



NOTICE OF TERMINATION

Workplace Relations Fact Sheet – October 2016

An employer must not terminate an employee's employment unless they have given the employee written notice of the day of the termination.

The employer must not terminate an employee's employment unless:

- The time between giving the notice and the day of the termination is at least the required notice period; or
- The employer has paid to the employee payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee to the employee for the hours that they would have worked had the employment continued until the end of the minimum notice period.

Minimum Notice Periods

The National Employment Standards (**NES**) sets out that an employer must give the following minimum notice periods when terminating an employee's employment:

Period of continuous service	Minimum notice period
Not more than 1 year	1 week
More than 1 year but less than 3 years	2 weeks
More than 3 years but less than 5 years	3 weeks
More than 5 years	4 weeks

An employee who is over 45 years old and has completed at least 2 years of continuous service with the employer receives an additional week's notice.

Minimum Notice by an Employee

Some modern awards and enterprise agreements may include terms specifying the period of notice that an employee must give in order to terminate their employment. Most modern awards include a provision which states that the notice of termination required to be given by an employee is the same as that required of the employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination, under the relevant modern award or the NES, an amount not exceeding the amount the employee would have been paid under the relevant award in respect of the period of notice required, less any period of notice actually given by the employee.

Job Search Entitlement

Most modern awards include a provision which states that where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee in consultation with the employer. Modern awards typically provide additional job-search entitlements in cases where the termination is due to redundancy.



Longer Notice Periods

A modern award, enterprise agreement, employment contract or other registered agreements may specify a longer minimum notice period - for example, one month's notice instead of 1 week. In cases where an employee fails to comply with a notice period obligation, an award-based right to withhold money will not automatically apply to the longer notice period.

Other Obligations on Termination

Employers should not give a notice of termination to an employee unless they are satisfied that other obligations have been satisfied. Examples of associated obligations might be:

- Completion of a consultation process where organisational change results in the loss of one or more staff positions; or
- Completion of a satisfactory investigation if misconduct by an employee is the reason for termination.

Note: This information is provided for convenient reference only on the basis that it is not to be relied upon without reference to the Workplace Relations Advisers of the Canberra Business Chamber, as the circumstances in each matter are different and no one piece of advice will apply to all circumstances. For more information please contact the Workplace Relations Hotline on 1300 277 881 or wradvice@canberrabusiness.com