Quitting and Giving Notice: What Employees Need to Know

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Introduction

Since employees like to be in control of their lives, they think they can quit an employer any time it suits them. But woe to the employer who feels the same way about terminating employees. Somehow employees think employers cannot freely dismiss employees but employees can dismiss employers as they choose.

As it turns out, there is more legal mutuality in the relationship than employees would like. They also have to be careful about quitting employers. Usually, employers can and will think 'good riddance' to disloyal workers and find replacement ones rather quickly. They rarely pursue employees who quit them. But this is changing.

> Employers have historically been reluctant to pursue former employees who leave them in a lurch without adequate notice. That is changing as they invest significantly in selection and training and much work is highly specialized.

This article considers what obligations the employee has to the employer when he or she quits. Does an employee need to provide notice? If so, how much notice must the employee provide to avoid liability for breach of the employment contract?

The Basics of Quitting

Employment law is found in legislation and the common law.

Labour Relations Codes

Labour relations legislation sets out the framework for unions and management to negotiate a collective agreement which governs the working relationship between employees and employer. Quitting the relationship by employer or employee is often regulated in the collective agreement, which is enforceable by grievance and ultimately arbitration.

Employment Standards Codes

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Alberta's *Employment Standards Code*, RSA 2000, c E-9, (Part 2, Division 8) is typical. It covers the subject of termination of employment by both employee (quitting or resignation) and by the employer (dismissal).

Section 58 states that to terminate employment an employee must give the employer a *written* notice of termination of *at least* one week if the employee has been employed between three months to two years, or *at least* two weeks if the employee has been employed for longer than two years. This short written notice of quitting is not onerous for most employees, yet many still quit on shorter notice, including no notice when they choose to never return to work.

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Even then, section 58 notice is not required if:

protections, as well as a few legal duties, in employment standards legislation.

- there is an established practice in the industry to give less quitting notice;
- the employee is quitting for personal health or safety reasons;
- the job has become impossible for the employee to perform due to causes beyond the employee's control;
- the employee is temporarily laid off or does not have work due to a strike or lockout at the job site; or
- the employee is quitting due to the employer's denial of his or her legal minimum rights.

For probationary employees working their first three months, no quitting notice is legally required.

It is natural for an employer to resent a quitting employee. The employer may think 'well, if you are going to quit anyway, why not just go now?' Firing workers who are quitting is how vindictive employers demonstrate their ultimate power over employees.

The legislation also addresses that scenario. Section 59 says once an employee gives proper minimum notice and the employer wants to dismiss that employee sooner, the employer must still pay the employee salary to the end of the employee's notice period. To discourage employers' retaliation in this way, if the employee gave longer than minimum notice, and the employer asks her to leave before then, the employee is entitled to the much longer notice (or damages in lieu) that the employer would have needed to furnish in order to dismiss that employee.

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Another way for employers to retaliate against quitting employees is to reduce their wages or hours (or any other term) after the quitting notice has been received. Section 61 also prohibits this. The employer, however, can still give full termination pay or terminate for a legitimate reason. A written quitting notice has no effect if somehow the quitting employee continues to work for the same employer after the stipulated quitting date.

Common Law

It is very important to remember that these statutory notice periods are the legal *minimum*. Occasionally, employer and employee may have contracted to be bound by this minimum legal notice, but most often they will not have made any such agreement. In many circumstances, employees will be expected to provide the employer with more notice of quitting. This is called *reasonable notice*.

A fundamental principle of contract interpretation is that if there is no endpoint to the contract, it may be brought to an end by either party giving reasonable notice to the other party of that intention. The courts have held that quitting employees generally need to give less notice to employers than employers need in order to dismiss employees.

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In most cases, an employee's reasonable notice of quitting will be longer than the minimum statutory notice set out in section 58. The difficulty now lies in prescribing how much quitting notice should be, because that depends on several factors.

Today workers in highly complex jobs are more indispensable; harder to replace. How much time would an employer need to find a suitable replacement employee? This is the standard of what reasonable notice ought to be given. It includes:

- the nature of the work;
- the experience and seniority of the worker;

- availability of replacements; and
- the time it takes to train new employees to a satisfactory level.

In the 1992 case of *Tree Savers International Ltd. v. Savoy,* 1992 CanLII 2828 (AB CA), although the employee had provided the two-week minimum period of notice, the Alberta Court of Appeal found that 18 months (or $146,200 in lieu) was appropriate reasonable notice.

In *Bradley v. Carleton Electric Ltd.,*1998 CanLII 7140 the Ontario Court of Appeal determined three months of quitting notice should have been rendered by a key employee who resigned after 18 months on the job. Perhaps the most famous case is *GasTOPS Ltd. v. Forsyth,* 2012 ONCA 134. Four employees were ordered to pay nearly $20 million in damages to the employer for breaching fiduciary duty, soliciting existing employees and business from the employer, and quitting without reasonable notice, which was determined to be 10 to 12 months.

Conclusion

Employers have historically been reluctant to pursue former employees who leave them in a lurch without adequate notice. That is changing as they invest significantly in selection and training and much work is highly specialized. Statutory minimum quitting notice triggers protection for the departing employee. Employees should also consider the employer's interests, as well as their own reputation, when departing. As far as possible in the circumstances, they should supply generous and reasonable quitting notice.

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