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MVP: <https://employmentterminationtool.vercel.app/>

## Executive Summary

Wrongful dismissal remains one of the most common sources of employer liability in Ontario, largely due to miscalculations of statutory notice<sup>12</sup>, misunderstandings of common law notice requirements<sup>5</sup>, and errors in evaluating whether the high legal threshold for just cause has been met<sup>3</sup>. These compliance gaps frequently lead to litigation, aggravated damages, and reputational harm<sup>9</sup>. To address these risks, our team developed the Employment Termination Compliance Tool, an integrated platform that guides employers through ESA requirements, evaluates reasonable notice using the Bardal factors<sup>5</sup>, and generates termination letters aligned with Ontario standards. By consolidating statutory rules, common law principles, and documentation requirements into a streamlined interface, the tool reduces the likelihood of notice miscalculations, inconsistent HR practices, and procedurally unfair dismissals. This promotes defensible decision making, enhances compliance accuracy, and lowers the organization's exposure to wrongful dismissal claims.

## Legal Issue Analysis

The legal issue addressed in this project is wrongful dismissal. Wrongful dismissal occurs when an employer terminates an employee without cause and fails to provide the statutory or common law notice the employee is legally entitled to<sup>2</sup>. Terminations are also wrongful when employers rely on insufficient cause<sup>3</sup>, fail to satisfy ESA obligations such as notice, severance, or benefit continuation<sup>12</sup>, or when significant unilateral changes to employment terms amount to constructive dismissal<sup>2</sup>. These errors expose employers to substantial financial liability, aggravated damages<sup>9</sup>, and avoidable litigation. Our compliance tool is designed to ensure terminations are carried out in a manner consistent with both ESA standards and common law principles.

### Legal Test 1: ESA Minimum Notice and Severance Requirements

Ontario's Employment Standards Act requires written notice or pay in lieu when terminating without cause. Notice is typically one week per year of service to a maximum of eight weeks. Employees may also qualify for statutory severance under sections 64 to 66. Employers must continue benefits during statutory notice and issue final wages and the Record of Employment within required timelines.<sup>12</sup>

### Legal Test 2: Common Law Reasonable Notice (Bardal Factors)

Common law reasonable notice requires consideration of the Bardal factors, which include the employee's age, length of service, character of employment, and availability of similar work.<sup>15</sup> These factors often result in significantly longer notice periods than ESA minimums. In *Henderson v. Slavkin*, the court awarded damages because the employer used an unenforceable termination clause that failed to meet ESA benefit continuation requirements.<sup>1</sup>

### Legal Test 3: Standard for Dismissal with Cause

Cause dismissal requires proof of wilful misconduct or a fundamental breach of the employment relationship. Courts expect progressive discipline, prior warnings, and clear

documentation before cause can be justified. If the evidence does not meet this high standard, the dismissal will be treated as without cause.<sup>2 3</sup> The decision in *Wallace v United Grain Growers* highlighted how poor termination handling can increase damages due to bad faith.<sup>9 10 11</sup>

#### Legal Test 4: Constructive Dismissal

Constructive dismissal arises when employers make unilateral and substantial changes to fundamental employment terms. Examples include reducing compensation, changing job duties, or allowing a poisoned work environment. Courts treat these changes as termination events requiring notice. This standard is reflected in *Potter v New Brunswick Legal Aid Services Commission*.<sup>2</sup>

#### Legal Test 5: Bad Faith Termination (Aggravated Damages)

Bad faith termination occurs when employers conduct dismissals in an unfair, untruthful, or insensitive manner. Courts may award aggravated damages in these situations, as established in *Wallace v United Grain Growers*.<sup>9 10 11</sup>

### **Risk Assessment**

Ontario courts can set aside termination clauses that contain overly broad or ambiguous language and clauses that breach ESA requirements<sup>1</sup>. Invalid termination clauses can be grounds for wrongful dismissal, and the employer may be liable for full common law reasonable notice which is often far higher than ESA minimums.

Employers often assume that providing the ESA statutory minimum satisfies legal requirements. However, common law reasonable notice frequently ranges from 3 to 24 months, depending on the Bardal factors. Failure to consider common law notice exposes the business to successful wrongful dismissal claims<sup>2</sup>.

Business must provide warnings and/or opportunities to improve if an employee commits misconduct, insubordination, and incompetence. Business also must properly document the employees conduct and the steps taken to correct said conduct<sup>3</sup>. Businesses may face wrongful dismissal claims for failing to provide warnings and documenting activities before dismissing an employee.

Employers have an obligation to act in good faith when dismissing an employee, meaning that they must act honestly, cannot be misleading, or unnecessarily cruel<sup>4</sup>. Employers may open grounds for wrongful dismissal cases when terminating an employee in bad faith.

The employer may be liable to pay common law reasonable notice which can range from 3-24 months<sup>5</sup>. The employer may also be liable for ESA penalties if applicable. The courts may award

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<sup>1</sup> *Henderson v. Slavkin et al.*, 2022 ONSC 2964 (CanLII) at paras 38-43

<sup>2</sup> UL Lawyers Professional Corporation, "What Is Wrongful Dismissal in Ontario Explained", (24 August 2025)

<sup>3</sup> Willis Business Law, "Dismissing an Employee for 'Just Cause' in Ontario", (31 January 2025)

<sup>4</sup> UL Lawyers Professional Corporation, "What Is Wrongful Dismissal in Ontario Explained"

<sup>5</sup> Monkhouse Law, "Common Law Notice and Employment Standards Act", (8 August 2022)

additional moral, aggravated or punitive damages where the employer acted in bad faith in the manner of dismissal or mishandled the termination process<sup>6</sup>.

Companies may have a lack of systems in calculating notice, severance eligibility and reviewing employee contracts. Lack of manager training as wrongful dismissal cases may arise from how the termination was executed and if bad faith was involved. Companies and managers may also have a limited understanding of the bardal factors.

Henderson v. Slavkin et al., 2022 ONSC 2964 (CanLII)

The plaintiff, Henderson, sued the defendant, Slavkin and Kellner, for wrongful dismissal due to invalid clauses that violated the ESA standards for benefit continuation during the notice period<sup>7</sup>. The employee was entitled to 15 months reasonable notice which far exceeds the ESA minimums<sup>8</sup>.

Wallace v. United Grain Growers Ltd., 1997 CanLII 332 (SCC), [1997] 3 SCR 701

During this case the courts held that employers have an obligation to act in good faith and fair dealing in the manner of dismissal<sup>9</sup>. The employee, Wallace had a strong performance record during his tenure and was then dismissed without warning. It was also rumored that Wallace was involved in wrongdoing leading him to suffer depression, mental distress and loss of reputation<sup>10</sup>. The courts held that UGG acted in bad faith and awarded 24 months' worth of salary in damages for wrongful dismissal as well as \$15,000 for aggravated damages<sup>11</sup>.

## Solution Description

Our solution guides managers through a structured, three-part workflow to ensure legal compliance. It begins with the Ontario Termination Compliance Checklist, which requires active confirmation of all statutory obligations under the Employment Standards Act<sup>12</sup>. Managers then use the Ontario Bardal Notice Calculator to fulfill the common-law analysis, inputting key factors to generate a quantified notice range that highlights the financial risk of relying solely on ESA minimums. The process concludes with the Ontario Termination Letter Generator, which synthesizes all inputs into a transparent, compliant letter documenting both statutory and common law entitlements<sup>13</sup>.

The tool executes specific legal compliance functions through its integrated features. It enforces statutory adherence by systematically verifying compliance with ESA sections governing notice, severance, and benefits. By implementing the Bardal factors, it quantifies common law liability, transforming abstract legal principles into concrete risk assessments. Additionally, it creates

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<sup>6</sup> UL Lawyers Professional Corporation, "What Is Wrongful Dismissal in Ontario Explained"

<sup>7</sup> Henderson, *supra* note 1 at paras 38-43

<sup>8</sup> Henderson, *supra* note 1 at para 84

<sup>9</sup> Wallace v. United Grain Growers Ltd., 1997 CanLII 332 (SCC), [1997] 3 SCR 701 at para 95

<sup>10</sup> Ibid., at para 108

<sup>11</sup> Ibid., at para 148, 151

<sup>12</sup> Government of Ontario, *Termination of Employment, Your Guide to the Employment Standards Act* (2024)

<sup>13</sup> Monkhouse Law, "Common Law Notice and Employment Standards Act", (8 August 2022)

procedural safeguards by emphasizing the high standard for "just cause" and generating an auditable record of the entire termination process.

Ontario Termination Compliance Checklist

Ensure all ESA and common-law requirements are met before proceeding with termination

⚠ Important Disclaimer: This tool does not replace legal advice. Consult with an Ontario employment lawyer before making termination decisions.

✓ ESA Written Notice Requirements

☐ Has written notice of termination been provided? (ESA s.57-60)  
OR has pay in lieu been provided instead of notice? (ESA permits either)

☐ Was the notice period correctly calculated based on years of service?  
ESA requires 1 week per year of service, up to 8 weeks maximum.

✓ Statutory ESA Entitlements

☐ Has termination pay been calculated correctly?  
Termination pay must equal wages for the notice period.

☐ Is the employee entitled to severance pay? (Worked 5+ years AND employer's Ontario payroll ≥ \$2.5 million)  
ESA s.64-66: Severance = 1 week per year of service, up to 26 weeks.

✓ Just Cause (Wilful Misconduct)

☐ Is the employer alleging wilful misconduct as just cause?  
If NO → ESA notice/severance must be paid. If YES → employer must meet the very high ESA standard.

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✓ Common-Law Analysis

☐ Has a Bardal analysis been completed to identify possible reasonable notice exposure?  
Required only for non-unionized employees to assess common-law notice obligations.

✓ Documentation & Administrative Compliance

☐ Has the termination meeting plan been prepared?  
Proper documentation protects both parties and ensures clarity.

☐ Has final pay been scheduled within required timelines?  
ESA pay deadlines apply - typically 7 days after termination or on next regular pay date.

☐ Has the Record of Employment (ROE) been completed and issued?  
ROE must be issued within 5 days of termination or interruption of earnings.

☐ Has all accrued vacation pay + unpaid wages been delivered?  
Required on termination - all outstanding amounts must be paid.

☐ Has benefit continuation during notice been arranged? (ESA s.60)  
Employer must continue benefits during the statutory notice period.

Check Compliance

Ontario Termination Compliance Checklist

Employment Termination Tool

Compliance ChecklistBardal CalculatorLetter Generator

Ontario Bardal Notice Calculator (Common Law)

Calculate estimated reasonable notice period based on Bardal factors

⚠ Important Disclaimer: Educational Estimate Only — Ontario common-law notice is case-specific and varies significantly. Courts may award substantially higher or lower amounts. This tool does not replace legal advice from an Ontario employment lawyer.

Required Information

Employee Age

Age at time of termination affects job search prospects.

Length of Service (years)

Total years with the employee.

Character of Employment

Select...  
Higher positions typically receive longer notice periods.

Availability of Similar Work

Select...  
Job market conditions affect time needed to find new employment.

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Optional Information

Industry

e.g., Technology, Finance, Healthcare  
Industry context may affect notice period.

Annual Salary (\$)

e.g., 75000  
Salary level can be a factor in determining notice.

Calculate Notice Period

Ontario Bardal Notice Calculator

**Ontario Termination Letter Generator**  
Generate an Ontario-compliant termination letter template

**Important Disclaimer:** This document is provided for educational purposes only and does not constitute legal advice. Have all termination letters reviewed by an Ontario employment lawyer before delivery. For advice regarding your specific situation, consult qualified legal counsel.

**Basic Information**

Employee Name:

Employer Name:

Termination Date:

**Notice Period Information**

ESA Statutory Minimum Notice (weeks):

ESA minimum: 1 week per year of service, maximum 8 weeks (or pay in lieu).

**ESA Severance Pay (weeks, if applicable)**

ESA s.64-66: if employee has 5+ years AND employer Ontario payroll > \$2.5M, severance = 1 week/year (max 26 weeks).

**Common Law Notice - Minimum (weeks)**

From your Bardal calculation - lower end of reasonable notice range.

**Common Law Notice - Maximum (weeks)**

From your Bardal calculation - upper end of reasonable notice range.

**Additional Payments & Benefits**

**Additional Ex Gratia Payment (weeks, if any)**

Any additional payment beyond calculated common-law notice as goodwill gesture.

**Benefits Continuation Period (months)**

ESA s.60 requires benefit continuation during statutory notice period. May be extended for common-law notice.

**Generate Letter**

## Ontario Termination Letter Generator

This approach directly mitigates key wrongful dismissal risks. It eliminates notice miscalculations by ensuring offers reflect common law standards rather than inadequate ESA minimums. The system also prevents improper cause assertions by requiring managers to acknowledge the stringent legal threshold for "wilful misconduct" before proceeding with such terminations<sup>14</sup>.

The solution enables businesses to satisfy core legal requirements effectively. The Bardal Calculator ensures compliance with the common law reasonable notice standard from *Bardal v. Globe & Mail* through systematic application of its four-factor test<sup>15</sup>. Simultaneously, the checklist guarantees adherence to minimum statutory entitlements under the Employment Standards Act. Finally, by filtering "just cause" allegations, the tool guides businesses toward meeting the rigorous evidentiary standards required for such defenses, as established in jurisprudence like *McKinley v. BC Tel*.<sup>16</sup>

## Implementation Considerations and Limitations

For the business to implement and use the solution, the tool requires training HR staff and managers on proper data entry, interpreting notice-period and severance outputs, and applying the compliance checklist. Organizations should ensure employee information is current and have internal compliance personnel review all outputs before any termination decision is finalized. They should verify that the tool is accessible to managers with varying abilities and needs.

Beyond the tool, businesses must continue reviewing employment contracts to confirm termination clauses remain enforceable and should obtain legal advice for higher-risk cases, such as those involving senior employees, potential discrimination issues, or just-cause allegations.

<sup>14</sup> MacLeod Law Firm, *Wrongful Dismissal: Recent Case Law Increases Legal Uncertainty* (10 Jan. 2024)

<sup>15</sup> *Bardal v. Globe & Mail Ltd.*, 1960 CanLII 294 (ON SC)

<sup>16</sup> *McKinley v. BC Tel*, 2001 SCC 38 (CanLII), [2001] 2 SCR 161

Employers must also maintain proper documentation, including written warnings and records of misconduct.

There may be potential challenges in the adoption of the tool such as resistance from HR or managers may occur, especially if they view the tool as burdensome or mistake it for legal advice. Smaller employers may struggle with the documentation and resource requirements. The tool's accuracy depends on correct and complete data entry, and integration with existing HR systems may raise privacy concerns.

The tool has a limited scope because it does not cover mass terminations, unionized workplaces, human rights or accommodation issues, federally regulated employees, constructive dismissal, or contract specific exceptions, which are governed under special rules.<sup>17</sup> It also cannot verify the accuracy of information entered by HR and only applies general ESA rules. Since it is advisory, managers may ignore its recommendations, and incomplete, omitted or inaccurate inputs can reduce its effectiveness. If there are bad actors, managers or HR can manipulate the inputs to alter the outcome as the tool relies on the honesty of managers and HR.

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<sup>17</sup> Government of Ontario, *Termination of Employment*, Your Guide to the Employment Standards Act (2024)

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