

Factsheet – Notice Period

Why It Matters

An employment arrangement can end for a whole range of reasons whether it is the employee or the employer terminating the employment relationship, and it is important to make sure that it is done the right way.

What is a notice period?

A notice period is the length of time that an employee or employer has to give to end employment.

Resignation

When an employee resigns, they are required to give notice to you. The amount of notice they are required to give will be set out in the applicable award, enterprise agreement and/or the employment contract. The notice period:

- starts when the employee gives notice that they want to end their employment, and
- ends on the last day of employment.

Once the employee has given you notice, you can:

- let the employee work out the notice period, or
- tell the employee to leave early and pay them in lieu of notice.

If you decide that the employee can leave early and pay them in lieu of notice, you are required to pay them the full notice period that would apply if you were terminating their employment.

Dismissal

When you dismiss an employee (also referred to as firing or terminating employment), you must give them notice. The notice period:

- starts when you tell the employee that you want to end the employment; and
- ends on the last day of employment.

Minimum period of notice

The National Employment Standards (NES) include minimum notice periods for termination of employment by an employer.

The NES applies to all employees covered by the national workplace relations system, regardless of

any award, agreement or contract. However, if a contract of employment, award, or enterprise agreement contains terms more favourable than those provided in the NES, the employee will be entitled to the benefit of the more favourable terms.

The minimum notice period you are required to give when dismissing an employee is as follows:

Employee's period of continuous service	Minimum notice period
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

An employee over 45 years of age who has worked for you for at least 2 years is entitled to an additional 1 weeks' notice.

During probation

If an employee's employment is ended while they're on probation, you still have to pay them the notice in their employment contract, the applicable award or enterprise agreement, whichever is the greater.

Serious misconduct

If you are dismissing an employee on the grounds of serious misconduct, you do not have to provide any notice, or payment in lieu of notice, as their employment ends at the time the decision to terminate their employment is communicated to them.

Payment in lieu of notice

If you choose to pay out the employee's notice period rather than allowing the employee work out the period, you must pay the employee the full amount the employee would have been paid if they worked until the end of the notice period. This includes:

- incentive-based payments and bonuses;
- loadings;
- monetary allowances;
- overtime;
- penalty rates; and
- any other separately identifiable amounts.

Not enough notice

Where an award covered employee fails to provide the required notice, the employer may deduct from the wages due to the employee (other than an employee under 18 years of age) an amount up to a maximum of 1 weeks' wages.

For example, if an employee was required to provide 2 weeks' notice, but did not give any notice, the employer may only withhold the value of 1 weeks' wages.

“Wages” does not include an amount due to the employee for accrued but untaken annual leave or long service leave.

Any deduction made to an employee's wages on the basis that they have not given the required notice must not be unreasonable in the circumstances

The ability to deduct an amount from wages will not apply where the employer has agreed to accept less than the required period of notice.

Too much notice

There may be occasions where an employee, in good faith, provides a greater period of notice than is required under their award, agreement, or contract of employment. The employer does not have to accept this notice. In such situations the employer should inform the employee that only the period prescribed by the relevant instrument is accepted.

If the employee only works the minimum notice period, the employer doesn't have to pay the extra notice period.

Taking leave during a notice period

An employee can take approved leave during a notice period.

Annual leave

An employee must apply for the leave as they would at any other time during their employment with you. It is your decision whether to approve the leave or not.

You cannot force an employee to take leave as part of a notice period.

Personal/carer's leave (sick leave)

If an employee becomes ill or injured during a notice period they can take personal/care's leave if they give:

- notice of the leave as soon as possible; and
- suitable evidence if you request it (e.g. medical certificate).

Need More

NatRoad's practical advisors are experienced in assisting employers meet their legal obligations in employment matters, including leave entitlements and arrangements for the taking of leave. For more information and advice about your obligations for leave entitlements, contact a NatRoad advisor on (02) 6295 3000 or info@natroad.com.au.