

## FACTSHEET: CONTRACT PROVISIONS ON TERMINATION

Chapter 6 of the Employers' Guidebook covers the legal regulation of termination and discusses legal requirements in detail. This factsheet does not restate legal rules, but provides examples of clauses you might want to include in your employment contracts.

Please also refer to the different chapters of the Employers' Guidebook when finalising specific clauses of employment contracts to ensure you are following the law.

Clauses that are central to termination are:

- **How contract can come to an end by giving notice** should be stated, particularly for contracts that are made for a fixed term.
- **How contract can come to an end in the event of misconduct by the employee** should be explained. Some companies have detailed procedures for termination that are explained in the employment contract or associated rule books. We recommend seeking advice if you want to state more complicated procedures.
- **Payments and allowances on termination** can be briefly explained by referencing the relevant law. If this is done it can be useful to attach the relevant law to the contract, so parties do not have to look beyond the employment contract in the event of a dispute.

**IMPORTANT NOTE TO EMPLOYERS:** The following text boxes provide example clauses that you can use as the basis for writing your own contracts. You can amend the clauses to suit your own situation. Please **do not** just paste any of these clauses into your employment contracts without carefully reviewing them to ensure they meet your needs.

### EXAMPLE CLAUSE FOR ENDING THE CONTRACT BY NOTICE

1. The contract can be terminated at any time by either party by giving 2 week's notice, in writing, or 2 week's pay in lieu of notice.

### EXAMPLE CLAUSE FOR ENDING THE CONTRACT DUE TO UNEXPLAINED ABSENCE OF THE EMPLOYEE

1. If an employee is absent for more than 2 days without contacting the employer to explain the absence, or if the employee fails to turn up for work without reasonable prior explanation after the employer has expressly ordered him or her to recommence work after a period of leave then, through this action, the employee will be deemed to have resigned and the employment relationship shall cease.

### **EXAMPLE CLAUSES FOR TERMINATING THE CONTRACT FOR SERIOUS MISCONDUCT BY THE EMPLOYEE**

1. The contract can be terminated by the employer immediately in the event of serious misconduct by the employee. Serious misconduct includes, but is not limited to

- Theft from the workplace
- Undertaking outside jobs during working hours
- Continued failure to be present at assigned job sites
- Being drunk at work
- Fighting with staff members or customers
- Sexual harassment of staff members or customers
- Failure to follow lawful orders
- Any behaviour that brings the employer into disrepute

2. Before any such termination the employer will give the employee an adequate opportunity to answer any charges, and will consider all explanations.

3. In the event that there is a delay between the alleged incident of misconduct occurring and the employee being given an opportunity to answer charges the employer shall be entitled to suspend the employee on full pay.

4. If the employer tries to contact the employee 3 times at reasonable intervals by telephone message, messages with family members or visits to the employee's house, but is unable to get in touch with the employee, then the employer will be considered to have taken reasonable steps to give the employee adequate opportunity to explain his or her absence and may terminate the contract for serious misconduct.

5. In the event that misconduct has occurred which is not serious enough to warrant immediate termination the employer shall be entitled to:

- a. Suspend the employee for up to 4 weeks without pay
- b. Demote the employee to a less responsible job

### **PAYMENTS ON TERMINATION**

1. Outstanding remuneration for work done and other payments on termination shall be paid on the employee's last day of work.

2. Severance allowance will only be paid by the employer in accordance with the Employment Act.

3. Unused annual leave will be paid by the employer in accordance with the Employment Act.

4. All outstanding deductions that the employer is entitled to take from the employee's salary or wage must be reimbursed, and may be deducted from the employee's final payment.