

## Canadian Guide to Employment in the U.S. - Termination Pay Differences

### Access US

When a Canadian company enters the U.S. to expand their business, one of the major differences in our labor laws that they typically need guidance on is termination and/or severance pay. In Canada, there is no such thing as at-will employment and therefore an early termination would give rise to notice or pay in lieu of notice and/or severance pay depending on their length of employment with the company. In general, employees are entitled to notice or pay in lieu of notice after the completion of three months of employment.

In the U.S., we have employment-at-will where the employer or employee can terminate their relationship at any time, provided it does not violate any statutory law or employment agreement. For Canadian companies new to the U.S., this discussion includes a review of the following:

- **Statutory Laws:** Companies need to become familiar with the laws of the Department of Labor (<https://www.dol.gov/general/aboutdol/majorlaws>)
- **Wrongful Termination:** Terminating an employee for any of the following reasons may constitute wrongful termination:
  - **Discrimination:** The employer cannot discriminate against an employee and terminate their employment as a result of one of the following protected statuses under Federal and State Law: race, color, religion, sex, age (over 40), national origin, disability, veteran status, protected leave such as FMLA or military leave, immigration status, Collective Bargaining Rights and in some jurisdictions sexual orientation and conviction status.
  - **Retaliation:** An employer cannot fire an employee because the employee filed a claim of discrimination or is participating in an investigation for discrimination based on a protected status. In the US, "retaliation" is forbidden under civil rights law.
  - **Employee's refusal to commit an illegal act:** An employer is not permitted to fire an employee because the employee refuses to commit an act that is illegal.
  - **Employer is not following the company's own termination procedures:** Often, the employee handbook or company policy outlines a procedure that must be followed before an employee is terminated. If the employer fires an employee without following this procedure, the employee may have a claim for wrongful termination.
- **Benefits and Pay:** This will vary by State and the reason for termination. The variance will be regarding severance pay, payment for accrued vacation, overtime and sick pay, entitlement for healthcare benefits, eligibility for unemployment insurance, and timeline to pay the employee. Generally speaking, for privately held companies unless there is a written policy regarding the accrual of vacation, holidays or severance, these benefits are not required for at-will employees.

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