

# The right way to say goodbye

*Most firms have formal, written severance policies: Global survey*

BY LIZ BERNIER

**WHEN IT COMES** to termination pay, Canadian firms are pretty much on par with their global counterparts, according to a Right Management global benchmarking survey of 1,800 senior leaders and HR professionals in 19 countries.

For example, top executives dismissed without cause in Canada receive an average of 3.46 weeks pay per year of service. The global average is 3.48 weeks, while the United States ranks near the bottom at 3.16 weeks, found *Severance Practices Around the World*.

Severance is most often offered as a lump sum payment, and 55 per cent of respondents have a cap on how much pay in lieu of notice they will provide.

Common non-monetary benefits in a severance package include assistance programs, continued benefits such as health care and financial compensation, and — less often — continued use of company resources.

Reference letters can also be useful to the outgoing employee, but they are increasingly hard to get in Canada, according to Ron Minken, managing director of Markham, Ont.-based Minken Employment Lawyers.

“Companies are more into giving a detailed confirmation letter, so really no qualitative statements about the employee such as ‘They’re a great employee.’ And we believe this is as a result of companies either being U.S.-based or -influenced. Quite often, U.S. companies don’t give letters of reference,” he said.

## Canadian trends

Having a formal policy on severance practices is more common with larger employers — and the majority of firms (75 per cent) have formal, written policies, found the survey. But a formal policy isn’t necessarily the best option, according to Kenneth Krupat, a Toronto-based employment lawyer.

“There are issues under Canadian law as to whether these formal severance policies are ultimately enforceable... generally, if the employees have signed a contract when they first started that incorporated the terms of those severance policies, then that would be enforceable. But if they haven’t... (the policy) is not necessarily always binding on the employee when there’s a dismissal,” he said.

The best way to incorporate a formal policy would be to include it in the terms of severance in the employment agreement or contract, said Minken.

In Canada, there’s been a trend over the past few years of older employees staying on in the

hope of getting a package, said Natalie MacDonald, co-founder of Rudner MacDonald in Toronto and author of *Extraordinary Damages in Canadian Employment Law*, published by Carswell.

“With the end of mandatory retirement, we’re finding more older employees basically wanting to remain for a package,” she said.

“More employers are terminating with a 50 per cent clawback, so (they are) providing reasonable notice but making it subject to a 50 per cent clawback... So the emphasis and the impetus is really on the employee to find comparable employment.”

## Continuing benefits

There are also issues around continuing benefits, said Krupat. In Ontario, for example, employment standards legislation requires employers to continue short- or long-term disability, or even life insurance, he said.

“Being able to continue more of those extended health benefits is something employees often want, and sometimes can be a challenge,” said Krupat. “Sometimes, it doesn’t cost the employers a huge amount of money relative to paying more months of salary, but it’s viewed as a very helpful thing from an employee perspective.”

As a best practice, employers should strive to offer health benefits as long as possible, he said.

“We generally try to convince employers that it’s a good idea to continue extended health and dental benefits for as long as they can — many families rely on those benefits.”

Employers may also want to consider offering outplacement services to displaced employees, something provided by more than two-thirds (68 per cent) of survey respondents.

“The more outplacement counselling, the easier the transition will be for the employee, the easier they will find work, so I think that is a good value for a company,” said Minken.

Outplacement is advantageous to both the employer and employee, particularly when there are clawback provisions in the severance package, said Krupat.

“It’s a very good business practice for an employer to offer outplacement assistance to encourage the employee to show up right away, to start looking for work. And as soon as that employee finds work, then of course the employer is going to be saving a whack of money on the continuing severance obligation. And the employee’s going to be in a better position,” he said.

“It may well be quite a bit cheaper for the employer to pay for some kind of outplacement

## GLOBAL SNAPSHOT

### How much termination pay do top execs get?

Number represents weeks of pay per year of service

Global average	3.48
China	4.24
Japan	4.05
Netherlands	4.02
Singapore	3.95
France	3.9
Sweden	3.73
Spain	3.64
Germany	3.52
U.K.	3.51
Belgium	3.5
<b>Canada</b>	<b>3.46</b>
India	3.38
Italy	3.16
Mexico	3.27
Brazil	3.23
U.S.	3.16
Hong Kong	3.1
Switzerland	2.75
Australia	2.69

Source: Right Management

package then to pay for another month or two’s salary.”

Providing outplacement support is also critical in mitigating risk, said Bram Lowsky, group executive vice-president, Americas, at Right Management in Toronto. It also reduces the chance the employee will go to websites, such as Glassdoor, and post a scathing review of the company, he said.

Crunching the numbers is certainly important but, in the end, the most important factor is how the termination process is handled, said Minken.

“Often, the biggest issue for the employee is not how much money is paid but how the termination is done,” he said. “We know there’s no perfect way to do this, but there’s a number of

good points to follow.’

### Best practices

Having a witness present, considering timing and personal events in the employee’s life, having the termination meeting face-to-face and handling the process with respect are all critical steps, said Minken.

Also, keeping the meeting short, not going into too much detail about the reasons for termination and giving the employee time — and, possibly, funds — to get legal advice about the package are also best practices.

“Often, what really triggers employees to be launching lawsuits and being all upset is the way they feel they were treated out the door — something that was said or the way it was handled or that they were just walked out of the premises

summarily even when it was a non-cause dismissal and they would’ve liked the time to collect things, to say goodbye,” said Krupat.

“If it’s really a situation where people aren’t being let go for performance or as a result of some misconduct, then employers need to find ways to deal with people as fairly as they can, and as professionally as they can.”

If an employer can be shown to have acted in bad faith during the termination process, there is the possibility it will have to pay moral damages — and, in extreme cases, punitive damages as well, said MacDonald.

But handling the termination process well doesn’t end when the employee walks out the door. It’s also important to provide support after the termination meeting has ended, said Lowsky.

“People don’t often remember everything they heard in that meeting because they just lost their job... (It’s important) to have support, to have it in writing and to follow up with that, and to have a person that they can be able to connect with afterwards for any questions they might have.”

And having good severance and termination practices isn’t just about avoiding lawsuits — they can also help to safeguard an employer’s reputation.

“(Employers) need to care and recognize how important it is to protect their employer brand,” said Lowsky. “In our age of social media, treating people with care and respect and sensitivity — that human element — directly ties back to your brand, as well as how you attract future employees.”

## GLOBAL SNAPSHOT

# Severance around the world

Which of the following are required or regulated by law in the event of employee terminations?

	Global	Americas	Europe	Asia Pacific
Length of advance notification given to employees	62%	53%	63%	72%
Notification of unions	47%	45%	51%	45%
Notification of government	41%	34%	44%	44%
Minimum time period an employee will receive termination benefits	47%	38%	51%	58%
Minimum monetary amount of benefits	45%	35%	45%	55%
Continuation of benefits	31%	38%	23%	35%
Minimum tenure at company needed for employee to qualify	49%	38%	51%	57%
Consultation process	35%	19%	40%	45%
Provision of outplacement services	31%	21%	32%	40%
Other/don’t know/no answer	6%	14%	2%	2%

Source: Right Management