



Employment Relations Fact Sheet

Ministry of Internal Affairs
Government of the Cook Islands

Ending an Employment Relationship

This fact sheet will provide workers and employers with general guidance on their rights and obligations when ending an employment relationship.

There are 3 ways in which your employment relationship may be ended, such as resignation, termination and instant dismissal.

Resignation

Termination of employment by a worker is also known as “resignation”.

A worker can resign from their employment at any time provided they give proper notice to their employers. When deciding to resign from employment, it is important that the worker consult their employment agreement. If there is no employment agreement the Employment Relations Act 2012 states that the worker must give no less than 7 days notice.

If a worker leaves work without giving proper notice, the employer is not required to pay for time beyond the worker’s last actual working day. The employer must not deduct pay in lieu of notice from any amount owed to the worker without written consent. In any event, the worker and employer should consult the employment agreement.

The employer must pay all annual leave owing to the worker in their final pay.

Termination by employer

When an employment relationship is terminated by an employer, the termination must be linked to one or more of the following:

- a) the worker’s capacity to carry out the duties required by the employment agreement:
- b) the worker’s conduct:
- c) a restructure of the employers business, for genuine reasons, that creates a redundancy of a worker’s position.

The new rules provide greater protection for workers making it harder for an employer to terminate without giving proper notice or reason.

A worker who is terminated for reasons other than conduct, capacity or redundancy as a result of restructuring may have grounds to bring a case of personal grievance against their employer for being unjustifiably terminated.

An employer can either request that the worker work the required notice period or opt to provide the worker with payment in lieu of notice. Where there is no employment agreement, an employer must provide no less than 7 days notice or 7 days pay in lieu of notice

An employer is also legally required to provide written notice of termination; this notice must set out the specific reasons for termination.

Termination – redundancy

The Employment Relations Act 2012 states that the restructuring of any business that results in workers being terminated must be for genuine reasons.

Where an employer is forced to restructure their business and that restructuring results in a worker being made redundant, that employer is required to provide no less than 2 weeks notice or 2 weeks pay in lieu of notice to the effected worker.

Instant dismissal

Termination of employment by employer for reasons of serious misconduct is more commonly referred to as “instant dismissal”. This type of termination does not require the employer to provide the worker with notice; it is instant, hence the term “instant dismissal”.

Serious misconduct means that a serious wrongdoing has occurred. The employer should review the situation fairly and establish that the worker’s actions amount to serious misconduct. The misconduct must be sufficiently serious that it undermines the trust and confidence that the employer has in the worker (e.g. theft, sexual or other assault, or the use of illegal drugs at work).

Entitlements when ending an employment relationship

Regardless of the way in which an employment relationship is ended, an employer is obligated to pay the worker any outstanding pay or any accrued annual leave not taken at the date of ending the employment relationship.

An employer can not withhold final payment or deduct payments without the expressed permission of the worker or a Court Order.

For more information contact the Ministry of Internal Affairs on:

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