



## Fact Sheet

### 6 things an employer needs to know about termination

To view the webinar associated with this fact sheet, visit <https://www.youtube.com/watch?v=QWmFf77xJ2g>

Employers should note the following issues when a termination of employment occurs:

1. The termination must be lawful, eg not in breach of contract, equal opportunity, discrimination or other legislation, and in compliance with any award or agreement that covers the employee and there must be a valid reason for the termination
2. The date and reasons for termination must be clear to both parties — whoever initiates the termination (employer or employee) should do so in writing.
3. The employer and employee must comply with notice periods required by legislation, awards, or contract (whichever is the most generous) eg a resigning employee must give the required period of notice and a dismissed or retrenched employee must receive at least the minimum period of notice required by law, or payment in lieu of that notice (if the award or agreement permits).
4. Employees must receive payment of their accrued entitlements, such as payment for untaken annual and long service leave if required by the legislation.
5. Employers must meet documentation requirements, such as keeping payroll records, providing statements of termination entitlements and calculations and certificates of service.
6. The employer should collect any employer property issued to the employee before the employee leaves (such as vehicles, mobile phones, credit cards, business cards, uniforms, product samples, security/access cards, etc).

Let's look at all of these in more detail ...

#### 1. The termination must be lawful

The most common type of employer-initiated termination is a dismissal with notice, or payment in lieu of notice. However, summary dismissal (without notice) may occur where an employee's conduct amounts to serious misconduct sufficient to justify instant dismissal.

An employee who feels the termination was not in accordance with his or her contract or legislative protections can take legal action, for example apply for an order for unfair dismissal or sue for breach of contract.

#### **General protections legislation**

Legislation prohibits an employer from dismissing, or adversely affecting the employment of an employee, on prescribed grounds. What was previously called unlawful dismissal is now called 'general protections' dismissal in the Fair Work Act.

#### **Unfair dismissal**

Unfair dismissal is termination at the initiative of the employer in circumstances that are 'harsh, unjust or unreasonable'. An unfair dismissal claim can be made by an eligible employee to the Fair Work Commission within 21 days of the dismissal.

#### **Equal opportunity legislation**

Federal and State equal opportunity and anti-discrimination legislation sets out a wide range of grounds of discrimination in employment situations that are unlawful. Ensure you are familiar with the provisions of the legislation that cover your employees.

#### **Practical point: Consider termination issues before the employee starts work**

*This information and advice is general in nature, based on our interpretation of current legislation and policy, and does not take into account your specific circumstances. You should consider whether the information is appropriate to your needs and seek professional advice if required.*



Address the termination of employment process at the pre-employment stage by carefully drafting the employment contract. Make sure you refer to termination of employment provisions in the contract, at least stating the agreed period of notice by each party.

In addition, have clear, unambiguous written policies covering conduct in the workplace, covering a wide range of issues such as workplace safety, sexual harassment, dress requirements, use of email and employer's property, attendance/timekeeping, termination procedures and other relevant issues. These policies should flag any conduct that would be a serious breach of the employment contract and indicate the consequences of a breach.

## 2. Get things in writing

If an employee resigns or retires, ask him/her to confirm it in writing. If the employee cannot or will not confirm in writing, issue a letter confirming that you accept the verbal resignation/retirement.

If you dismiss an employee, you must issue a letter confirming the dismissal. It is also best practice if you briefly explain the reasons for the termination in writing. If there are events that led up to the dismissal, keep records of them as well.

The Fair Work Act requires employers to set out in writing the actual date of termination of employment.

## 3. Notice periods

It is important that both employer and employee adhere to the required notice period on termination. The **minimum** amount of notice under the Fair Work Act is:

<b>Employee's period of service with the employer at the end of the day notice is given</b>	<b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

Note that employees who are **over 45 years of age** and have worked for you **for 2 years or more** are entitled to an **extra 1 week's notice**

If an employee's contract, award or enterprise agreement prescribes a greater period of notice, that greater period must be given.

The notice periods listed above do not apply in all termination situations, eg summary dismissal. **If you need specific advice about relevant notice periods, you should seek legal advice.**

### **If the contract is silent ...**

If the contract is silent as to notice, reasonable notice will be implied.

Reasonable notice is a vague term and can be very substantial in some circumstances. This is why it is important to have in place a written contract that specifies the notice required by both parties to terminate the employment.

Notice is not normally required for casual employees (except as required by an award, agreement or contract). Although long-term casual employees may qualify for some other entitlements.

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For fixed-term and fixed-project employees, the contract should specify a date or event (eg completion of a project) upon which the contract ends, but you need to check the contract in case it has any other provisions, eg for termination before the specified date/event occurs.

#### **4. Employees must be paid their accrued entitlements**

An employee is entitled to be paid for all work performed and other entitlements that are owing at the time of termination. This could be amounts due in relation to personal/carer's leave, public holidays or overtime payments that occurred during the notice period.

If an employee resigns without giving proper notice, the applicable award or enterprise agreement or the individual's contract of employment will determine the employer's right to withhold payment under these circumstances.

Accrued entitlements, eg untaken annual and long service leave, are paid out as required by legislation.

#### **5. Meeting documentation requirements**

Employers must keep employment, payroll and termination records for 7 years after an employee's termination.

You are also required to give the employee a detailed statement of his/her termination entitlements. The statement sets out calculations for each component — ordinary pay, severance pay, leave payments, other payments and tax deducted.

You must also provide a Statement of Service where requested.

In some circumstances, external agencies must be notified, eg Centrelink for some redundancies and workers compensation insurers where injured employees are involved.

#### **6. Return of company property**

It is prudent to prepare a checklist of any property issued to the employee, to ensure that everything is returned upon termination of employment.

**Need help?** Contact Pinnacle People Solutions for tailored advice and support for your business by email to [admin@pinnaclepeoplesolutions.com.au](mailto:admin@pinnaclepeoplesolutions.com.au) or call 1300 856 231

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