks</u> in any <u>period of 20 consecutive weeks</u>, if the layoff is <u>less than 35 weeks</u> in any period of <u>52 consecutive weeks</u> and, <ul style="list-style-type: none"> — the employee continues to receive <u>substantial payments</u> from the employer, — the employer continues to make payments for the benefit of the employee under a <u>legitimate retirement or pension plan</u> or a <u>legitimate group or employee insurance plan</u>; — the employee receives <u>supplementary unemployment benefits</u>; — the employee is employed elsewhere during the layoff and would be entitled <u>to receive supplementary unemployment benefits</u> if that were not so; — the employer <u>recalls</u> the employee <u>within the time approved by the Director of Employment Standards</u>; or — in the case of an employee who is <u>not represented by a trade union</u>, the employer <u>recalls</u> the employee <u>within the time set out in an agreement between the employer and the employee</u>. <p>Moreover, in respect of the above-noted extended layoff period (max of 35 weeks in any period of 52 consecutive weeks), the legislation provides additional provisions that apply to employees who do not have a regular work week, as follows:</p>	<p>The <i>Commission des normes, de l'équité, de la santé et de la sécurité au travail</i> states that there are 2 types of layoffs in Quebec : (i) layoffs; and (ii) permanent layoffs.</p> <p>Layoffs</p> <p>A layoff <u>temporarily suspends</u> the contract of employment between the employer and the employee. In other words, a laid off employee may be called back to work. The employee retains his employment relationship for the duration of his layoff and the contractual relationship is maintained.</p> <p>Permanent layoffs</p> <p>A permanent layoff is the permanent severing of the employment relationship by the employer for:</p> <ul style="list-style-type: none"> • Economic reasons, such as financial difficulties, a decline in revenues • Organizational reasons, such as a reorganization resulting in the abolition or the merging of positions • Technical reasons, such as technological innovations. <p>An employer lays off his employee permanently when the employer no longer requires the employee's services. The employer's choice is based on objective criteria, such as:</p> <ul style="list-style-type: none"> • Performance • Skills • Versatility • Seniority <p>Permissible duration of layoffs</p> <p>As mentioned, if the employer lays off an employee for more 6 months or more, it must provide the employee with <u>a notice of termination of employment</u>, in accordance with the notice requirements discussed previously.</p> <p>Certificate of employment</p> <p>At the expiration of the contract of employment, Quebec's legislation specifically allows the employee to ask that his employer give him a certificate of employment which must exclusively describe the employee's duties and the length of employment. This certificate cannot describe the quality of the work or the employee's conduct. It must also contain the employer's name and address.</p>

	Ontario	Quebec
<p>Layoff requirements</p>	<ul style="list-style-type: none"> • If for <u>35 or more weeks in any period of 52 consecutive weeks</u> employees who <u>do not have a regular work week earn less than one half the average amount they earned per week in the period of 12 consecutive weeks that preceded the 52-week period</u>, they will be considered <u>laid off</u> for a period longer than the period of a temporary layoff; • For these employees, an excluded week shall not be counted as part of the 35 or more weeks but shall be counted as part of the 52-week period; and • For these employees, if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. <p>Excluded week</p> <ul style="list-style-type: none"> • For clarity, an “excluded week” must be counted as part of the periods of 20 and 52 weeks. • “Excluded week” means that the employee is not able to work, is not available to work, is subject to a disciplinary suspension or is not provided with work because of a strike or lock-out occurring at his place of employment or elsewhere. <p>Possibility of extended duration for unionized employees</p> <p>For <u>unionized employees</u> (that is, employees represented by a trade union), a <u>longer</u> layoff than prescribed may also be permissible if the employer <u>recalls</u> the employee within the time set out in an <u>agreement between the employer and the trade union</u>.</p> <p>Temporary layoff deemed to begin (regular work week)</p> <p>Employees who work <u>regular work weeks</u> are on a temporary layoff if</p> <ul style="list-style-type: none"> • in that week, the <u>employee earns less than one-half the amount he would earn at his regular rate in a regular work week</u>, and • the week is <u>not an excluded week</u>. <ul style="list-style-type: none"> — “Regular work week”, with respect to an employee who usually works the same number of hours each week, means a week of that many hours but not including overtime hours. — “Regular rate” means, subject to regulation: (a) for an employee who is paid by the hour, the amount earned for an hour of work in the employee’s usual work week, not counting overtime hours, or, (b) otherwise, the amount earned in a given work week divided by the number of non-overtime hours actually worked in that week. 	<p>Collective dismissal</p> <p>If 10 or more employees are laid off for a period of 6 months or more it is a collective dismissal (certain conditions apply). Notice is increased and must also be provided to the Minister of Employment and Social Solidarity.</p>

	Ontario	Quebec
Layoff requirements	<p>Deemed termination</p> <p>If the employer lays off the employee for a longer period than is legally permissible, the employment shall be <u>deemed to be terminated on the first day of the layoff</u>.</p> <p>Deemed severance</p> <p>An employer severs the employment of an employee if the employer lays off the employee for 35 weeks or more in any period of 52 consecutive weeks.</p> <p>Public holidays</p> <p>If a public holiday falls on a day that would not ordinarily be a working day for an employee and the employee is laid off on that day, the employee is entitled to public holiday pay for the day. However, this does not apply to an employee if his employment has been terminated under paragraph 56 (1) (c) of the legislation and the public holiday falls on or after the day on which the layoff first exceeded the period of a temporary layoff.</p> <p>Recalling employees</p> <ul style="list-style-type: none"> • Employers are expressly <u>not required to set a recall date</u> when laying off employees, provided that the date on which employees are recalled falls within a timeframe that does not exceed the legally permissible period for the temporary layoff. Indeed, the legislation in Ontario states that “[a]n employer who lays off an employee without specifying a recall date shall not be considered to terminate the employment of the employee.” • Although the ESA does not set out specific recall requirements, it does provide that if an employee does not return to work within a “reasonable time” of being recalled, then the employment relationship can come to an end without termination or notice pay owing to the employee. • So, unless the terms of any employment or collective agreement state otherwise, the employer can set out the recall procedure. This procedure should be given to the employee, in writing, and at the onset of the layoff. The procedure must also provide the employees with a reasonable amount of time to return to work upon being recalled. What is “reasonable” will vary in the circumstances. • Preferably, notice of recall (and the date on which the employee is expected to return to work) should be set out in writing. 	

British Columbia & the Prairie Provinces

	Alberta	Saskatchewan	Manitoba	British Columbia												
Governing legislation	<i>Employment Standards Code</i>	<i>The Saskatchewan Employment Act</i>	<i>The Employment Standards Code</i>	<i>Employment Standards Act</i>												
Notice of layoff requirements	<p>Required notice period</p> <p>All employees in Alberta are entitled to proper notice.</p> <p>In Alberta, the legislation specifically states that 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 <u>the employee a written layoff notice</u>.”</p> <p><u>Unless a collective agreement provides otherwise</u>, a layoff notice must be given to the employee:</p> <ul style="list-style-type: none"> • at least <u>1 week</u> prior to the date that the layoff is to commence, if the employee has been employed by the <u>employer for less than 2 years</u>; • at least <u>2 weeks</u> prior to the date that the layoff is to commence, if the employee has been <u>employed by the employer for 2 years or more</u>; or • if <u>unforeseeable circumstances</u> prevent an employer from providing the notice within the above-noted timeframe, <u>as soon as is practicable in the circumstances</u>. 	<p>Required notice period</p> <p><u>Layoffs where a public emergency has been declared</u></p> <p>Providing official notice for temporary layoffs in the event of a public emergency is no longer required.</p> <p><u>The Saskatchewan Government filed a declaration of public emergency on March 20, 2020, in response to COVID-19.</u></p> <p><u>Layoffs in the normal course (no public emergency)</u></p> <p>Employees with less than 13 consecutive weeks of service are not entitled to notice of layoff (or payment in lieu thereof).</p> <p>Employees with more than 13 consecutive weeks of service are entitled to notice of layoff or pay in lieu thereof in accordance with the following:</p> <table border="1"> <thead> <tr> <th>Employee's period of employment</th> <th>Minimum period of written notice</th> </tr> </thead> <tbody> <tr> <td>More than 13 consecutive weeks but 1 year or less</td> <td>1 week</td> </tr> <tr> <td>More than 1 year but 3 years or less</td> <td>2 weeks</td> </tr> <tr> <td>More than 3 years but 5 years or less</td> <td>4 weeks</td> </tr> <tr> <td>More than 5 years but 10 years or less</td> <td>6 weeks</td> </tr> <tr> <td>More than 10 years</td> <td>8 weeks</td> </tr> </tbody> </table>	Employee's period of employment	Minimum period of written notice	More than 13 consecutive weeks but 1 year or less	1 week	More than 1 year but 3 years or less	2 weeks	More than 3 years but 5 years or less	4 weeks	More than 5 years but 10 years or less	6 weeks	More than 10 years	8 weeks	<p>Notice not required</p> <p>Providing official notice for layoffs is not required in Manitoba.</p>	<p>Notice not required</p> <p>Providing official notice for temporary layoffs is not required in British Columbia.</p>
Employee's period of employment	Minimum period of written notice															
More than 13 consecutive weeks but 1 year or less	1 week															
More than 1 year but 3 years or less	2 weeks															
More than 3 years but 5 years or less	4 weeks															
More than 5 years but 10 years or less	6 weeks															
More than 10 years	8 weeks															

	Alberta	Saskatchewan	Manitoba	British Columbia
Notice of layoff requirements	<p>What the layoff notice must contain:</p> <p>The layoff notice <u>must</u>:</p> <ul style="list-style-type: none"> (a) state that it is a temporary layoff notice; (b) state the date that the layoff is to commence; (c) include a copy of this section and sections 63 and 64 of the ESC; and <p>include any other information provided for by regulation.</p>	<p>Compensation obligations during the notice period</p> <p>Vacation: After giving notice of layoff to an employee, the employer shall <u>not require</u> an employee to take vacation leave as part of the notice period required as listed above.</p> <p>Pay: If an employer lays off an employee, the employer <u>shall pay</u> to the employee, with respect to the period of the notice required as listed above,</p> <ul style="list-style-type: none"> (a) if the employer is <u>not bound by a collective agreement</u> that applies to the employee, the <u>greater of</u>: (i) the sum earned by the employee during that period of notice; and (ii) a sum equivalent to the employee's normal wages for that period; or (b) if the employer <u>is bound by a collective agreement</u> that applies to the employee, the <u>entitlements provided for in the collective agreement</u>. <p>Exclusions for care providers</p> <p>The legislation's provisions on (i) notice of layoff requirements and (ii) compensation obligations during the notice period <u>do not</u> apply to employees who are <u>care providers</u>, other than live-in care providers.</p> <p>Transportation requirement for remote sites</p> <p>If an employer lays off an employee at a <u>remote site</u>, the employer <u>shall provide transportation without cost</u> for the employee to the nearest point where regularly scheduled transportation services are available.</p>		

	Alberta	Saskatchewan	Manitoba	British Columbia
Layoff requirements	<p>Permissible duration of layoff & deemed termination</p> <p>If a layoff notice was issued <u>before March 17, 2020</u>, the employment of an employee who is laid off for one or more periods exceeding, in total, <u>60 days within a 120-day period</u> will be deemed to have been <u>terminated</u>.</p> <p>If a layoff notice was issued <u>on or after March 17, 2020</u>, the employment of an employee who is laid off for a period of time <u>exceeding 120 consecutive days</u> will be deemed to have been <u>terminated</u>.</p> <p>Exception: Possibility of extending</p> <p>However, the above-noted periods <u>can be extended</u> if:</p> <p>(a) during the layoff the employer, <u>by agreement with the employee</u>,</p> <p>(i) pays the employee wages or an amount instead of wages; or</p> <p>(ii) makes payments for the benefit of the laid-off employee in accordance with a pension or employee insurance plan or similar plan;</p> <p>or</p> <p>(b) there is a collective agreement binding the employer and employee containing recall rights for employees following the layoff.</p>	<p>Permissible duration of layoff & deemed termination</p> <p>Under the legislation, “layoff” means the temporary interruption by an employer of the services of an employee for a <u>period exceeding 6 consecutive work days</u>.</p> <p>While a declaration of public emergency is in effect:</p> <ul style="list-style-type: none"> • The employment of an employee who is laid off for one or more periods exceeding, in total, <u>12 weeks within a 16 week period</u> will be deemed to have been terminated. • <u>Saskatchewan Employment Standards has indicated that COVID-19 likely constitute an exception to group termination notice requirements. As such, only individual notice requirements must be provided in the event of a deemed termination during the pandemic.</u> <p>Layoffs in the normal course of business (no public emergency)</p> <ul style="list-style-type: none"> • There is no maximum length of time before a layoff is considered a deemed termination under the legislation. • <u>If no recall date is included in the original layoff notice or if the layoff exceeds 26 weeks</u>, group termination obligations will be triggered; • If group termination obligations are triggered, employees are entitled to both an individual notice and a group notice. However, these notices may be provided concurrently. 	<p>Permissible duration of layoff & deemed termination</p> <p><u>The Manitoba government recently introduced amendments to the temporary layoff provisions. There is no longer a maximum layoff period for layoffs that occurred after March 1, 2020; any layoff period occurring after March 1 will not be counted toward the period after which a temporary layoff would become a permanent termination.</u></p> <p>The employment of an employee who is laid off for <u>1 or more period(s) exceeding, in total, 8 weeks within a 16-week period</u> is deemed to have been terminated.</p> <p>Exception: Possibility of extending</p> <p>The legislation contemplates the <u>possibility of extending the number of weeks within a longer period</u>, upon application by the employer before the <u>Director</u>. Should the layoff exceed the maximum period set out by the director, then the employee’s employment will be deemed to have been terminated.</p> <p>No deemed termination in these circumstances</p> <p>However, the employee will not be deemed to have been terminated if:</p> <ul style="list-style-type: none"> • in the business in which the employee is employed, employees are subject to regular and recurring layoffs, and the employee was told about it when he or she was hired; or 	<p>Permissible duration of layoff</p> <p>Under the legislation, a “temporary layoff” means:</p> <ul style="list-style-type: none"> • in the case of an employee who has a <u>right of recall</u>, a <u>layoff that exceeds the specified period within which the employee is entitled to be recalled to employment</u> (usually applicable to employees covered by collective agreements); and • in any other case, a layoff of <u>up to 13 weeks in any period of 20 consecutive weeks</u>. <p>Generally, temporary layoffs are permissible only if (a) they are permitted in an employment agreement (or collective agreement), (b) the employee consents, or (c) layoffs are a well-known industry practice (like logging).</p> <p>Exception: COVID-19 caused layoff</p> <p>A temporary layoff may last up to 16 weeks in any period of 20 consecutive weeks where: (a) the employee is laid off; (b) the employee does not have a right of recall under a collective agreement; and (c) the COVID-19 emergency is the cause of all or part of the layoff.</p> <p>Deemed termination</p> <p>The employment of an employee who <u>is laid off for more than a temporary layoff</u> is deemed to have been terminated <u>at the beginning of the layoff</u>.</p>

	Alberta	Saskatchewan	Manitoba	British Columbia
Layoff requirements	<p>Deemed Termination of Employment</p> <p>As noted above, should the layoff period exceed <u>60 days within a 120-day period (if the layoff was implemented before March 17, 2020) or 120 consecutive days (if the layoff was issued on or after March 17, 2020)</u>, the employee will be deemed to have been terminated, unless one of the above-mentioned exceptions applies.</p> <p>That being said, it should be noted that if payments related to the employee's wages, pension or insurance plan cease, or if recall rights under a collective agreement expire, the employment of the employee terminates and termination pay is payable.</p> <p>Specific provisions on recalls</p> <p>An employer may request that an employee return to work by providing the employee with a <u>recall notice</u>, which <u>must</u>:</p> <ul style="list-style-type: none"> • be in writing; • be served on the employee; • state that the employee must return to work within 7 days of the date the recall notice served on the employee. <p>If an employee <u>fails to return to work</u> within <u>7 days</u> of being served 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 (this does not apply to an employee bound by a collective agreement containing recall rights for employees following a layoff).</p>		<ul style="list-style-type: none"> • during the layoff, the employer, by agreement with the employee, continues (i) to pay wages to the employee in place of wages, or (ii) to make payments for the benefit of the employee to a pension plan or group employee insurance plan, or to both if the employee has both; or • the employment of an employee is covered by a collective agreement that addresses whether, and under what circumstances, if any, a layoff may be treated as a termination of employment. 	<p>Possibility to vary</p> <p>An employer and any of the employer's employees may, in accordance with the regulations, include in a <u>written application to the director</u> for a variance of any time period specified in the definition of "temporary layoff".</p> <p>Week of layoff</p> <p>A "<u>week of layoff</u>" means a week in which an employee <u>earns less than 50% of the employee's weekly wages, at the regular wage, averaged over the previous 8 weeks.</u></p>

Atlantic Provinces

	New Brunswick	Nova Scotia	Newfoundland and Labrador	Prince Edward Island
Governing legislation	<i>Employment Standards Act</i>	<i>Labour Standards Code</i>	<i>Labour Standards Act</i>	<i>Employment Standards Act</i>
Notice of layoff requirements	<p><u>New Brunswick Employment Standards has confirmed that COVID-19 falls within the exemption of the requirement of notice due to unforeseen reasons. As such, employers are not required to provide notice to their employees or pay in lieu thereof, nor are they required to provide notice to the Minister of Post-Secondary Education, Training and Labour for group layoffs within a 4-week period (more than 10 employees if they represent at least 25% of the employer's employees).</u></p> <p>Required notice period (non-unionized)</p> <p>An employer shall not lay off employees without having given <u>them</u> at least:</p> <ul style="list-style-type: none"> • <u>2 weeks' notice in writing</u>, where the employee has been employed by the employer for a <u>continuous period of employment of 6 months or more but less than 5 years</u>; • <u>4 weeks' notice in writing</u>, where the employee has been employed by the employer for a <u>continuous period of employment of 5 years or more</u>. <p>Notice for unionized employees</p> <p>If length of notice of layoff under a <u>collective agreement exceeds the minimum length of notice</u> prescribed by legislation, the employer shall give to the Minister, the employees affected by the layoff and the employees' bargaining agent, the notice required by the collective agreement.</p>	<p>Required notice period</p> <p>An employer must give written notice to <u>employees</u> and the <u>Minister of Labour and Advanced Education</u> when laying off <u>10 or more employees within any period of 4 weeks or less</u>, as follows:</p> <ul style="list-style-type: none"> • <u>8 weeks' notice</u> for a group of <u>10 to 99 employees</u>; • <u>12 weeks' notice</u> for a group of <u>100 to 299 employees</u>; • <u>16 weeks' notice</u> for a group of <u>300 or more employees</u>. <p>Failure to provide the required notice within the prescribed time will trigger <u>termination notice requirements</u>, as the employee's employment relationship will be deemed to have come to an end.</p> <p>Exceptions: No notice required</p> <p>However, notice is <u>not required</u> for persons:</p> <ul style="list-style-type: none"> • whose period of employment is <u>less than 3 months</u>; • who are <u>laid off for a period not exceeding 6 consecutive days</u>; • employed for a <u>definite term</u> or task for a period <u>not exceeding 12 months</u>; 	<p>Required notice period</p> <p>An employer shall not temporarily lay off an employee unless written notice of the temporary layoff is given by or on behalf of the employer to the <u>employee</u> within the following timeframe:</p> <ul style="list-style-type: none"> • <u>one week</u>, where the employee has been <u>continuously employed</u> by the employer for <u>a period of 3 months or more but less than 2 years</u>; • <u>2 weeks</u>, where the employee has been <u>continuously employed</u> by the employer for <u>a period of 2 years or more but less than 5 years</u>; • <u>3 weeks</u>, where the employee has been <u>continuously employed</u> by the employer for <u>a period of 5 years or more but less than 10 years</u>; • <u>4 weeks</u>, where the employee has been <u>continuously employed</u> by the employer for <u>a period of 10 years or more but less than 15 years</u>; and • <u>6 weeks</u>, where the employee has been <u>continuously employed</u> by the employer for <u>a period of 15 years or more</u>. 	<p>Required notice period</p> <p>An employer shall not lay off an employee who has been employed by the employer for a <u>continuous period of 6 months or more</u> without having given the employee at least:</p> <ul style="list-style-type: none"> • <u>two weeks' notice</u> in writing, where the employee has been employed by the employer for <u>a continuous period of 6 months or more but less than 5 years</u>; • <u>four weeks' notice</u> in writing, where the employee has been employed by the employer for <u>a continuous period of 5 years or more but less than 10 years</u>; • <u>6 weeks' notice</u> in writing, where the employee has been employed by the employer for <u>a continuous period of 10 years or more but less than 15 years</u>; or • <u>8 weeks' notice</u> in writing, where the employee has been employed by the employer for <u>a continuous period of 15 years or more</u>. <p>Exceptions: no notice required</p> <p>Notice is <u>not required</u> where:</p> <ul style="list-style-type: none"> • a person is laid off for a <u>period not exceeding 6 consecutive days</u>;

	New Brunswick	Nova Scotia	Newfoundland and Labrador	Prince Edward Island
Notice of layoff requirements	<p>Laying off more than 10 employees representing 25% of workforce:</p> <p>General prohibition: Under the legislation, employers are prohibited from laying off, in a <u>4-week period</u>, more than <u>10 employees</u> if they represent <u>at least 25% of the employees of the employer in a 4-week period</u>.</p> <p>Exception: However, should the employer lay off more than 10 employees, representing at least 25% of the employer's employees, <u>6 months' notice</u> of the layoff must be given to:</p> <ul style="list-style-type: none"> • The <u>Minister</u>; • The <u>employees affected by the layoff</u>; and • Where the employees are covered by a collective agreement, notice must also be given to the <u>employees' bargaining agent</u>. <p>Notice deemed extinguished:</p> <p>Where an employee is given notice of layoff by the employer <u>but continues to work for the employer for a period of 1 month or more beyond the end of the notice period</u>, the notice is extinguished and the employer shall only lay off the employee after lawfully giving a <u>new notice</u>.</p> <p>Exceptions: No notice required</p> <p>An employer may lay off an employee without notice being given if:</p> <ul style="list-style-type: none"> • the employee's period of employment is <u>less than 6 months</u>; 	<ul style="list-style-type: none"> • who are laid off for any <u>reason beyond the control</u> 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 layoff; • who have been <u>offered reasonable other employment</u> by his employer; • who are laid off in circumstances established by regulation; • who are employed in <u>the construction industry</u>; • who are employed in an activity, business, work, trade, occupational profession, or any part thereof, that is exempted by regulation. <p>Notice of layoff given to the Minister</p> <p>The <u>written notice to the Minister</u> should include the <u>following information</u>:</p> <ul style="list-style-type: none"> • the name and address of the company laying off employees; • the reason employees are being laid off; 	<p>Notice period under contract or collective agreement</p> <p>Where a period of notice of temporary layoff is provided for in a collective agreement within the meaning of the <i>Labour Relations Act</i> or in a written contract of service between the employer and the employee that <u>differs</u> from the period of notice required to be given by the employer under legislation, <u>the period provided for in the collective agreement or in the contract of service will apply</u>.</p> <p>Where notice has no effect</p> <p>A notice of temporary layoff has <u>no effect</u> if the contract of service continues beyond the period of expiry specified in the notice of temporary layoff.</p> <p>Condition of future event</p> <p>A notice of temporary layoff may be given <u>conditionally</u> upon the happening of a <u>future event</u> if the period of the notice so given is not less than the prescribed time period under legislation (provided above).</p> <p>Exceptions: No notice required</p> <p>Notice for temporary layoff is <u>not required</u> where:</p> <ul style="list-style-type: none"> • the employer <u>pays to the employee wages equal to the normal wages covering the period of notice</u> that the employer would otherwise be required to give; 	<ul style="list-style-type: none"> • a person is laid off for any <u>reason beyond the control of the employer</u>, including (i) the complete or partial destruction of a plant, (ii) the destruction or breakdown of machinery or equipment, (iii) the inability to obtain supplies and materials, or (iv) the cancellation or suspension of, or inability to obtain, orders for the products of the employer, <u>if the employer has exercised due diligence to foresee and avoid the cause of termination or layoff</u>; • a person is laid off because of <u>labour disputes, weather conditions or actions of any governmental authority</u> that affect directly the operations of the employer. <p>Notice extinguished</p> <p>Where an employee is given a written notice of layoff by the employer but continues to work for the employer for a period of <u>1 month or more</u> beyond the end of the notice period, the <u>notice is extinguished</u> and the employer shall only lay off the employee after giving a <u>new notice</u>.</p> <p>Requirement to pay</p> <p>Where an employer lays off an employee, the employer <u>shall pay the employee the wages earned by the employee during that period or a sum equivalent to the employee's normal wages</u> for the number of weeks prescribed under the legislation, exclusive of overtime, whichever is <u>greater</u>.</p>

	New Brunswick	Nova Scotia	Newfoundland and Labrador	Prince Edward Island
Notice of layoff requirements	<ul style="list-style-type: none"> there is a <u>lack of work</u>, due to any <u>reason unforeseen</u> by the employer at the time the notice would otherwise have been given, for such period as the lack of work continues due to that reason; the <u>lay off period is 6 days or less</u>; an employee has <u>refused reasonable alternate employment</u> offered by the employer as an alternative to being laid off; an employee has completed a term of employment that was fixed in the employment contract, unless the employee is employed for a period of 3 months beyond that period; the employee is doing <u>construction work</u> in the construction industry; the layoff results from the <u>normal seasonal reduction, closure or suspension of an operation</u>; or the employer provides <u>payment in lieu of notice</u> of an amount equal to the pay the employee would have earned during the notice period provided. 	<ul style="list-style-type: none"> the number of employees being laid off; if more than one location of the business is affected, the number of employees being laid off at each location and the address of each location; the date on which written notice is being given to employees; the date on which employees' employment is ending; the number of weeks' notice and/or pay in lieu of notice being given to employees; or contact information for an individual who the Department of Labour and Advanced Education can get in touch with if more information about the layoff is needed. 	<ul style="list-style-type: none"> the employee is laid off for a <u>period not exceeding 1 week</u>; or the <u>contract of service</u> between the employer and the employee has existed for <u>less than 30 days</u>. 	<p>If notice is not given, the employer must pay the employee a sum equivalent to the employee's normal wages for the number of weeks he is entitled to as pay in lieu of notice, exclusive of overtime.</p> <p>Most favourable entitlement applies</p> <p>Provisions related to notice of layoffs do not affect any provision in a contract of service, or any recognized custom, by virtue of which an employee or employer is entitled to more notice of layoff or to <u>more favourable compensation</u> during the notice period.</p>
	<p>Posting requirements</p> <p>A copy of the notice of layoff required to be given must be <u>posted and made available to all employees</u>.</p>			

	New Brunswick	Nova Scotia	Newfoundland and Labrador	Prince Edward Island
Layoff requirements	<p>Key definitions</p> <ul style="list-style-type: none"> • Layoff: a temporary interruption of the employment relationship at the direction of the employer because of a lack of work. • Period of employment: the period of time from the last hiring of an employee by an employer <u>to the termination of his employment</u>, and includes any period of layoff or suspension of <u>less than 12 consecutive months</u>. 	<p>Key definitions</p> <ul style="list-style-type: none"> • Layoff: temporary or indefinite termination of employment because of lack of work and includes a temporary, indefinite or permanent termination of employment because of the elimination of a position, and "laid off" has a corresponding meaning. • Period of employment: the period of time from the last hiring of an employee by an employer <u>to his discharge</u>, which includes any period on layoff or suspension of <u>less than 12 consecutive months</u> and "employed" has a corresponding meaning. <p>Therefore, the period of employment will not be considered broken where there is a layoff of less than 12 months.</p>	<p>Permissible duration of layoff & deemed termination</p> <p>A "<u>temporary layoff</u>" means a layoff of <u>not more than 13 weeks in a period of 20 consecutive weeks</u>.</p> <p>Where an employer temporarily lays off an employee and the layoff exceeds a temporary layoff, the employee shall be <u>considered to have been terminated at the beginning of the temporary layoff</u>.</p>	<p>Permissible duration of layoff</p> <p>A "<u>layoff</u>" means a temporary interruption of the employment relationship as directed by of the employer because of a lack of work.</p> <p>In PEI, there is no specified time limit prescribed in the legislation.</p>

The Territories

	Nunavut	Northwest Territories	Yukon
Governing legislation	<i>Labour Standards Act</i>	<i>Employment Standards Act</i>	<i>Employment Standards Act</i>
Notice of layoff requirements	<p>Required Notice Period</p> <ul style="list-style-type: none"> Where an employer wishes to temporarily lay off an employee, the employer shall give the employee <u>written notice of temporary layoff</u>; and indicate in the notice of temporary layoff the <u>expected date on which the employer will request the employee to return to work</u>. <p>Exceptions: No Notice Required</p> <p>Notice does <u>not</u> need to be given if the employee is employed:</p> <ol style="list-style-type: none"> in the construction industry; for less than 180 days in a year, seasonally or intermittently, in a business, work, trade or profession; in an activity, business, work, trade or profession, for a definite term or task for a period not exceeding 365 days where at the end of the term the employment is terminated; or in an activity, business, work, trade or profession for less than 25 hours a week. 	<p>Required Notice Period</p> <ul style="list-style-type: none"> An employer who wishes to temporarily lay off an employee shall give the employee a <u>written notice of temporary layoff</u>. A notice of temporary layoff must indicate the <u>expected date on which the employer will request the employee to return to work</u>. If an employer lays off an employee for <u>longer than 45 days during a period of 60 consecutive days</u>, (or provided by any extension by Employment Standards Officer), the employee shall be deemed to have his employment terminated on the last day of the temporary layoff; and the employer shall pay the employee <u>termination pay</u>. 	<p>Required Notice Period</p> <p>There are no notice requirements in the Yukon.</p>

	Nunavut	Northwest Territories	Yukon
Layoff requirements	<p>Permissible Duration Of Layoff & Deemed Termination</p> <ul style="list-style-type: none"> • Temporary Layoff: means an interruption of the employment of an employee by an employer for a period: <ul style="list-style-type: none"> (a) <u>not exceeding 45 days of layoff in a period of 60 consecutive days;</u> or (b) <u>exceeding 45 days of layoff,</u> where the employer recalls the employee to employment <u>within a time fixed by the Labour Standards Officer;</u> • Deemed Termination: Where an employer <u>temporarily lays off</u> an employee <u>without giving the employee notice of temporary layoff,</u> the employer shall be <u>deemed to have terminated</u> the employment of the employee. • Permanent Layoff: Where an employer temporarily lays off an employee and the layoff exceeds a temporary layoff; <ul style="list-style-type: none"> (a) the employment of the employee shall be deemed to have terminated on the <u>last day of temporary layoff;</u> and (b) the employer shall pay the employee <u>termination pay.</u> <p>However, employees on a temporary layoff who do not return to work within <u>7 days</u> after being requested to do so in writing by the employer are not entitled to termination pay.</p>	<p>Permissible Duration Of Layoff & Deemed Termination</p> <ul style="list-style-type: none"> • Temporary Layoff: must not exceed <u>45 days during a period of 60 consecutive days.</u> • Deemed Termination: An employer who temporarily lays off an employee, <u>without giving the employee notice</u> shall be deemed to have terminated the employment of the employee. • Permanent Layoff: If an employer lays off an employee for longer than the period referred to in above: <ul style="list-style-type: none"> (a) the employee shall be deemed to have his employment terminated <u>on the last day</u> of the temporary layoff; and, (b) the employer shall pay the employee <u>termination pay.</u> <p>However, employees on a temporary layoff who do not return to work within <u>7 days</u> after being requested to do so in writing by the employer are not entitled to termination pay.</p>	<p>Permissible Duration Of Layoff & Deemed Termination</p> <ul style="list-style-type: none"> • Temporary layoff: means an interruption of an employee's employment by an employer for a period: <ul style="list-style-type: none"> (a) <u>not exceeding 13 weeks of layoff in a period of 20 consecutive weeks;</u> or (b) exceeding 13 weeks of layoff, if the employer recalls the employee to employment <u>within a time set by the director;</u> • Deemed Termination: If an employer temporarily lays off an employee and the layoff exceeds a <i>temporary layoff</i> (defined above), the employee shall be deemed to have been terminated at the <u>start of the temporary layoff and the employer shall pay the employee the amounts required based on their length of service.</u> • Possibility to extend: The employer may, with leave of the Employment Standards Board, extend the period of the temporary layoff of the employee for any period of time the Board may order.

Federal

Federally-regulated employees in the private sector	
Governing legislation	<i>Canada Labour Code (Code canadien du travail)</i>
Notice of layoff requirements	<p>Notice of temporary layoff is not required.</p> <p>However, a temporary layoff may be more than 3 months if the employer notifies its employees before the layoff that they will be recalled on a fixed date which is not longer than 6 months, and the employees are recalled on that date, as detailed further below.</p>
Layoff requirements	<p>A layoff of an employee shall not be deemed to be a termination of the employee's employment (for the purposes of severance pay, group or individual termination of employment):</p> <ul style="list-style-type: none"> (a) the layoff is a result of a strike or lockout; (b) the term of the layoff is 12 months or less and the layoff is mandatory pursuant to a minimum work guarantee in a collective agreement; (c) <u>the term of the layoff is 3 months or less;</u> (d) the term of the layoff is more than 3 months and the employer: <ul style="list-style-type: none"> i. notifies the employee in writing at or before the time of the layoff that he will be recalled to work on a fixed date or within a fixed period neither of which shall be more than 6 months from the date of the layoff; and ii. recalls the employee to his employment in accordance in accordance with the above-noted notice; (e) the term of the layoff is more than 3 months and: <ul style="list-style-type: none"> i. the employee continues during the term of the layoff to receive payments from his employer in an amount agreed on by the employee and his employer; 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; iii. the employee receives supplementary unemployment benefits; or 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 (f) the term of the layoff is more than 3 months but not more than 12 months and the employee, throughout the term of the layoff, maintains recall rights pursuant to a collective agreement. <p>In determining the term of a layoff for the purposes of sub-points (c), (d) and (f), any period of re-employment of less than 2 weeks duration shall not be included.</p>

Contacts



Pierre Hébert
National Chair, Partner, Montréal
Tel +1 514 847 4474
pierre.hebert@nortonrosefulbright.com



Taryn Mackie
Partner, Vancouver
Tel +1 604 641 4877
taryn.mackie@nortonrosefulbright.com



Lindsay Mullen
Partner, Calgary
Tel +1 403 267 8394
lindsay.mullen@nortonrosefulbright.com



Anne Gallop
Partner, Toronto
Tel +1 416 216 4038
anne.gallop@nortonrosefulbright.com



Kevin MacNeill
Partner, Ottawa
Tel +1 613 780 3767
kevin.macneill@nortonrosefulbright.com



Daniel Leduc, CIRC
Partner, Montréal
Tel +1 514 847 4472
daniel.leduc@nortonrosefulbright.com



Jean-Sébastien Cloutier
Partner, Québec
Tel +1 418 640 5046
jean-sebastien.cloutier@nortonrosefulbright.com



John Mastoras
Senior Partner, Toronto
Tel +1 416 216 3905
john.mastoras@nortonrosefulbright.com

Our contributors:

Dallan Poulin, Channele Wong, Danielle Emmett, Kaley Dodds, Charles-Émile Morin and Stéphane Erickson



Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3700 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

Law around the world

nortonrosefulbright.com

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices. The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

© Norton Rose Fulbright Canada LLP. Extracts may be copied provided their source is acknowledged.
CAN22995 – 06/20