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## ***Public Sector Employers Act***

# **EMPLOYMENT TERMINATION STANDARDS**

**Note:** Check the Cumulative Regulation Bulletin 2015 and 2016 for any non-consolidated amendments to this regulation that may be in effect.

[includes amendments up to those made by 2002-64-Sch.]

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The Employment Termination Standards established by the Public Sector Employers Council are adopted as employment termination standards for the purposes of section 14.4 of the *Public Sector Employers Act*.

### **Definitions**

- 1** In these standards:

**"Act"** means the *Public Sector Employers Act*;

**"employee"** has the same meaning as in section 14.1 of the Act;

**"notice of termination"** means notification by a public sector employer to an employee that his or her contract of employment will be terminated;

**"notice period"** means the length of time from the date on which notice of termination is given to an employee until the date on which employment will terminate;

**"retiring allowance"** means a payment that, by a contract of employment, an employee may receive on or after retirement of the employee from his or her employment in recognition of the employee's service, but does not include the following:

- (a) superannuation or a pension benefit;
- (b) an amount received as a consequence of the death of the employee;
- (c) a benefit designated by the minister;

**"severance"** means the severance payment made in lieu of the notice period;

**"successor employer"** means a purchaser, lessee or transferee referred to in section 35 of the *Labour Relations Code*.

[am. 2002-64-Sch, s. 1.]

### **Limitation on notice period and severance**

- 2 (1) An employee must not be given a notice period or severance in the case of
- (a) termination for cause,
  - (b) expiry of a contract of employment with a definite term, or
  - (c) voluntary resignation or retirement.
- (2) Subsection (1) does not prevent an employer from providing severance under a labour adjustment policy or program approved by the minister.
- (3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of subsection (2).

[am. 2002-64-Sch, s. 2.]

### **Limitation on retiring allowance**

- 2.1 (1) An employee who receives a notice period or severance must not be given a retiring allowance.
- (2) Subsection (1) does not prevent an employer from providing a retiring allowance under a labour adjustment policy or program approved by the minister.
- (3) A labour adjustment policy or program approved by the council before this subsection comes into force is deemed to be a labour adjustment policy or program approved by the minister for the purposes of

subsection (2).

[en. 2002-64-Sch, s. 3.]

### **Duties of employee during notice period**

**3** (1) During the notice period, a public sector employer, in its sole discretion, may

(a) require the employee to continue with his or her duties, assignment, tasks or projects,

(b) assign the employee to other duties, assignments, tasks or projects with the same or a successor employer, notwithstanding that the assignment may amount to a constructive dismissal, if

(i) the assignment is reasonably consistent with the employee's ability and responsibility at the time of the assignment, and

(ii) the employee is not required to relocate unreasonably,

(c) assign the employee to a non-successor employer with the agreement of the employee, or

(d) excuse the employee from performing his or her duties.

(2) If an employee refuses to perform duties assigned by the employer in accordance with this section, the employee is deemed to have voluntarily resigned and is not entitled to a continuation of the notice period or any payment in lieu of the notice period.

### **Severance payment instead of notice**

**4** (1) If an employer terminates employment without cause and excuses the employee from performing his or her duties under section 3 (1) (d), the employer, in its sole discretion, may provide the employee with severance.

(2) Severance must be in the form of periodic payments unless the employer, in its sole discretion, considers a lump sum payment to be more appropriate.

### **Amount of notice and severance**

**5** (1) A notice period or severance must not exceed the following:

(a) an amount calculated according to an employment termination plan for the employee that has been approved by the minister;

(b) if no employment termination plan has been approved by the council, the lesser of

- (i) an amount equal to the remaining term of the contract, or
- (ii) an amount provided under common law calculated as though the employee were subject to an indefinite term agreement with no provision regarding severance.

- (1.1) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the minister for the purposes of subsection (1).
- (2) Despite subsection (1), the maximum notice period that an employee may be given is 18 months.
- (3) Despite subsection (1), the maximum severance that an employee may be given is the value of salary and benefits the employee would otherwise be entitled to for the notice period.

[am. 2002-64-Sch, s. 4.]

## **Executive notice and severance**

**5.1** (1) In addition to the limits imposed under section 5, this section applies in relation to employees of a public sector employer, other than an employer referred to in paragraph (g) of the definition of "public sector employer" in section 1 of the Act, who are appointed to or employed in the following positions:

- (a) deputy minister;
- (b) chief executive officer or president of a public sector employer;
- (c) superintendent of a school.

(2) The notice period or severance that may be given to an employee in a position referred to in subsection (1) must not exceed

- (a) an amount calculated according to an employment termination plan for the employee that has been approved by the Treasury Board, or
- (b) if no employment termination plan has been approved by the Treasury Board, the following limits:
  - (i) up to a 6 month notice period or severance, if the employee has served or been employed in that position for fewer than 12 months;
  - (ii) up to a 9 month notice period or severance, if the

employee has served or been employed in that position for 12 to 17 months;

(iii) up to a 12 month notice period or severance, if the employee has served or been employed in that position for 18 to 35 months;

(iv) up to a 14 month notice period or severance, if the employee has served or been employed in that position for 36 to 47 months;

(v) up to a 16 month notice period or severance, if the employee has served or been employed in that position for 48 to 59 months;

(vi) up to an 18 month notice period or severance, if the employee has served or been employed in that position for 60 or more months.

- (3) Treasury Board may not approve an employment termination plan under subsection (2) (a) that would provide an employee more than a 12 month notice period or severance for fewer than 18 months of service or employment.
- (4) An employment termination plan approved by the council before this subsection comes into force is deemed to be an employment termination plan approved by the Treasury Board for the purposes of subsection (2).

[en. 2002-64-Sch, s. 5.]

## **Re-employment in the public sector**

- 6** (1) In this section, "**re-employment**" includes entering into a contract for services with a public sector employer either individually or through a sole proprietorship, partnership or corporation.
- (2) An employee must notify the employer of any re-employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided.
- (3) If an employee commences employment with a public sector employer during the notice period or period of notice in lieu of which severance is provided,
- (a) no severance covering this period of re-employment is payable, and
  - (b) the employee must pay the government any amount that is attributable to the period during which the employee is re-employed.
- (4) During the notice period or period in lieu of which severance is provided,

if an employee is re-employed at a lower level of compensation, nothing in this section prevents an employer from providing to the employee an amount equivalent to the difference between their former compensation level and their compensation level upon re-employment.

### **Term of employment contracts**

**7** If an employee is employed under a contract of employment for a definite term the contract must

(a) subject to paragraph (b), be for a term of not more than 5 years, and

(b) if employment under the contract may be extended for more than 5 years, make the extension conditional on a renegotiation of the contract during the term of the contract.

[en. 2002-64-Sch, s. 6.]

Provisions of the *Public Sector Employers Act*, R.S.B.C. 1996, c. 384, relevant to the enactment of this regulation: section 14.4]

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## General Conditions (Part 03 - Terms & Conditions of Employment for Excluded Employees / Appointees)

### 7. Probation: All employees/appointees except OIC categories C and D

Every appointment or promotion shall be subject to a probationary period in accordance with the **Hiring and Deployment Policy**. A six-month probationary period will apply to initial appointments of deputy ministers, associate deputy ministers and assistant deputy ministers.

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Career Phases: Experienced, Leaving, New

Roles: Supervisor, Auxiliary Employee, Executive, Regular Employee

Keywords: probation, hours, classification

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## Termination of Employment of Excluded Employees (Human Resources Policy 8)

This policy statement covers the termination of excluded employees appointed under sections 8, 12, 14, and 15 of the *Public Service Act*. Termination of bargaining unit employees is covered by their collective agreement. The policy statement supports the government's core policy objective that the "public service is a versatile workforce that can adapt to meet changing needs."

Terminated employees will be treated with respect and professionalism.

### Termination Without a Notice Period

Terminated employees are not entitled to a notice period or to severance pay if they:

- Resign or retire;
- Are discharged for cause;
- Are rejected on initial probation, if other than a Deputy, Associate Deputy, or Assistant Deputy Minister;
- Were appointed on an auxiliary, per diem, stipendiary, or at pleasure basis
- Complete a defined-term appointment;
- Have refused an offer of alternate employment that the BC Public Service Agency head believes constitutes reasonable alternate employment, or
- Abandon a position.

If termination notice is required, it must be in writing and must indicate when the termination takes effect. Documentation substantiating performance concerns and issues must be kept on file by organizations.

### Termination With a Notice Period

In situations not covered under *Termination Without a Notice Period*, organizations may terminate an employee at any time provided the employee is given a reasonable notice period and/or severance pay.

Organizations must notify the Agency Head before issuing a notice of termination with notice and/or severance pay. The Agency Head is solely responsible for determining the duration and terms of the notice period and the amount and terms of any severance.

The notice period or severance pay in lieu of the notice period is to provide the terminated employee with a reasonable period of time in which to make the transition to comparable employment. During the notice period or period of severance pay in lieu, employees are expected to mitigate and diligently pursue other employment opportunities both inside and outside the BC Public Service. Eligible employees, who are terminated with notice, will be assisted in a cost-effective manner in identifying opportunities for employment.

Employees are obligated to inform the Agency Head if they find work before the severance pay period is over. If terminated employees on paid or working notice do not accept an offer of permanent employment within the BC Public Service that is commensurate with their abilities, they will be deemed to have resigned from the BC Public Service and will no longer be entitled to the balance of the notice period or severance.

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# Post Employment Restrictions for Senior Management in the BC Public Service (Human Resources Policy 13)

## Definitions

**Confidential information** means information that is unavailable to the public.

**Outside entity** means a person or entity other than a public sector employer as defined in section I of the *Public Sector Employers Act*.

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# Post Employment Restrictions for Senior Management in the BC Public Service (Human Resources Policy 13)

## Before Leaving Public Service

1 (1) the following are conditions of your employment with the government:

(a) you must not allow yourself to be influenced in carrying out your employment responsibilities by prospects for or an offer of

- (i) employment as an employee of an outside entity, or
- (ii) remuneration or other reward from an outside entity for doing anything for it in a capacity other than as an employee of the outside entity;

(b) you must immediately disclose to the Deputy Minister to the Premier and Head of the BC Public Service Agency

- (i) any offer described in paragraph (a), if the offer does or could place you in a conflict of interest situation; or
- (ii) your acceptance of any offer described in paragraph (a).

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# Post Employment Restrictions for Senior Management in the BC Public Service (Human Resources Policy 13)

## After Leaving Public Service

2 (1) The following are conditions of your employment with the government:

- (a) after your employment ends, you must not disclose confidential information that you obtained through your employment;
- (b) if you had a substantial involvement in dealings with an outside entity at any time during the year immediately preceding the end of your employment then, for a year after the end of your employment, you must not
  - (i) accept an offer of employment, an appointment to the board of directors or a contract to provide services to that outside entity;
  - (ii) lobby or otherwise make representations for that outside entity to the government; or
  - (iii) give counsel to that outside entity, for its commercial purposes, concerning the programs or policies of any organization or ministry of the government in which you were employed at any time during the year immediately preceding the termination of your employment; or
- (c) until one year after your employment ends, you
  - (i) must not lobby or otherwise make representations for any outside entity to any ministry or organization of the government in which you were employed at any time during the year immediately preceding the termination of your employment; or
  - (ii) act for an outside entity in connection with any ongoing proceedings, transaction, negotiation or case in which the outside entity and the government are involved
    - (a) if you, during your former employment with the government, acted for or advised the government concerning the proceedings, transaction, negotiation or case; and
    - (b) acting for the outside entity in that connection would result in the receipt by the outside entity of a private or commercial benefit or of any benefit not for general application.

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# Post Employment Restrictions for Senior Management in the BC Public Service (Human Resources Policy 13)

## Reduction of One-Year Limitation

The Head of the BC Public Service Agency in consultation with the Deputy Minister to the Premier may reduce the one-year restriction, upon your application, after considering the following:

- (a) the circumstances under which your employment ended;
- (b) your general employment prospects;
- (c) the significance to the government of information you possessed by virtue of your position with the government;
- (d) the desirability of a rapid transfer of your skills to an employer other than the government;
- (e) the degree to which the new employer might gain unfair commercial advantage by hiring you;
- (f) the authority and influence you possessed while employed by the government;
- (g) the disposition of other cases.

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