



Termination and Severance of Employment, O Reg 288/01

This regulation replaces RRO 1990, Reg 327.

Current version: in force since Jul 1, 2023

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Citation to this version: Termination and Severance of Employment, O Reg 288/01, <<https://canlii.ca/t/562ct>> retrieved on 2023-10-25

Currency: This regulation is current to 2019-12-08 according to the [e-Laws](#) site

Employment Standards Act, 2000

ONTARIO REGULATION 288/01

TERMINATION AND SEVERANCE OF EMPLOYMENT

Consolidation Period: From July 1, 2023 to the e-Laws currency date.

Last amendment: 101/23.

This is the English version of a bilingual regulation.

Definitions

1. In this Regulation,

"construction employee" has the same meaning as in **Ontario Regulation 285/01** (When Work Deemed to be Performed, Exemptions and Special Rules) made under the Act. O. Reg. 288/01, s. 1; O. Reg. 492/06, s. 1; O. Reg. 533/17, s. 1.

TERMINATION OF EMPLOYMENT

Employees not entitled to notice of termination or termination pay

2. (1) The following employees are prescribed for the purposes of **section 55** of the **Act** as employees who are not entitled to notice of termination or termination pay under Part XV of the Act:

1. Subject to subsection (2), an employee who is hired on the basis that his or her employment is to terminate on the expiry of a definite term or the completion of a specific task.
2. An employee on a temporary lay-off.
3. An employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.

4. An employee whose contract of employment has become impossible to perform or has been frustrated by a fortuitous or unforeseeable event or circumstance.
5. An employee whose employment is terminated after refusing an offer of reasonable alternative employment with the employer.
6. An employee whose employment is terminated after refusing alternative employment made available through a seniority system.
7. An employee who is on a temporary lay-off and does not return to work within a reasonable time after having been requested by his or her employer to do so.
8. An employee whose employment is terminated during or as a result of a strike or lock-out at the place of employment.
9. A construction employee.
10. Revoked: O. Reg. 397/09, s. 4.
11. An employee whose employment is terminated when he or she reaches the age of retirement in accordance with the employer's established practice, but only if the termination would not contravene the *Human Rights Code*.
12. An employee,
 - i. whose employer is engaged in the building, alteration or repair of a ship or vessel with a gross tonnage of over ten tons designed for or used in commercial navigation,
 - ii. to whom a legitimate supplementary unemployment benefit plan agreed on by the employee or his or her agent applies, and
 - iii. who agrees or whose agent agrees to the application of this exemption. O. Reg. 288/01, s. 2 (1); O. Reg. 549/05, s. 1 (1); O. Reg. 492/06, s. 2; O. Reg. 397/09, ss. 1, 4; O. Reg. 95/10, s. 1.

(2) Paragraph 1 of subsection (1) does not apply if,

- (a) the employment terminates before the expiry of the term or the completion of the task;
- (b) the term expires or the task is not yet completed more than 12 months after the employment commences; or
- (c) the employment continues for three months or more after the expiry of the term or the completion of the task. O. Reg. 288/01, s. 2 (2).

(3) Paragraph 4 of subsection (1) does not apply if the impossibility or frustration is the result of an illness or injury suffered by the employee. O. Reg. 549/05, s. 1 (2).

(4) For greater certainty, for the purposes of paragraph 4 of subsection (1), if the employment is terminated because the Director has refused to issue or renew, or has revoked or suspended, a licence to operate a temporary help agency or a licence to act as a recruiter under **section 74.1.5** or **74.1.6** of the **Act**, the contract of employment has not become impossible to perform or been frustrated by a fortuitous or unforeseeable event or circumstance. O. Reg. 101/23, s. 1.

Notice, 50 or more employees

3. (1) The following periods are prescribed for the purposes of **subsection 58 (1)** of the **Act**:

1. Notice shall be given at least eight weeks before termination if the number of employees whose employment is terminated is 50 or more but fewer than 200.
2. Notice shall be given at least 12 weeks before termination if the number of employees whose employment is terminated is 200 or more but fewer than 500.
3. Notice shall be given at least 16 weeks before termination, if the number of employees whose employment is terminated is 500 or more. O. Reg. 288/01, s. 3 (1).

(2) The following information is prescribed as the information to be provided to the Director under **clause 58 (2) (a)** of the **Act** and to be posted under **clause 58 (2) (b)** of the **Act**:

1. The employer's name and mailing address.
2. The location or locations where the employees whose employment is being terminated work.
3. The number of employees working at each location who are paid,
 - i. on an hourly basis,
 - ii. on a salaried basis, and
 - iii. on some other basis.

4. The number of employees whose employment is being terminated at each location who are paid,

- i. on an hourly basis,
- ii. on a salaried basis, and
- iii. on some other basis.

5. The date or dates on which it is anticipated that the employment of the employees referred to in paragraph 4 will be terminated.

6. The name of any trade union local representing any of the employees whose employment is being terminated.

7. The economic circumstances surrounding the terminations.

8. The name, title and telephone number of the individual who completed the form on behalf of the employer. O. Reg. 288/01, s. 3 (2).

(3) The employer shall provide the information referred to in subsection (2) to the Director by setting it out in the form approved by the Director under **clause 58 (2)** (a) of the **Act** and delivering the form to the Employment Practices Branch of the Ministry of Labour between 9 a.m. and 5 p.m. on any day other than a Saturday, Sunday or other day on which the offices of the Branch are closed. O. Reg. 288/01, s. 3 (3).

(4) Section 58 of the **Act** does not apply to the employer and employees if,

- (a) the number of employees whose employment is terminated at the establishment is not more than 10 per cent of the number of employees who have been employed there for at least three months; and
- (b) the terminations were not caused by the permanent discontinuance of part of the employer's business at the establishment. O. Reg. 288/01, s. 3 (4).

Manner of giving notice

4. (1) Subject to section 5, a notice of termination shall be,

- (a) given in writing;
- (b) addressed to the employee whose employment is to be terminated; and
- (c) served on the employee in accordance with **section 95** of the **Act**. O. Reg. 288/01, s. 4 (1); O. Reg. 397/09, s. 2.

(2) If an employer bound by a collective agreement is or will be laying off an employee for a period that will or may be longer than a temporary lay-off and the employer would be or might be in breach of the collective agreement if the employer advised the employee that his or her employment was to be terminated, the employer may provide the employee with a written notice of indefinite lay-off and the employer shall be deemed as of the date on which that notice was given to have provided the employee with a notice of termination. O. Reg. 288/01, s. 4 (2).

Notice of termination where seniority rights apply

5. (1) This section applies with respect to employees whose employment contracts provide seniority rights by which an employee who is to be laid off or whose employment is to be terminated may displace another employee. O. Reg. 288/01, s. 5 (1).

(2) If an employer who proposes to terminate the employment of an employee described in subsection (1) posts a notice in a conspicuous part of the workplace setting out the name, seniority, job classification and proposed lay-off or termination date of the employee, the notice shall constitute notice of termination as of the day of posting to any employee whom the employee named in the notice displaces. O. Reg. 288/01, s. 5 (2).

(3) Clause 60 (1) (a) of the **Act** does not apply to an employee who displaces another employee in the circumstances described in this section. O. Reg. 288/01, s. 5 (3).

Temporary work, 13-week period

6. (1) An employer who has given an employee notice of termination in accordance with the **Act** and the regulations may provide temporary work to the employee without providing a further notice of termination in respect of the day on which the employee's employment is finally terminated if that day occurs not later than 13 weeks after the termination date specified in the original notice. O. Reg. 288/01, s. 6 (1).

(2) The provision of temporary work to an employee in the circumstances described in subsection (1) does not affect the termination date as specified in the notice or the employee's period of employment. O. Reg. 288/01, s. 6 (2).

Inclusion of vacation time in notice period

7. The period of a notice of termination given to an employee shall not include any vacation time unless the employee, after receiving the notice, agrees to the inclusion of the vacation time in the notice period of the notice. O. Reg. 288/01, s. 7.

Period of employment

8. (1) For the purposes of this Regulation and sections 54 to 62 of the Act, an employee's period of employment is the period beginning on the day he or she most recently commenced employment and ending on,

- (a) if notice of termination is given in accordance with Part XV of the Act, the day it is given; and
- (b) if notice of termination is not given in accordance with Part XV of the Act, the day the employee's employment is terminated. O. Reg. 288/01, s. 8 (1).

(2) For the purposes of subsection (1), two successive periods of employment that are not more than 13 weeks apart shall be added together and treated as one period of employment. O. Reg. 288/01, s. 8 (2).

SEVERANCE OF EMPLOYMENT**Employees not entitled to severance pay**

9. (1) The following employees are prescribed for the purposes of subsection 64 (3) of the Act as employees who are not entitled to severance pay under section 64 of the Act:

1. An employee whose employment is severed as a result of a permanent discontinuance of all or part of the employer's business that the employer establishes was caused by the economic consequences of a strike.
2. Subject to subsection (2), an employee whose contract of employment has become impossible to perform or has been frustrated.
3. An employee who, on having his or her employment severed, retires and receives an actuarially unreduced pension benefit that reflects any service credits which the employee, had the employment not been severed, would have been expected to have earned in the normal course of events for purposes of the pension plan.
4. An employee whose employment is severed after refusing an offer of reasonable alternative employment with the employer.
5. An employee whose employment is severed after refusing reasonable alternative employment made available through a seniority system.
6. An employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.
7. A construction employee.
8. An employee engaged in the on-site maintenance of buildings, structures, roads, sewers, pipelines, mains, tunnels or other works.
9. Revoked: O. Reg. 397/09, s. 5.

O. Reg. 288/01, s. 9 (1); O. Reg. 492/06, s. 3; O. Reg. 397/09, s. 3, 5; O. Reg. 95/10, s. 2.

(2) Paragraph 2 of subsection (1) does not apply if,

- (a) the impossibility or frustration is the result of,
 - (i) a permanent discontinuance of all or part of the employer's business because of a fortuitous or unforeseen event,
 - (ii) the employer's death, or
 - (iii) the employee's death, if the employee received a notice of termination before his or her death; or
- (b) the impossibility or frustration is the result of an illness or injury suffered by the employee. O. Reg. 288/01, s. 9 (2); O. Reg. 549/05, s. 2.

(3) For greater certainty, for the purposes of paragraph 2 of subsection (1), if the employment is severed because the Director has refused to issue or renew, or has revoked or suspended, a licence to operate a temporary help agency or a licence to act as a recruiter under section 74.1.5 or 74.1.6 of the Act, the contract of employment has not become impossible to perform or been frustrated. O. Reg. 101/23, s. 2.

10. Omitted (revokes other Regulations). O. Reg. 288/01, s. 10.

11. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 288/01, s. 11.