

# Canadian Termination Insurance for Employment Practices Insureds

CHUBB®



First introduced by Chubb, our employment practices liability policy provides an insuring provision, Canadian Termination Coverage which provides affirmative coverage that applies in the event of termination of an employee.

Under Canadian employment law (both statutory and common law), termination can be done in one of two ways: (1) termination without cause and (2) termination with cause. An employee that is terminated without cause is entitled to “reasonable notice” of termination. An employee that is terminated with cause has committed an act of misconduct and is not entitled to “reasonable notice”. Chubb’s Canadian Termination insuring provision similarly reacts in the case of either a termination without or with cause.

In Canada, the power to make laws is divided between the federal and provincial governments. In the area of employment law, the federal government has exclusive federal jurisdiction over very specific works, such as shipping, railways, broadcasting, airlines and banks. Many employment relationships, however, do not come within federal

jurisdiction and are governed by the law of the province in which they are located. With the exception of Quebec, employment law is very similar across the provinces.

## **Termination without cause**

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An employee’s entitlements on termination without cause arise from three potential sources:

- minimum standards established by provincial or federal legislation;
- the right to reasonable notice of termination at common law; and
- termination provisions in an enforceable, written employment contract.

## **Statutory Requirements: Notice of Termination**

Among the provinces, legislation has been enacted that set out minimum standards that govern the basic terms of employment, including termination. Employers are not permitted to contract out of these minimal standards. Statutory termination and severance pay are those amounts which are

defined by the relevant provincial or federal employment legislation and are mandatory minimums that an employer is required by law to pay when an employee is terminated without cause. Most provinces mandate approximately one week of **termination notice** or pay in lieu of notice for each year of an employee's service to a maximum of eight weeks. These amounts are defined by the relevant provincial or federal employment legislation.

#### **Common Law Requirements: Reasonable Notice**

The entitlements to notice of termination and severance pay established by legislation are minimum standards only and greater obligations are usually imposed by common law.

**Common law notice of termination** is inclusive of minimum statutory notice entitlements. Where there is no contract between the parties that would govern the circumstances of termination and notice, the court will imply an obligation on the employer to provide "reasonable notice" of termination of employment or payment in lieu of notice, in the event of a termination without cause. When determining the period of reasonable notice, an employer is asked to consider various factors on a case by case basis, such as the employee's:

- age;
- length of service and compensation;
- position within the company;
- level of training and education;
- and availability of alternative work.

It is more of an art than an exact science and an employer is guided by the facts of each individual case, as well as Canadian case law, as opposed to statute. Failure to provide an employee with reasonable notice may give rise to a claim for damages for "wrongful termination".

#### **How Does Chubb's policy react in a without Cause termination**

In recognition that the calculation of common law notice is more of an art, under the Canadian Termination Insuring Clause, Chubb will provide insurance for any additional common law reasonable notice amount owing to an employee at settlement or judgement in excess of the original termination offer given to the employee at the time of termination.

It does not insure contractual terms, statutory termination pay and/or severance pay minimums described above. These amounts are specifically excluded under the policy as these amounts are set out in clear terms in the relevant employment legislation. Failure to pay these amounts would be a clear and intentional breach of employment legislation.

Our Chubb claims examiner will work closely with our insured and where a good faith error has occurred in calculating the appropriate amount of common law reasonable notice, Chubb will look to assist the employer in negotiating a settlement with the employee, and would look to provide insurance based on the additional amount(s) determined to be owing either in settlement negotiations or by virtue of a judgement rendered.

#### **Termination with cause**

If an employee is terminated with cause, the employer is not obligated to pay the employee any amounts. However, the Canadian courts have acknowledged that the legal standard for proving cause is extremely high. Courts are inclined to make a finding of cause where the employee's conduct constitutes serious misconduct, a habitual neglect of duty, or gross incompetence. Poor performance is not sufficient to support a case for termination for cause and each for cause termination is very dependent on its own discrete set of circumstances. As a result, the majority of terminations in Canada are on a without cause basis.

#### **How does the Chubb policy react in a with cause termination?**

If the insured employer had a legitimate reason to terminate an employee for cause, but it is later determined that proving cause may be difficult, Chubb will work with our insured and attempt to resolve the claim and the Policy will provide insurance for the employee's common law notice entitlement. The employer will still be required to pay the statutory termination pay and/or severance pay minimums described above in the event of any settlement or judgment.

Due to the high legal threshold required to establish a with cause termination, the Policy requires an insured to obtain a written opinion from independent legal counsel that would confirm that they have sufficient grounds for the termination with cause. If a claim is made as a result of the decision to terminate with cause, the Policy will reimburse the insured for these costs to obtain a written opinion by treating them as defence costs under the Policy, up to a \$25,000 sub-limit. The independent legal opinion will also assist an insured with maximizing the insurance available under the Policy and avoiding any appearance of wrongful or intentional conduct.

#### **Why Chubb?**

Chubb has earned its leadership position in providing business insurance for organizations by consistently providing innovative insurance products, superior service, unparalleled underwriting expertise, and unflinching commitment to fair and prompt claims handling.

We are pioneers in the specialty insurance marketplace. Operating in Canada for more than 30 years, we are one of the largest providers of EPL Insurance.

Our financial stability and ability to pay claims rate among the best in the insurance industry, as attested by the ratings we receive from the leading independent insurance rating services.

Please see our [website](#) for details on Chubb's EPL Loss Prevention Program which includes:

1. ChubbWorks<sup>SM</sup> Website
2. Loss Prevention Consultant Services
3. [Toll-Free Hotline](#)

## **Superior Claims Management**

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The true measure of an insurance carrier is how it responds to and manages your claim. Chubb is renowned in the industry for fair, prompt claims handling and unparalleled claims service. We have a significant Specialty Claims team in Canada with nine dedicated examiners who handle all lines of executive protection business, including EPL, three of whom are based in Quebec and are fluently bilingual. Unlike some insurers, we manage your claim, no matter where in the world the claim is commenced, using our own Canadian in-house claims examiners. Utilizing a team approach that keeps you part of the process, we work closely with you, experienced panel counsel, and your agent or broker to obtain the very best possible result for your claim, applying the experience we've gained handling EPL claims for over 20 years in Canada.

There are benefits to choosing a local carrier with a network of in-house examiners worldwide that can assist the Canadian examiners on any jurisdiction specific issues. We have US in house counsel and panel relationships with employment counsel across the globe that allow us to obtain competitive rates at top tier employment law firms, ensuring that your purchased limits will go farther. Our team is well versed in legal and risk issues inside and outside of Canada that affect your company every day.

Please contact your Chubb Claims representative for a listing of our pre-approved law firms.

Chubb Insurance Company of Canada  
[www.chubb.com/ca](http://www.chubb.com/ca)

## **Chubb. Insured.<sup>SM</sup>**

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