



INDUSTRIAL WORKERS OF THE WORLD

VANCOUVER GENERAL MEMBERSHIP BRANCH

PO Box 4755

STN Terminal

Vancouver BC V6B 4A4

Just Cause

This Employment Standards Factsheet is also available in a [printable pdf format](#)

This Factsheet is not a substitute for legal advice.

The purpose of this Factsheet is to help employers and employees understand the interpretation of just cause as it applies to the *Employment Standards Act*. The information in this Factsheet does not apply to the interpretation of other laws or contracts.

The employer's right to fire

The *Employment Standards Act* does not take away an employer's right to dismiss an employee. The Act does require that an employee be given working notice, severance pay or a combination of the two. The amount of compensation depends on how long the employee has been working.

This is intended to give the employee money or time to prepare for the loss of their employment. The Act, in effect, expects employers to communicate with employees about their prospects for continued employment.

Section 63(3)(c) of the Act says an employer does not have to pay severance or give working notice to an employee who is dismissed for 'just cause.'

Important: Whether or not an employee is entitled to severance is distinct from the question of wrongful dismissal. Wrongful dismissal cases are dealt with through civil courts and take many factors into account. An employer or employee involved in a wrongful dismissal action should seek legal advice.

Burden of proof

It is up to the employer to show that just cause exists. More than dissatisfaction with work performance is necessary to justify depriving an employee of the entitlement to compensation.

The employer must be prepared to show that the employee's behaviour or conduct was so unacceptable that it is not only cause for dismissal, but dismissal without compensation or notice in lieu of compensation.

What constitutes Just Cause?

The Director may consider any of the following to constitute just cause:

- Serious wilful misconduct. *
- Assault or harassment of co-workers.

- Breach of duty.
- Conflict of interest (especially, if it involves provable loss to the employer).
- Theft.
- Serious breach of company rules or practices.
- Fraud and dishonesty.
- Chronic absenteeism or tardiness.
- Serious undermining of the corporate culture.
- Unsatisfactory performance.

Some of these reasons, such as theft, fraud, dishonesty, or conflict of interest, require only one provable incident to justify dismissal without compensation or notice. Others, like poor performance, low productivity, absenteeism or tardiness, usually require an employer to advise the employee of expectations, and the consequence of dismissal for failure to meet expectations.

*Wilful misconduct means the employee knew what to do and deliberately did not do it, or knew what not to do, and deliberately did it. A mistake, especially if due to inexperience or lack of training, is not considered to be wilful misconduct.

There is no rule of law outlining what degree of employee misconduct constitutes just cause. The test for just cause has been set out as: 'Did the employee behave in a manner totally inconsistent with the continuation of employment?'

An employer would not be able to prove just cause if, by action or inaction, it condoned or forgave the misconduct.

Corrective discipline and just cause

In determining whether just cause exists, the Director will consider the concept of corrective discipline.

Simple dissatisfaction with performance is not just cause. Corrective discipline involves reasonable attempts by the employer to correct unsatisfactory performance.

Employees who fail to respond to corrective discipline may be terminated for just cause. The termination must relate to the matters that gave rise to the corrective discipline. The employer must prove that there has been a proper application of corrective discipline procedures.

Unsatisfactory performance

If an employee is being dismissed because of unsatisfactory performance, the Director expects employers to show the following criteria have been met:

- The employer makes the employee aware of an expected standard of performance. (The employer has the right to determine how the business will be conducted and can adopt any procedure as long as it is not unlawful, dishonest, or unsafe, and is within the ability of the employee to perform).
- In the event the employee failed to meet this standard, the employer has made reasonable efforts to assist the employee -- by training or otherwise -- to meet the expected performance standards.

- The employee, despite the employer's reasonable efforts to assist, fails to meet acceptable standards of performance.
- The employer has specifically told the employee that continued failure to perform to acceptable standards of performance would result in dismissal.

The employer has to show that the employee was warned of performance problems and that dismissal was the outcome for failure to meet reasonable performance standards.

For more information, see the Factsheet on [Termination of Employment](#).