

Thinning The Herd: Terminations And Severance For Ontario Farms



Navigating Terminations and Severance Pay in Ontario's Farming Sector

The farming sector in Ontario is unique in many ways, and employment laws reflect that. One area of concern for both farm owners and workers is how terminations and severance pay are handled under the *Employment Standards Act, 2000* ("**ESA**"). The farming exemption provides significant flexibility, but it does **not** eliminate an employer's obligations when it comes to termination and severance.

What Does the Farming Exemption Cover?

The farming exemption, as outlined in *Ontario Regulation 285/01* under section 2(2), excludes farm workers from certain ESA provisions such as hours of work and overtime pay. These exemptions are designed to reflect the unique demands of agricultural work, which can be highly seasonal and subject to the unpredictability of weather and harvest cycles. However, these exemptions have their limits.

Termination Entitlements

Farm employees are **not exempt** from the basic requirements

surrounding termination notice under the *ESA*. If a farm worker is terminated after three months of service, they are entitled to notice of termination or pay in lieu of notice.¹ The amount of notice depends on the length of service – notwithstanding some exceptions, it's roughly 1 week per year of service up to a maximum of 8 weeks.

Severance Pay in the Farming Sector

Severance pay, unlike termination notice, is only applicable in certain cases under the *ESA*². For farming employers, this usually applies if the business has a payroll of \$2.5 million or more, or if the termination affects 50 or more employees within a six-month period due to a permanent discontinuance of the business. In these cases, employees are entitled to severance pay, which is distinct from termination pay. Severance pay is calculated as one week of pay for each year of service, up to 26 weeks. Severance pay cannot be provided as working notice and must be provided as a payment.

The farming exemption does not negate these entitlements if the conditions are met. Farms with significant payrolls or larger employee numbers can be subject to severance pay obligations just like businesses in other sectors.

SAWP or TFWP and Termination Entitlements

Farm employers who hire foreign workers under programs such as the Seasonal Agricultural Worker Program (“SAWP”) or Temporary Foreign Worker Program (“TFWP”) must also be mindful of their obligations under the *Employment Protection for Foreign Nationals Act, 2009* (“EPFNA”). Terminations involving foreign workers must align not only with the *ESA* requirements but must also conform to EPFNA requirements to ensure that workers are treated fairly and without exploitation. Violations can lead to significant penalties, so farm employers should prioritize compliance when managing foreign workers' employment.

When Exemptions May Apply

There are specific cases where farm workers may not be entitled to notice or severance. For example, if an employee is hired under a fixed-term contract for a specific project or seasonal work and the employment ends at the conclusion of the term in the contract, the employer may not be required to provide notice. This is common in farming operations that rely on seasonal labour during peak periods, such as planting or harvesting.

Best Practices for Farm Employers

Terminations are tricky in any business, and the farming sector is no different. Here are some best practices for farm employers to ensure compliance with the *ESA*:

- **Draft clear employment contracts:** Outline whether a position is seasonal or project-based before hiring to avoid misunderstandings about termination rights. If seasonal or fixed-term, ensure that the employment relationship does not extend beyond the final date listed in the contract.
- **Track service accurately:** Keep records of how long each employee has been with the company, as this will affect their entitlement to notice or severance pay.
- **Consult with legal experts:** Given the complexities of farming exemptions, it's always a good idea to get professional advice to ensure you're compliant with employment laws.

Special Note Regarding Common Law Entitlements

ESA minimums are no match for the common law notice period some employees may be entitled to if they are employed without a contract OR if their contract does not contain a valid

termination clause. Regardless of your industry, ensure that your employment contracts are compliant to avoid increased liabilities upon termination.

Conclusion

By understanding the interplay between farming exemptions and termination rights, farm employers can manage their workforce more effectively and avoid costly mistakes.

If you would like to know more about farming exemptions, please refer to other blog posts in our series [here](#). For more specific advice on the total consideration for entitlements when terminating your farm workers, [please reach out to us](#).

1. *ESA at section 57.* 2. *ESA at section 64.*

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Find out more and explore further thought leadership around [Employment Law and Labour Law](#).

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