

CHAPTER SEVENTEEN

“I Quit”: Termination of the Employment Contract by the Employee

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I. The Test for Assessing Whether an Employee Has Resigned – A Quit Isn’t Always a Quit

- The employee’s intention to resign must be clear and unequivocal.
- **Objective test:** asks whether a reasonable person of normal intelligence looking at what happened would conclude that the employee had resigned. (*Upcott v. Savaria Concord*)

II. The Requirement for an Employee to Give an Employer Notice of Termination

- Ontario Employment Standards Act does not require employees to provide notice to employers.
- Common law judges imply 'reasonable notice' requirement, unless contract includes an expressed requirement for EE to provide notice of termination to ER.
- *Bardal* factors do not guide the calculation of employee notice. Purpose of notice for EE is different than for ER.
- What is purpose of requiring EEs to provide notice to ERs? (*Tree Savers*)
- *Notice required by EE is less predictable than amount required for ER.*

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III. Calculating Damages When an Employee Fails to Give Proper Notice of Termination

- Damages for breach of contract requires that victim be "made whole."
- Damages assessed based on the actual harm caused to the employer due to lack of notice, not the decision to quit itself.
- Damages incurred from employee lack of notice are usually so nominal that employers don't bother to sue.
- 'Wrongful quitting' lawsuits are far less frequent than 'wrongful dismissal' lawsuits.

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Questions and Issues for Discussion

1. Explain the legal test the courts apply when considering whether an employee has terminated the employment contract.
2. Explain two important differences in the law's treatment of the notice of termination required of employees versus employers.
3. What is the rationale for requiring employees to provide employers with reasonable notice of termination?
4. Can the employer and employee agree to a period of notice required by an employee to terminate the contract that is different from that of reasonable notice?
5. On what basis do the courts assess damages for a breach by an employee of the contractual requirement to give notice of termination?