

Ertl Lawyers

HELP! I WAS FIRED WITH CAUSE



By Toronto Employment Lawyer David Ertl

TO REQUEST A FREE CALL BACK

416.572.9900 • INFO@ERTL-LAWYERS.COM • ERTL-LAWYERS.COM

MY EMPLOYER HAS TERMINATED ME "WITH CAUSE". WHAT DOES THAT MEAN?

The employer has taken the position that you have engaged in conduct that warrants termination without any notice or pay in lieu (i.e. no severance package). The employer is saying that the employment relationship has been permanently damaged and no other form of discipline was appropriate in the circumstances.

DID MY EMPLOYER HAVE JUST CAUSE TO TERMINATE ME?

Unless the conduct is especially serious or happened on previous occasions (for which you had been warned), it can be very difficult for an employer to establish just cause.

In determining whether just cause exists, each case must be examined objectively and on its own facts. Decisions in other cases, therefore, may have little value.

Grounds for just cause may include, for example:

- insubordination
- conflict of interest
- gross incompetence
- habitual neglect of duty
- unauthorized absence
- theft and fraud
- dishonesty
- breach of employer's policy
- lying to employer during investigation
- assaulting co-workers

Continued on next page...

REQUEST A FREE CALL BACK!

416.572.9900

INFO@ERTL-LAW.CA WWW.ERTL-LAWYERS.COM

CALL US TODAY. WE ARE HERE TO HELP.

DID MY EMPLOYER HAVE JUST CAUSE TO TERMINATE ME? (CONT'D)

However, **the test** is whether the employee's misconduct gave rise to an irreparable breakdown in the employment relationship. Just cause for dismissal will exist where the misconduct violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

IS THERE ANYTHING THAT CAN HELP ME?

Yes. Because determining whether you were properly terminated with cause depends on a contextual approach, the following factors may help your case:

- A just cause dismissal is the "capital punishment" of employment law and, as a result, the onus is on the employer to show misconduct of the most serious kind.
- A single instance of misconduct is often not enough to warrant dismissal for cause.
- Dismissal for cause for performance-related issues generally requires that the employer have given the employee a warning and a reasonable opportunity to correct the deficiency before dismissal.
- If an employer does not act promptly in dismissing an employee (for misconduct the employer knows about), the employer is said to have condoned the behaviour. The employer will not be able rely on that behaviour to summarily dismiss the employee in the future.
- The longer an employee has been with the employer, the harder it is for the employer to justify dismissing them for cause.
- Where an employer does not stick to its own disciplinary policies (either in the handling of your matter or with other incidents involving other employees) it is often fatal to the employer's case.
- A faulty investigation (i.e. no fair opportunity for you to tell your side of the story) can ruin an employer's case.



Important: These are just a few of the things that can help your case.

CAN MY EMPLOYER TERMINATE ME WITHOUT CAUSE AND THEN CHANGE ITS MIND AND SAY IT HAD "JUST CAUSE" TO TERMINATE ME?

Yes. It is within the employer's rights to provide one reason now and another reason later. It is called *after acquired cause*.

Unfortunately, *after acquired cause* allegations are sometimes raised by the employer in order to deter a former employee from pursuing his or her legal entitlements. These allegations may arise after the employee confronts the employer about an inadequate severance offer.

Important: Judges will pay extra attention to an employer who alleges cause after the fact. Further, a failed after acquired cause argument may attract a higher notice period for an employee.

REQUEST A FREE CALL BACK!
416.572.9900

INFO@ERTL-LAWYERS.COM
WWW.ERTL-LAWYERS.COM

CALL US TODAY. WE ARE HERE TO HELP.

I HAVE BEEN TERMINATED "WITH CAUSE". AM I ENTITLED TO ANYTHING UNDER THE *EMPLOYMENT STANDARDS ACT*?

Under the *Employment Standards Act*, there are some exceptions to an employer's obligation to provide notice. One of those is where the employee is guilty of "wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer".

This is similar to the concept of "just cause" at common law which would disentitle the employee to reasonable notice. At common law, "just cause" for dismissal can be found for various forms of misconduct, including misconduct that is less than "wilful". Therefore, the standard under the *Employment*

Standards Act has been interpreted as being a higher standard than the "just cause" standard employed under the common law.

What does all of this mean? It means that, even if you were dismissed with cause by your employer, you may still be entitled to compensation under the *Employment Standards Act*.

Important: It is not recommended that you make a complaint under the *Employment Standards Act* until you consult with a lawyer. If you make an employment standards complaint with the Ministry of Labour (with respect to your entitlements upon

termination) you will be barred from pursuing a wrongful dismissal claim unless your complaint is withdrawn within two weeks.



I HAVE BEEN TERMINATED WITH CAUSE. AM I ENTITLED TO EMPLOYMENT INSURANCE BENEFITS?

If you were terminated for cause, whether or not you are entitled to Employment Insurance benefits is determined by the *Employment Insurance Act*, and the discretion of an employment insurance officer, board, or umpire.

The *Employment Insurance Act* uses the standard of "misconduct". Precisely what type of "misconduct"

would disqualify an employee from receiving benefits is not clear, but many employees who are terminated by their employers for just cause are still eligible for Employment Insurance benefits.

In our view, this is probably due to the fact that many employers do not tend to respond to questions asked by employment insurance officers.

First, there is no legal obligation to do so. Second, an employer has no economic interest in whether the employee receives Employment Insurance benefits.

The *Employment Insurance Act* states that in the absence of any evidence from the employer, they are to give the benefit of the doubt to the employee.

I'M WORRIED ABOUT WHAT MY EMPLOYER MIGHT SAY TO PROSPECTIVE EMPLOYERS.

It is possible that your former employer might say something negative about you, but many employers do not want

to risk further potential liability. In addition, it is usually in the employer's interests that you find work as quickly as possible

– so that any potential damages are reduced.

Important: There are usually a few different

solutions to this dilemma. We regularly help employees to protect their reputations.

REQUEST A FREE CALL BACK!
416.572.9900

INFO@ERTL-LAWYERS.COM
WWW.ERTL-LAWYERS.COM

CALL US TODAY. WE ARE HERE TO HELP.

WHAT INFORMATION SHOULD I GATHER BEFORE MY FREE CALL BACK WITH ERTL LAWYERS?

KEY DETAILS	WRITE YOUR COMMENTS HERE
Name of employer	
Your most recent job title	
Your length of employment (i.e. start date and termination date)	
If there were any gaps in your employment with your employer	
Your compensation (e.g. salary, bonuses, commissions)	
Your benefits (e.g. health benefits, insurance, RRSP, pension, car allowance, stock purchase plans, etc.)	
Did you sign an employment agreement or job offer letter? If so, do you have a copy of it?	
What reason did the employer give for terminating you?	

REQUEST A FREE CALL BACK!

416.572.9900

INFO@ERTL-LAWYERS.COM

WWW.ERTL-LAWYERS.COM

CALL US TODAY. WE ARE HERE TO HELP.

Disclaimer:

This guide is intended to provide basic information to help you better understand just cause dismissals.

It is not legal advice.

For legal advice, please contact:



Ertl Lawyers

Leaders in Employment and Disability Law

330 BAY ST., SUITE 1400 TORONTO, ON M5H 2S8

To Request a Free Call Back

EMAIL: INFO@ERTL-LAWERS.COM

VISIT: WWW.ERTL-LAWYERS.COM

CALL: 416.572.9900

TOLL FREE: 888.222.6184