



NINE TO FIVE

## I was recruited to a new job, but was then quickly fired. Can I get severance?

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### **The question**

I was recruited into a new role and quit my previous job to take the new one. Unfortunately, I was let go one month into a three-month probation period. Does this mean I'm not entitled to any severance or compensation? What are my options?

### **The first answer**

Shibil Siddiqi, partner, Progressive Barristers, Toronto

In Ontario, employees terminated less than three months into their employment are not entitled to any notice or compensation under Ontario's Employment Standards Act (ESA). However, probationary periods do not arise from legislation; they are established by the employment contract. Probationary periods longer than three months attract ESA protections. And in some circumstances, even shorter-term probationary employees may receive compensation under the common law or the Ontario Human Rights Code.

Some employment contracts provide for set compensation upon termination. Most contain termination clauses that purport to restrict compensation to minimum ESA entitlements. Fortunately for employees, not all termination clauses are valid and enforceable. Termination clauses are void if they try to limit entitlements or rights under the ESA or if their meaning is ambiguous.

A void termination clause entitles employees to common law reasonable notice (or pay in lieu thereof) upon termination. Such compensation is usually minimal for short-term employment. However, it can be more significant for employees in senior or highly specialized positions, or where employees have few other opportunities in the job market. Greater notice may also be provided where an employer used undue pressure tactics to induce an employee to quit a secure job to take up a new position.

Finally, regardless of the employment contract and ESA, an employee may be entitled to compensation if a ground protected by the Human Rights Code, such as race, gender or disability, was a factor in the termination.

The interpretation of termination clauses can be a highly technical exercise and most employees can benefit from some legal advice on their options following termination.

### **The second answer**

Josh Hobbs, employment lawyer, Purnell Employment Law, Calgary

You raise a valid concern. Given the three-month probation, and the fact you were terminated during that probation, you won't be entitled to statutory severance. That's because, in most provinces, employers are not required to pay statutory severance if they terminate an employee within 90 days. However, if a court were to find that the second employer induced you away from your previous job, then you may be entitled to common law severance.

Inducement is when an employer offers someone certain perks or promises to convince them to quit a secure, well-paying job and join their company. These can be things like a higher salary, better benefits or improved working conditions that aren't normally offered to other employees.

If a terminated employee can show that they wouldn't have joined the company without these inducements, a court may award a greater amount of severance than what they would have otherwise received. The amount of this severance would depend on whether the previous job was secure and the extent of the employer's efforts in attempting to recruit the individual.

So, if you can establish that your employer had induced you to quit a secure, well-paying job, then you may be entitled to common law severance.

As to your options, we recommend discussing your situation in greater detail with an employment lawyer who specializes in working with employees. As the above explanation is only cursory, a consult is necessary in order to properly advise you of your rights and options.

<https://www.theglobeandmail.com/business/careers/career-advice/article-i-was-recruited-to-a-new-job-but-was-then-quickly-fired-can-i-get/>

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