DENTONS

Group Terminations Employer Toolkit

Grow | Protect | Operate | Finance

August 2023

NOTE: The information provided in this toolkit does not constitute legal advice or a legal opinion. We hope this toolkit will provide employers with some of the background information they need to effectively manage group termination plans.

If you have any questions, please reach out to one of the members of the Dentons Canada Employment and Labour Law group.

Overview

This toolkit covers group terminations, sometimes called mass or collective terminations or collective dismissals, by providing an overview of best practices and key considerations to effect a group termination, strategies to mitigate risk and a summary of jurisdiction specific requirements.

The majority of jurisdictions in Canada have legislative obligations an employer must comply with to lawfully conduct a group termination. This toolkit focuses on the jurisdictions in which our clients primarily operate – Ontario, Québec, Alberta, British Columbia (BC), Manitoba and Saskatchewan, as well as federally regulated workplaces. It does not cover requirements in Nova Scotia, New Brunswick, Newfoundland and Labrador, Yukon, the Northwest Territories or Nunavut.[1] Employers conducting group terminations in those other provinces or territories should consult applicable employment standards legislation.

Employers conducting group terminations should also be guided by the information included in our Dentons Canada Termination Toolkit and Dentons Canada Temporary Layoff Toolkit.

This toolkit is current as of the date of publication, and employers are strongly recommended to check the current legislation in effect in the relevant jurisdiction.

1 PEI does not currently have specific requirements in its legislation with respect to group terminations; however, employers must follow the employment standards minimums with respect to notice of termination.

Key practical considerations

Employers are well advised to review their specific workplace needs carefully with legal counsel when a group termination is being contemplated.

The starting point for discussing group terminations is an understanding of what they are, and what results from a group termination. Generally speaking, a group termination occurs when a large number of employees have their employment terminated on or around the same date (often within the same four-week period). When the terminations occur, legislation generally mandates significantly greater statutory notice or pay in lieu of notice be provided to all impacted employees. The amount of greater notice is determined by the applicable legislation, and is intended to provide a greater level of protection to the terminated employees as more employees will be looking for work in the same general geographic area during the same time period. In addition, many jurisdictions require written notice of group terminations be provided to the applicable Ministry of Labour and/or posted within the workplace at the time the termination takes place. A failure to follow the specific legislative requirements can nullify the group termination and/or result in increased financial liability.

Employers contemplating a shut down or substantial reduction of operations should begin a careful review of business needs and employment standards requirements applicable to their jurisdiction as soon as practicable. This review will allow the employer to plan for staged workforce reductions, and enable an organized, responsible and cost-minimizing business closure or disposition.

Consideration should be given to the applicable statutory requirements, including whether there are enough employees situated at a single location such that the relevant legislation applies. If so, the employer will then consider what the relevant notice requirements are, and whether it makes business sense to proceed with a group termination, a series of individual terminations, or perhaps a temporary layoff.

Group terminations must proceed in accordance with legislative requirements; otherwise, employers will run the risk of administrative penalties for non-compliance, and, more significantly, of assuming liability for pay in lieu of notice for a large number of terminated employees. In certain situations, sufficient lead time may be given to provide working notice that satisfies all, or at least part, of the required notice period, minimizing costs associated with the terminations. In addition, employers should leave themselves time to potentially take advantage of any variance applications permitted under applicable employment standards legislation.

If the group termination is in the context of a corporate transaction, employers should consider whether compliance with group termination obligations can be negotiated in the purchase and sale document.

Where an employer anticipates it will be terminating a large number of employees, but wishes to remain under the group termination thresholds, leaving room for unanticipated terminations will ensure the employer does not owe more termination notice than anticipated. In other words, employers should leave a buffer in their numbers to ensure that unexpected terminations can be implemented without changing the number of employees contemplated in the group termination. For example, employers will sometimes

inadvertently trigger a group termination when, in addition to the terminations taking place, another group of employees has their terms and conditions of employment changed. If claims of constructive dismissal are made by employees who have a fundamental change made to their employment terms, that can increase the number of terminations so as to bring the employer over the group termination threshold, which will in turn result in increased notice requirements for all affected employees.

Failure to give the required amount of notice can invalidate the prior notice that was given and require additional notice (or pay in lieu) to be provided. For example, if notice is given based on a threshold of 100 employees being terminated within a certain timeframe, but 101 employees end up being terminated, then a greater period of notice may apply. Employers should also ensure they understand the applicable time period, as some provinces have lengthy or rolling timeframes that may apply.

As detailed below, in most jurisdictions, a group termination must be implemented at a single location, "workplace" or "establishment," within specified timeframes, while meeting specified notice requirements. Employers should always provide written notice of an upcoming group termination, even if it is not required by legislation, as written notice will confirm when notice was given to the employee, and that the termination notice is valid. In some provinces, written notice is required to be provided not only to employees, but also to the applicable Ministry and/or posted in a specified form in the workplace. A failure to adhere to such legislative requirements can result in financial consequences for employers.

In some provinces, there can be further issues in relation to determining the definition of location or establishment impacted by a group termination. For example, in Ontario, an "establishment" is defined to mean "a location at which the employer carries on business but, if the employer carries on business at more than one location, separate locations constitute one establishment if, (a) the separate locations are located within the same municipality, or (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace another employee of the same employer." Due to the realities of the modern workplace, this raises questions such as: What happens if an employee engages in remote work? How is this employee's location of work determined?

Please see below under "Legislative Requirements" for further detail of what an "establishment" means in Ontario, and how that definition is being broadened to include employees in certain remote work situations in answer to the questions posed above. It is anticipated that such revisions may be considered in future in other provinces as well, as remote work becomes increasingly commonplace.

In addition, employers are required to consider all the usual factors for an individual termination, particularly if the individual termination falls in close proximity to the group termination. In this context, employers should ensure they have identified the risk factors for individual employees who may be included in the group termination (for example, long-serving employees with no written employment contract, or employees on disability leave who may have a human rights complaint if terminated with the group). Employers should also ensure they have a clear and defensible process and rationale for identifying which employees have been included in the group termination.

Common Law

Under the common law, a terminated employee may be entitled to reasonable notice or pay in lieu of notice which is more generous than the notice period contemplated under legislation. Even where an employer has complied with the statutory notice requirements applicable to the termination, an employee terminated by way of group termination may still have the ability to seek their common law notice entitlement.

To mitigate this, employers should have termination provisions in their employment contracts that limit notice to statutory minimums, and have the termination clause regularly reviewed to ensure it is legally enforceable in the relevant jurisdiction. A well-drafted clause can also limit employer liability for statutory notice or pay in lieu of notice in the event of a group termination, so long as the clause does not contract out of minimum statutory requirements. Due to the inability to contract out of minimum statutory requirements, it is important when setting caps for statutory notice in the termination provision in an employment agreement to keep in mind the largest potential group termination notice period, and to not undercut same. Given that the interpretation and enforceability of termination provisions varies between Canadian jurisdictions significantly, legal advice is strongly recommended for the drafting of same.

While group terminations trigger consideration of the concept of common law notice periods, the amount of notice required is statutorily prescribed, and depends on the location and number of employees at the worksite, and other specific jurisdictional requirements. This means that group notice periods are not dependent on the specific employee's length of service as is the case with individual terminations. In addition, in some jurisdictions, a group termination will trigger an obligation to provide both individual and group termination notice as prescribed by the statute.

Civil Law

Similarly, in Québec, where common law does not apply, a terminated employee may be entitled to reasonable notice or pay in lieu of notice which is more generous than the notice period contemplated under legislation. In fact, the Civil Code of Québec (the CCQ) imposes upon the employer the obligation to provide an employee with reasonable notice of termination of employment. However, this notice of termination is not necessary if the termination is made for a serious reason (or just and sufficient cause). In evaluating the reasonableness of the notice, Québec courts have considered, without limitation, the following factors:

- The age of the discharged employee;
- The position held;
- The salary earned;
- The availability of similar employment; and
- The fact that the employee was actively recruited by the employer while they had stable and lucrative employment with another employer, or that they were promised a long-term relationship.

The determination of reasonable notice under the CCQ depends upon an evaluation of the particular facts of each case, but as a rule of thumb, it will generally be equal to one week to one month per year of service. Although there is no rule imposing a maximum duration on the notice period, Québec courts will rarely award a notice period in excess of 24 months. Employers are strongly encouraged to obtain legal advice regarding what constitutes reasonable notice in a given situation.

The CCQ reasonable notice is inclusive of the collective dismissal statutory notice (described in the Legislative Requirements section below) or individual statutory notice. An employer may, at its discretion, provide an impacted employee with working notice or an indemnity in lieu of working notice, or a combination of both. Employers should also verify whether any of the impacted employees of the group termination are governed by contractual obligations contained in an offer letter or employment with regards to specific separation notice.

Unlike the common law, Québec law does not allow employers to contract out of the right of an employee terminated without cause to receive reasonable notice or compensation in lieu of notice. To the extent that a court finds that a contractual termination clause provides for notice that is not reasonable, it has discretion to award damages to the employee on the basis of longer notice.

Triggering a group termination

Group termination obligations differ by jurisdiction.

Whether a group termination is triggered can depend on:

- The location or geographical scope of the terminations.
- The number of employees in the group to be terminated.
- The time frames for termination.

Group terminations may involve:

- Providing written notice of the group termination to the relevant governmental authority, the relevant union (if any), and to the employees affected.
- A posting in the workplace of the termination notice provided to the government.
- Implementing a joint planning committee.
- Providing the required amount of statutory termination notice or pay in lieu of notice, which in many cases is increased in the case of group as opposed to individual terminations.
- Statutory severance pay in addition to notice or pay in lieu of notice, for both Ontario employers and federally regulated employers.

All jurisdictions contemplate that there may be situations where an employment contract becomes impossible to perform due to an unforeseeable event such that the contract is frustrated; however, this will rarely apply in the context of group terminations contemplated by businesses.

Variations and waivers

Federally regulated employers, and employers located in British Columbia, Manitoba and Saskatchewan, can apply for a variation or waiver of group termination obligations if the employer can demonstrate the group termination provisions would be unduly prejudicial to the employees, and would be seriously detrimental to the employer's business. If an employer is considering applying for a variation or waiver legal counsel should be consulted.

Layoffs and group terminations

Any laid-off employee must be counted in the group of employees to be terminated during a group termination as a layoff may be deemed a termination. For information specific to layoffs, please see Dentons' Temporary Layoff Employer Toolkit, referenced above.

Constructive dismissal and group terminations

As noted above, employees who have been constructively dismissed, are deemed to have been terminated. Even if the threshold for a group termination has not been met, if other employees make constructive dismissal claims, this can have the effect of turning a series of individual terminations into a group termination. Employers should be careful to ensure that potential constructive dismissal claims are factored into the numbers when contemplating the termination of a large group of individuals, so as to ensure that a group termination is not triggered.

Legislative requirements

Apart from Prince Edward Island (PEI), all Canadian jurisdictions have requirements that apply where a group termination is taking place. The legislative requirements for group terminations in select Canadian jurisdictions are as set out below. Note that these requirements do not consider any additional common or civil law notice entitlements which may also apply. Employers should always defer to the actual legislation for current requirements.

Jurisdiction	Specific requirements and explanations
Alberta	In Alberta, group termination is triggered when 50 or more employees at a single location are terminated within a four-week period. The employer is required to give the Minister responsible for employment standards (currently the Minister of Jobs, Economy and Trade) written notice at least four weeks before the date on which the first termination is to take effect unless the employer is unable to do so, in which case the employer must provide written notice as soon as is reasonable and practicable in the circumstances. The notice to the Minister must include the number of employees who will be terminated and the effective date of their termination through the following form: Notice to Minister of Group Termination. The above requirements do not apply to the termination of employees who are employed on a seasonal basis or for a definite term or task. Employees who are terminated pursuant to a group termination are only entitled to their individual notice entitlements, of which the statutory minimums are as follows: • One week, if the employee has been employed by the employer for more than 90 days but less than two years; • Two weeks, if the employee has been employed by the employer for two years or more but less than four years; • Four weeks, if the employee has been employed by the employer for four years or more but less than six years; • Five weeks, if the employee has been employed by the employer for six years or more but less than eight years, • Six weeks, if the employee has been employed by the employer for eight years or more but less than 10 years, or • Eight weeks, if the employee has been employed by the employer for 10 years or more. However, the Alberta Employment Standards Code reserves the common law rights of employees so if there is no enforceable termination provision in the employment agreement governing the relationship between the parties, each employee involved in the group termination may be entitled to significant additional notice. Given that common law notice depends on a number of factors, we recommend that legal counsel be consulted.

Jurisdiction	Specific requirements and explanations
British Columbia	In BC, additional notice for group termination is triggered when 50 or more employees at a single location are terminated within a two-month period (the two-month period is any consecutive two-month period in which terminations occur). The additional notice required is: • 8 weeks if 50-100 employees are terminated; • 12 weeks if 101-300 employees are terminated; and • 16 weeks if more than 301 employees are terminated. The amount of group termination notice set out above is in addition to what each individual employee is entitled to for individual termination under the BC *Employment Standards Act* (**ESA**) for non-unionized employees, or in the collective agreement for unionized employees. For example, if a five-year non-unionized employee is dismissed as part of a group of 60 employees, they would be entitled to a total of 13 weeks of notice (i.e., five weeks for individual notice, plus eight weeks for group notice). The employer must give written notice of the termination to each employee who will be affected, the union (where applicable), and the minister responsible for the Ministry of Labour. ***What is 'a single location'?*** What constitutes a single location will be determined based on the facts of each case. Factors taken into consideration include the working relationship of the employees affected; the degree of integration of the employees work or worksites; and the location where employees work from, or are directed and controlled from. ***Additional considerations*** • A recent decision (*Forbes v. Glenmore Printing Ltd.*, 2023 BCSC 25) provides comfort to employers that they can continue to craft termination provisions with a view to ensuring compliance with the minimum requirements of s. 63 of the ESA, and that as long as they do not purport to waive their obligations to comply with s. 64, a termination clause will not be invalidated for failure to expressly address this potential obligation. The Court noted the absence of any express provision in the agreement purporting to waive the employer's obligation to comply with s. 64 requirements, and concluded that where an employment agreement is silent with respect to group termination, an employer will be bound by the minimum statutory requirements established by s. 64. • *Canadian Forest Products Ltd. (MacKenzie Wood Products Division) and the Pulp, Paper and Woodworkers of Canada Local No.* 18, 2023 BCLRB 5 – This decision settles a distinction as to how section 64 applies in the arbitral context between the Midway approach (termination occurs when the recall rights expire); and the Canfor approach (when the recall period is exceeded, the termination date is deemed to be the first day of layoff). The Board held the correct interpretation of s. 64 of the ESA is that terminations happens when the employee's right of recall expires.

Jurisdiction	Specific requirements and explanations
Manitoba	Notice for group termination is triggered when 50 or more employees in the province are terminated within a period of four weeks. The prescribed notice period is dictated by the number of employees who are terminated. The applicable notice periods are: • 10 weeks, if 50-100 employees are terminated; • 14 weeks, if 101-299 employees are terminated; and • 18 weeks, if 300 or more employees are terminated. • Notice must also be provided to the minister. • Notice received as part of a group termination constitutes the individual termination notice only if the employee is identified in the notice and the length of notice meets the individual notice requirements. As the maximum individual notice entitlement is eight weeks, no additional individual notice is required under the Manitoba Employment Standards Code where group termination notice has been provided. For example, if a seven-year employee is dismissed as part of a group of 50 employees, they would be entitled to 10 weeks of notice.
Ontario	Notice for group termination is triggered when 50 or more employees at an establishment are terminated within a period of four weeks. The prescribed notice period is dictated by the number of employees who are terminated. The applicable notice periods are: • Eight weeks, if 50-199 employees are terminated; • 12 weeks, if 200-299 employees are terminated; and • 16 weeks if 300 or more employees are terminated. ***What is an establishment?*** An "establishment" is defined to mean "a location at which the employer carries on business but, if the employer carries on business at more than one location, separate locations constitute one establishment if, (a) the separate locations are located within the same municipality, or (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace another employee of the same employer." Due to the realities of the modern workplace, this raises questions such as: what happens if an employee engages in remote work? How is this employee's location of work determined?

Jurisdiction	Specific requirements and explanations
	In Ontario, the Ministry of Labour currently follows the following internal guidance: if the number of remote employees in the same municipality dismissed from their employment within the same four-week period, either alone or in conjunction with in-office employees, reaches the number threshold required for a mass termination, then a mass termination will occur. This position is in line with the intent of the mass termination provisions of the Ontario *Employment Standards Code*, 2000 (**ESA**), which recognize that the labour market of that particular municipality will be flooded with unemployed individuals seeking new work, thus making it difficult for those employees to find alternative employment. Remote workers are no exception. When a sufficient number of remote workers from the same municipality are dismissed from their employment, either alone or in conjunction with in-person employees in the same municipality, this will cause an increase in the amount of time it will take for those employees to compete for the limited number of positions that are normally available. Legislative amendments are planned in Ontario to deal with remote employees. Specifically, the proposed changes to the ESA, if passed, will broaden the definition of "establishment" to explicitly include employees' remote home offices. While it is unclear what the proposed changes will look like, as the draft legislation has not yet been published, it is apparent that the Ontario government intends to introduce some clarity for employers as to how to treat remote workers in a mass-termination situation. We predict that these amendments will essentially be a codification of the internal guidance already adopted by the Ministry. In addition, employees may be entitled to severance pay if they are part of a mass termination. Indeed, an employee is entitled to severance pay if their employment is severed and: (a) they have five or more years of experience with their employer (whether continuous or not and whether active or not), and (b) the employer (i) has a global payroll of at least $2.5 million or (ii) has severed the employment of 50 or more employees in a six-month period because all or part of the business permanently closed. It is the latter situation contemplated in part (b)(ii) that is applicable to a mass termination situation. The ESA outlines a formula to use when calculating severance pay, though this entitlement can be generalized as one week of severance pay per year of service, prorated for partial years. For example, if a 6.5-year employee is dismissed as part of a group of 50 employees, they would be entitled to 8 weeks of mass termination notice and 6.5 weeks of severance.

Jurisdiction	Specific requirements and explanations
Québec	Notice for group termination is triggered when at least 10 employees of the same establishment are terminated or laid off for a period of six months or more in the course of two consecutive months. To make the determination of the number of employees impacted, all employees are counted, including unionized personnel, non-unionized personnel, personnel on leave of absence, part-time and full-time employees and managerial personnel. Employees that are not terminated or that fall within one of the following exceptions are taken into account: • Employees who are credited with less than three months of service at time of termination; • Employees whose contract for a fixed term expires; • An employee to whom section 83 of the *Public Service Act* applies; • An employee who is terminated because he/she has committed a serious fault; and • An employee who is excluded from the application of the *Act respecting Labour Standards* (**LSA**). Before proceeding with a collective dismissal, the employer must give a notice to the Minister of Employment and Social Solidarity (the Minister), with copies to the Commission des normes, de l'équité et de la santé et sécurité du travail (the Labour Standards Commission), within the following minimum periods: • Eight weeks, if the number of employees affected by the dismissal is at least equal to 10 and less than 100; • 12 weeks, if the number of employees affected by the dismissal is at least equal to 100 and less than 300; • 16 weeks, if the number of employees affected by the dismissal is at least equal to 300. In the case of a superior force or where an unforeseeable event prevents an employer from respecting the time periods for giving notice set out above, the employer shall give the Minister a notice of collective dismissal as soon as the employer is in a position to do so. The employer must pay to the impacted employees their remuneration (excluding overtime) for the equivalent of the collective dismissal notice period. Insurance and pension benefits must also be continued unchanged during this period. An employer that gives a notice of collective dismissal is not exempted from giving the individual notice of termination (or indemnity in lieu thereof) required by the LSA. However, the collective dismissal notice is inclusive of the individual notice. The employee shall receive the greater of the indemnities to which the employee is entitled.

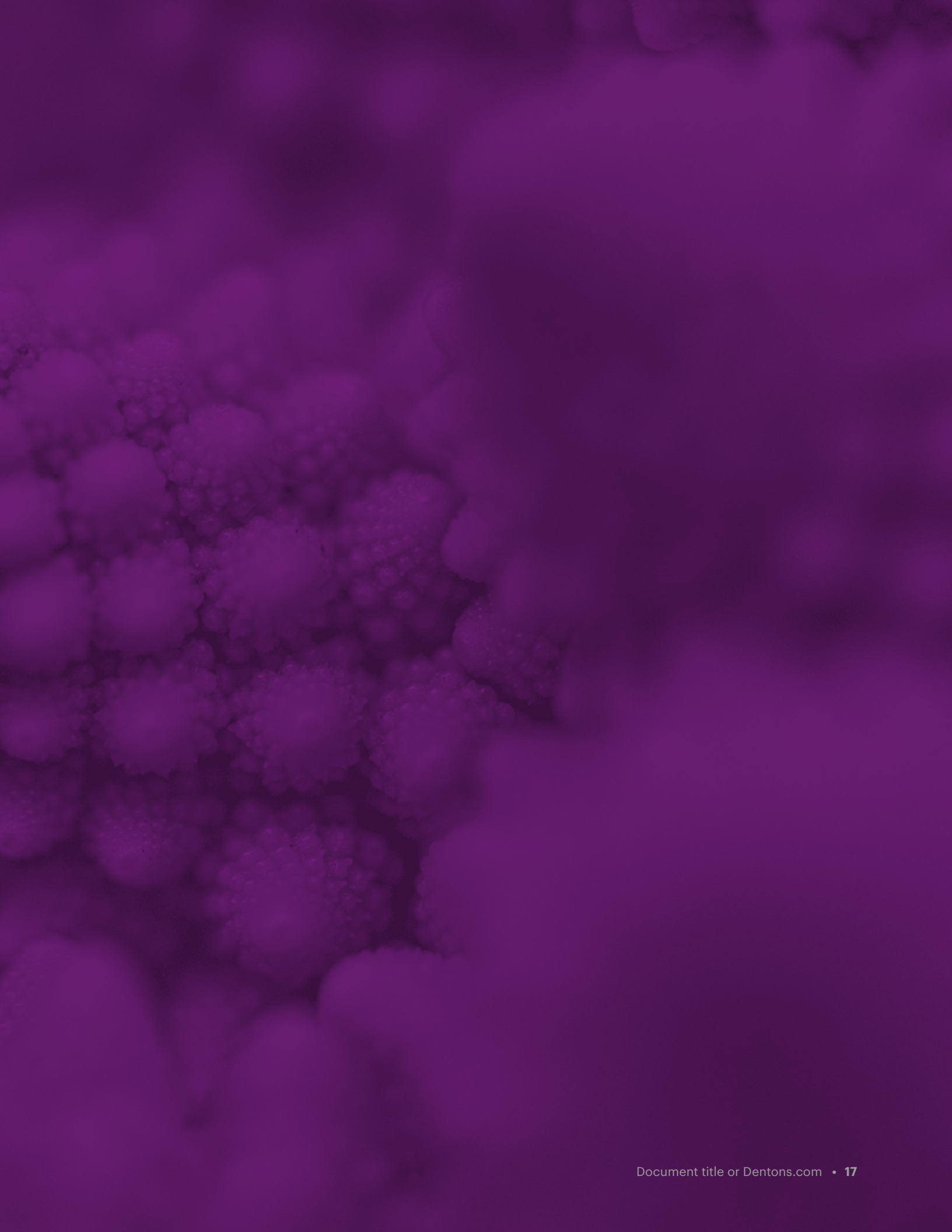
Jurisdiction	Specific requirements and explanations
	This constitutes the minimum statutory notice (or indemnity in lieu thereof) that must be provided to all impacted employees; some employees might be entitled to longer notice under the CCQ (see the civil law section above). If at least 50 employees are terminated, the employer and the certified union, or in the absence of a union, the representatives chosen by the employees affected by the collective dismissal, must, at the request of the Minister and without delay, participate in the establishment of a reclassification assistance committee and collaborate in carrying out the committee's mission. The mission of the reclassification assistance committee is to provide the employees affected by the collective dismissal with any form of assistance agreed on by the parties to minimize the impact of the dismissal and facilitate the maintenance or re-entry on the labour market of those employees. The financial contribution of the employer to the operating costs of the reclassification assistance committee and to the reclassification activities shall be agreed on by the employer and the Minister. ***What is an establishment?*** In Québec, the courts frequently point out that the notion of establishment is distinct from that of undertaking (business). An establishment corresponds to a physical division of the business, although the mere location of a company's operations in different places, such as separate buildings, is not sufficient to conclude that so many establishments exist. The location criterion must be supplemented by the finding of a certain unity of activities and management to recognize an establishment. In short, an establishment can be defined as a place, physically distinct from others, where the employer pursues the activities of its business, or part of these activities, under a certain unity of management. A careful examination of the organization and operation of the business is therefore normally required in each instance to conclude whether there is a single establishment or several distinct establishments and/or to know whether a remote worker shall be considered as working in a specific establishment. According to the internal guidelines of the Ministry of Employment, the following elements must be considered when deciding on these issues: • While significant geographic separations are often indicative of indicative of distinct establishments, the establishment does not strictly to a building or civic address; • The establishment has a moral or intellectual component. This component is determined by the presence of a management unit or activities governing the physical facilities; • Separate buildings or structures may be grouped together to form a single establishment, provided there is a unity of management or activities; • There may be two or more establishments within the same building or physical facility if there is sufficient functional autonomy between the management units or activities; and • The existence of a subsidiary (branch) can be used to conclusively identify a functionally autonomous management unit or activity. The section of the LSA regarding collective dismissals does not apply in respect of an establishment whose activities are seasonal or intermittent and in respect of an establishment affected by a strike or lockout within the meaning of the *Québec Labour Code*.

Jurisdiction	Specific requirements and explanations
Saskatchewan	Additional notice for group termination is triggered when 10 or more employees at a workplace are terminated within a four-week period. The additional notice required is: • Four weeks, if the number of employees whose employment is terminated is 10 or more but less than 50; • Eight weeks, if the number of employees whose employment is terminated is 50 or more but less than 100; and • 12 weeks, if the number of employees whose employment is terminated is 100 or more. The amount of group termination notice set out above is in addition to what each individual employee is entitled to for individual termination. For example, if a 4-year employee is dismissed as part of a group of 60 employees, they would be entitled to a total of 12 weeks of notice (i.e., 4 weeks for individual notice, plus 8 weeks for group notice). In addition to providing written notice to the union (if applicable) and impacted employees, notice must be given to the Minister of Labour Relations and Workplace Safety. The written notice must indicate the number of employees who will be terminated, the effective date or dates of the terminations, and reason(s) for the terminations.
Federal	Notice for group termination is triggered when 50 or more employees at a single industrial establishment are terminated either on the same date or within any four-week period. If an employer lays off an employee, they are deemed to have terminated the employment of that employee. Federally regulated employers must provide notice to the Head of Compliance and Enforcement at least 16 weeks before the first termination of employment of an employee in the group is to take effect. A copy of this notice must also be given immediately to the Minister of Employment and Social Development and the Canada Employment Insurance Commission. Federally regulated employers are also required to cooperate with the Canada Employment Insurance Commission by providing the Commission with any information they request, and must cooperate with the Commission to facilitate re-establishment in employment of employees. Employees must also receive a copy of the notice immediately, or alternatively this requirement can be satisfied if the employer posts the notice in a conspicuous place in the workplace. Posting of the notice can be done electronically, as long as employees have access to the electronic system where the document has been posted. If the federally regulated employer has unionized employees, then the notice must be given immediately to the union representing those employees.

Jurisdiction	Specific requirements and explanations
	The notice must include the following information (a form is available online): • The name of the employer; • The nature of the employer's industry; • The date or dates on which the employer intends to terminate the employment of its employees; • The estimated number of employees in each occupational classification whose employment will be terminated; • The location at which the terminations are to take place; • The reason for the terminations; and • The union representing employees who are impacted by the group termination (if applicable). In addition to giving notice of a group termination, federally regulated employers must provide employees with a statement of benefits summarizing the wages, vacation pay, and severance pay owing to them as soon as possible after the group termination notice is provided and no later than two weeks before their last day of work. In the context of a group termination, federally regulated employers also have an obligation to establish a joint planning committee as soon as possible. The purpose of the joint planning committee is to develop an adjustment program that is intended to eliminate the necessity for the termination of employment or minimize the impact of the termination on redundant employees and assist those employees in obtaining other employment. Members must be appointed to the joint planning committee within two weeks of notice being provided to the Head of Compliance and Enforcement, and the committee will remain in effect until the end of the 16-week notice period. The first meeting of the committee must also be held within two weeks of notice being provided to the Head of Compliance and Enforcement. The committee shall be made up of at least four members, and at least half of the representatives must be appointed as representatives of redundant employees (with the remaining members being representatives of the employer). Where redundant employees are represented by a union, then the union will be entitled to appoint some or all of the employee representatives, depending on how many impacted employees are represented by the union. The adjustment program must be completed as expeditiously as possible, and once completed the employer must implement the program with the cooperation of the committee and any applicable union. If the adjustment program is not completed in six weeks, then either the employee or employer representatives on the committee can request the appointment of an arbitrator by the Ministry of Labour. Similarly, if the adjustment program is completed in six weeks but the employee or employer representatives are not satisfied with the program, they can request the appointment of an arbitrator.

	A joint planning committee obligation does not apply in respect of any redundant employees represented by a union if the employees' termination of employment is because of a technological change. A "technological change" is defined in the *Canada Labour Code* (**CLC**) as (a) the introduction by an employer into their work, undertaking or business of equipment or material of a different nature or kind than previously utilized by the employer in the operation of the work, undertaking or business; and (b) a change in the manner in which the employer carries on the work, undertaking or business that is directly related to the introduction of that equipment or material. Federally regulated employers can request a waiver from the Ministry of Labour of certain group termination of employment obligations, specifically their obligation to provide and post the 16-week written notice, their obligation to provide a statement of benefits to impacted employees, and their requirement to form a joint planning committee. Employees seeking to request such a waiver can do so directly in the notice form. To be granted a waiver, the federally regulated employer must establish that the application of the obligation would be unduly prejudicial to the interests of either the employer or the affected employees, would be seriously detrimental to the industrial establishment's operations, or is not necessary because similar measures already exist under a collective agreement or established employee adjustment program. The group termination obligations under the CLC do not apply to two types of employees: (1) seasonal employees; and (2) employees who are employed on an irregular basis under an arrangement where the employee may elect to work or not to work when requested to do so. ***What is an industrial establishment?*** An "industrial establishment" is determined based on one of the following: 1. For prescribed federally regulated employers, based on the branches, sections and divisions outlined in Schedule I of the Canada Labour Standards Regulations; and 2. For all other federally regulated employers, the applicable Employment Insurance Economic Region. Federally regulated employers' group notice of termination obligations are in addition to employees' individual termination entitlements under the CLC; providing the group termination notice to an employee does not automatically count toward an employees' individual notice entitlements under the CLC. Accordingly, federally regulated employers must therefore ensure that they provide two weeks of written notice of termination in accordance with section 230 of the CLC or pay in lieu of such notice. Employees must also be provided with their outstanding wages, outstanding vacation pay, and severance pay (if applicable) at the end of their employment.

Please note that the information provided in this Toolkit does not constitute legal or professional advice, or a legal opinion. As this Toolkit simply provides an overview of issues that may be faced as employers begin contemplating group terminations, please contact legal counsel with respect to any specific legal issues. One of the members of the Dentons Canada Employment and Labour Law group would be pleased to advise.



ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

www.dentons.com

CSBrand-124785-Group Termination Toolkit-01 — 24/08/2023