
TERMINATION PROCEDURE

Purpose

The purpose of the Termination Procedure is to ensure employees exit on amicable terms that are **fair, not harsh and reasonable** ensuring the necessary legislative obligations are followed.

Are you a small business owner? *If you operate a small business (less than 15 employees) it is important that you follow the Small Business Fair Dismissal Code when terminating an employee's employment. Find out more in the Termination section at www.fairwork.gov.au/Termination.*

This procedure includes instructions for different termination scenarios such as;

- Voluntary termination
- Involuntary termination including; Termination of employment with notice, Termination without notice (summary dismissal), Termination through redundancy and Termination due to unsuccessful probation period.

Scope

This procedure applies to all employees.

Definitions

Voluntary Termination	Is a decision made by the employee to leave .
Involuntary Termination	Is a decision made by the employer that the employee should leave .

Summary Termination

Instant termination without notice or payment in lieu may occur when serious misconduct is apparent and your conduct during that incident:

1. Was willful or deliberate behavior by you that is inconsistent with the continuation of your contract of employment
 2. Caused a serious and imminent risk to the health or safety of a person
 3. Caused a serious and imminent risk to the reputation, viability or profitability of the Employer's business.
 4. Was conduct in the course of your employment engaging in theft and in the circumstances your continued employment during a notice period would be unreasonable
 5. Was conduct in the course of your employment engaging in fraud or assault, and in the circumstances your continued employment during a notice period would be unreasonable.
 6. You were intoxicated at work, to the extent that you were so impaired that you were unfit to be entrusted with your employment
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7. You refused to carry out a lawful and reasonable instruction that was consistent with your contract of employment, and in the circumstances you continued employed during a notice period would be unreasonable.

Notice Period

The employee may terminate his/her employment with the employer by giving the agreed amount, notified in employment contract, of notice in writing.

<i>Period of continuous service</i>	<i>Period of notice</i>
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

In addition, Employees over the age of 45 years and with at least two years continuous service at the time of the giving of the notice will be entitled to an additional notice of one week.

Where an employee fails to meet their notice period obligations, the employee will forego their notice period payment and will only be paid for the hours worked (i.e. the employee will not be paid in lieu of their notice period)

Procedure

Voluntary Termination

- The employee provides their resignation letter to the person they report to
- Payroll to file resignation letter in personnel file
- The Manager informs other staff
- The Manager provides exiting employee with instructions relating to the following:
 - Exit interview/survey
 - Returning company property
 - Finalising pay
 - Handing over work
- Exit Interview to be conducted by Manager (refer to [FOR16](#) or FOR016a)
- Complete Exit Checklist ([FOR21](#))

General principles: In any formal meeting, the employee should be allowed to be represented or accompanied by a support person. When reviewing unfair dismissal claims, the Fair Work Commission may consider whether an employer unreasonably refused to allow an employee to have a support person at any discussion relating to their dismissal.

Important: Following these procedures cannot guarantee that an employee will not pursue an unfair dismissal claim but will help ensure that the employer has complied with their obligations and mitigate the risk of such a claim being successful.

Involuntary Termination

Termination of employment with notice

- Manager to ensure the Performance Management/Disciplinary procedure ([PRO04](#)) was followed in a fair and reasonable manner. However if the issues in question are not or can not be resolved after the employee has had a reasonable opportunity to rectify the situation, you may decide to end the employment relationship. If decide to terminate the employee's employment, need to give the employee written notice of his or her termination
 - Always inform the employee of their termination with at least one other witness (as per Performance Management procedure [PRO04](#))
 - The letter of termination should:
 - outline the reasons for the termination of the employee's employment
 - specify the notice period or if the employee will be paid in lieu of that notice
 - advise the employee of the last day of work
 - Meet with the employee to provide the letter of termination of employment
 - The reasons for termination of employment should be explained to the employee and he or she should be given an opportunity to ask questions
 - It is important to carefully explain the information in the letter of termination of employment and ensure that the employee understands
 - You should keep a copy of the letter of termination of employment for your records
 - You may wish to complete the letter of Termination with notice ([FOR15a](#)) and/or Termination form ([FOR15](#)) is signed off, dated and sent to the relevant person to go in personnel file
 - Consider and agree on a final date of employment
 - Employer provides exiting employee with instructions relating to the following:
 - Exit interview/survey
 - Returning company property
 - Finalising pay
 - Handing over work
 - If appropriate, conduct Exit Interview ([FOR16](#) or FOR016a).
 - Complete Exit checklist form ([FOR021](#))
 - If necessary, escort the ex-employee off the premises
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Termination of employment without notice (Summary Termination)

- The discipline procedure may result in dismissal including summary dismissal. **Only in extreme circumstances should summary dismissal be used and then only after consultation with the [RelevantManager] within** and consider seeking legal advice. If this does occur ensure, it is done in a private meeting and always inform the employee of their termination with at least one other witness and they may also have a support person present. Also ensure that a termination form ([FOR15](#)) and/or Letter of Termination Serious misconduct ([FOR15b](#)) is completed (copy for both parties), payment up until the time of dismissal, plus any payment for accrued leave and if applicable payment for notice period is paid out immediately
 - Create your letter of termination of employment ([FOR15b](#))
If the employee's action was serious misconduct that warrants summary dismissal, create an appropriate termination of employment letter. While you do not need to provide the employee with notice of termination for serious misconduct, it is best practice to provide written confirmation that you are ending their employment
Ensure include in the letter:
 - the reasons for the termination of the employment
 - when the employment will end
 - Meet with the employee to provide the letter of termination of employment
 - The reasons for the termination of employment should be explained to the employee verbally and he or she should be provided with the opportunity to ask questions.
 - It is important to explain the information in the letter of termination of employment and ensure that the employee understands.
 - You should keep a copy of the letter of termination of employment for your records
 - Employer provides exiting employee with instructions relating to the following:
 - Returning company property
 - Finalising pay
 - Handing over work
 - Complete Exit checklist form ([FOR21](#))
 - If necessary, escort the ex-employee off the premises
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Termination of employment (Redundancy)

If decides that you no longer want an employee's job to be done by anyone, except where you have made this decision because of becoming insolvent or bankrupt or due to the ordinary or customary turnover of labour, then the job (not the employee) becomes redundant and you can end the employment relationship. Redundancy does not occur because of the performance or conduct of the employee.

1. Communicate changes to the employees affected

Regular communication with employees is important during periods when a business is undergoing major workplace change. Most modern awards and enterprise agreements require employers to consult with their employees regarding changes, including changes to production, organisation, structure or technology.

An employer should:

- Advise employees (and where applicable and required by an Award or Enterprise Agreement, employee representatives' as a union representative), of proposed changes in writing
- Provide employees with an opportunity to ask questions
- Consider all options and alternatives to redundancies, such as redeployment, job sharing and reduced overtime

2. Find out about notice periods and redundancy entitlements

Determine what the minimum notice of termination and redundancy pay entitlements are for affected employees. Notice of termination and redundancy entitlements are contained in the National Employment Standards, however awards and enterprise agreements often include additional redundancy entitlements for employees. If there is an applicable industrial instrument, contract of employment or workplace policy that provides different redundancy amounts than the National Employment Standards, you need to provide the employee with whichever is more generous.

The employee can work the notice period or the employer can pay the employee in lieu of that notice.

- Inform Centrelink

If you decide to terminate the employment of 15 or more employees and it is for reasons of an economic, technological, structural or similar nature (or if the reasons include any of these things) you must provide Centrelink with written notice of the dismissals

- Create your letter of termination of employment ([FOR15c](#))

If an employee's position becomes redundant you need to give the employee written notice of the termination of their employment.

The letter of termination should specify:

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- The reason for the termination of the employee's employment
 - The notice period and whether the employee will be paid in lieu of notice
 - The date of the employee's last day of work
 - Details of the employee's redundancy pay entitlements, and
 - Any other entitlements to be paid (like annual leave and long service leave)
 - Meet with the employee to provide notice of termination
 - Meet with the employee to give them the letter, explain the reasons the position has been made redundant and provide them with the opportunity to ask questions
Carefully explain the information in the letter and ensure the employee understands
 - The written notice can also be delivered or posted to the employee's last known address
 - You should keep a copy of the letter for your records
 - Consider and agree on a final date of employment.
 - Employer provides exiting employee with instructions relating to the following:
 - Exit interview/survey
 - Returning company property
 - Finalising pay
 - Handing over work
 - If appropriate, conduct Exit Interview ([FOR16](#) or FOR016a)
 - Complete Termination checklist form ([FOR21](#))
 - If necessary, escort the ex-employee off the premises

Termination of employment (Unsuccessful probation period)

A probationary period is an opportunity for you to assess a new employee's performance in their job, and for them to decide whether the job suits them.

If an employee's performance or conduct is not satisfactory during their probationary period, you should attempt to address the issues as per Performance Management procedure ([PRO04](#)). Performance and conduct issues often arise because employees do not understand what is expected of them. You should:

- Make sure the employee clearly understands their role, the expected level of output or performance, and the expected conduct at work, and
 - Provide the employee with regular performance feedback during the probation period and inform them of any changes needed to their work or conduct.
 - The written notice should specify:
 - the date the employment will end. Create your letter of an unsuccessful probation period ([FOR15d](#))
 - It is best practice to confirm with your employee whether or not his or her employment will continue beyond the probation period. The letter should be given to the employee before the end of the probation period.
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When drafting the letter you should:

- Review the letter of engagement to check the length of the probation period, and
- Check whether the relevant industrial instrument (e.g. an award or an enterprise agreement) contains any compulsory rules about probation.

Under the NES, you need to give an employee written notice to end his or her employment.

- Remember to also check if the letter of engagement or a relevant industrial instrument (e.g. an award or an enterprise agreement) contains a longer notice period. If they do, the longer notice period will apply
- Meet with the employee to provide the letter of unsuccessful probation and notice of termination ([FOR15d](#))
- While it is best practice to meet with an employee towards the end of their probation period, there is not a legislative requirement to do so. It is particularly important to meet with the employee if you are considering terminating his or her employment

Meeting face to face is an opportunity for you to:

- Provide feedback to the employee about their performance or conduct
 - Explain why the probation period was unsuccessful, and
 - Give the employee an opportunity to respond to your comments
- Keep a copy of the letter of an unsuccessful probation period given to the employee and document the meeting with the employee for your records
 - Consider and agree on a final date of employment.
 - Employer provides exiting employee with instructions relating to the following:
 - Exit interview/survey
 - Returning company property
 - Finalising pay
 - Handing over work
 - If appropriate, conduct Exit Interview ([FOR16](#) or FOR016a)
 - Complete Termination checklist form ([FOR21](#))
 - If necessary, escort the ex-employee off the premises

Documentation

Termination Form	FOR15
Letter of Termination with Notice	FOR15a
Letter of Termination- Serious Misconduct	FOR15b
Letter of Termination - Redundancy	FOR15c

Letter of Unsuccessful Probation Period	FOR15d
Exit Interview (informal)	FOR16
Exit Checklist	FOR21
