

Layoff FAQ for Employers

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PLEASE NOTE *The below information on layoffs does not pertain to unionized workplaces or some specific industries (construction, small farms, etc.).*

WHEN CAN I LAYOFF EMPLOYEES?

If you're expecting or seeing significant decrease in business, you can institute layoffs. You do not need to layoff all employees. The list below indicates those categories that qualify for layoffs (use Code A in your ROE):

- a. end of contract or season
- b. end of casual/part-time work
- c. end of school year
- d. temporary shutdown of operations
- e. permanent shutdown of operations
- f. position eliminated/redundant
- g. company restructuring
- h. employer bankruptcy or receivership

Ensure that when making decisions you are not infringing on Human Rights legislation and you are not discriminating based on protected grounds.

MY EMPLOYEE HAS NOT BEEN TO WORK FOR A WEEK, SHOULD I LAY OFF?

Yes, they have experienced an interruption in earnings and must be issued an ROE (learn more about ROE filing options [here](#)). An interruption of earnings is when an employee has had or is anticipated to have **seven consecutive calendar days with no work and no insurable earnings from the employer** (some [exceptions](#) do apply).

This situation is called the **seven-day rule**. For example, the seven-day rule applies when employees quit their jobs or are laid off, or when their employment is terminated. When the seven-day rule applies, the first day of the interruption of earnings is considered the last day for which they were paid.

When an employee's salary falls **below 60% of regular weekly earnings** because of illness, injury, quarantine, pregnancy, the need to care for a newborn or a child placed for the purposes of adoption or the need to provide care or support to a family member who is critically ill, an interruption of earnings occurs.

HOW DO I LAYOFF EMPLOYEES?

To answer this question, we reference section 62 of the [Employment Standards Code](#):

62(1) An employer who wishes to maintain an employment relationship without terminating the employment of an employee may temporarily lay off the employee only by giving the employee a written layoff notice.

(2) Unless a collective agreement provides otherwise, a layoff notice must be given to the employee

- (a) at least one week prior to the date that the layoff is to commence, if the employee has been employed by the employer for less than 2 years,
- (b) at least 2 weeks prior to the date that the layoff is to commence, if the employee has been employed by the employer for 2 years or more, or
- (c) if unforeseeable circumstances prevent an employer from providing the notice in accordance with clause (a) or (b), as soon as is practicable in the circumstances.

62(3) The layoff notice must

- (a) state that it is a temporary layoff notice,
- (b) state the date that the layoff is to commence,
- (c) include a copy of sections 62 - 64, and
- (d) include any other information provided for in the regulations.

DO I HAVE TO ISSUE THE ROE IMMEDIATELY?

Electronic ROE	five calendar days after the end of the pay period
Paper ROE	five calendar days of the employee's interruption of earnings or the date you become aware of the interruption of earnings

DO I PAY OUT VACATION PAY FOR A LAYOFF?

No, keep vacation pay for if/when the employee is called back to work. If you do not call back to work from layoff, you pay out vacation and termination pay (pay in lieu of notice) is due at that time.

WHAT WILL EMPLOYEES BE PAID ON EMPLOYMENT INSURANCE?

Employees who are terminated without cause and on layoff are likely to receive EI. For most people, the basic rate for calculating EI benefits is **55% of the average insurable weekly earnings**, up to a maximum amount. As of January 1, 2020, the maximum yearly insurable earnings amount is \$54,200. This means that employees can receive a maximum amount of \$573 per week. Because the last updated unemployment rate in Southern Alberta is 7.3%, employees are required to have 630-664 insurable hours. The more hours, the more time the employee will be covered.

CAN MY EMPLOYEE WORK WHILE ON EI?

Yes, you can recall employees for short periods of work, but it must be under a week. Employees report their earnings and receive **50 cents of their EI pay for every dollar they earn, up to 90 percent of their previous weekly earnings** (roughly four and a half days of work). Above this cap, the EI benefits are deducted dollar-for-dollar.

Visit the Government of Canada [EI Information for Employers](https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers.html) page here:

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HOW LONG IS A LAYOFF FOR?

To answer this question, we reference Temporary Layoff section 63 of the [Employment Standards Code](#):

63(1) The employment of an employee who is laid off for one or more periods exceeding, in total, 60 days within a 120-day period is deemed to have been terminated. If you have completed a layoff recently, your recall date is mid-May.

As the employer, you now have two options:

- 1) Recall to work (1 weeks' notice required)
- 2) Terminate, pay in lieu of notice is required

HOW DO I RECALL EMPLOYEES BACK TO WORK?

Employers must provide a written notice to the laid off employee and it must:

- (a) be in writing. (*contact [Kate Miller](#) of Avail CPA – HR Consulting for a free template)
- (b) be served on the employee (you need proof the employee received the notice).
- (c) state that the employee must return to work within 7 days of the date the recall notice is served on the employee.

WHAT IF I DO NOT RECALL EMPLOYEES BACK TO WORK?

Termination notice can be given as working notice or pay in lieu of notice. There are two ways in which we look at terminations:

- 1) Employment Standards minimum
- 2) Case Law when employers are taken to court

Employment Standards minimum:

One week	for employment of more than three months, but less than two years,
Two weeks	for employment of two years, but less than four years,
Four weeks	for employment of four years, but less than six years
Five weeks	for employment of six years, but less than eight years
Six weeks	for employment of eight years, but less than 10 years
Eight weeks	for employment of 10 years or more

Case Law suggests anywhere between 2-4 weeks per year of service. The difference is vast. If you would like to talk about this in more detail, please contact [Kate Miller](#) of Avail's HR Consulting department or an employment lawyer.

LEADERSHIP PRACTICES IN DIFFICULT TIMES

1) **Communicate.** Update your employees often, tell them as much as possible, and be as open and honest as you are able to.

2) **Maintain the relationship you built.** Good leaders have built incredible relationships with their employees. Do not lose this approach when instituting layoffs or other measures.

3) **Positivity goes a long way.** Focusing on opportunities and the positive outcomes as a leader will help your employee's morale. Ask all your employees to write down every possible positive outcome, and you may have some positive innovation as the result of this exercise.

4) **Lead by example.** Our government is instituting new measures every day and it is important for you to lead by example; social distancing, working from home, etc. Incorporating stress management practices and encouraging mental wellbeing during this time is also vital.