

Termination of Employment Policy

For Australian Small & Medium Enterprises

Template Version 1.0 | December 2024

Important Notice

This template provides general guidance on termination of employment. Employers must comply with the Fair Work Act, National Employment Standards, applicable awards, enterprise agreements and employment contracts. Seek legal advice before terminating employment.

1. Purpose

This policy establishes the framework for managing termination of employment at [Company Name]. It ensures that terminations are handled lawfully, fairly and consistently, in compliance with the Fair Work Act and other applicable legislation.

2. Scope

This policy applies to all terminations of employment including:

- Resignation by employee
- Termination by employer with notice
- Summary dismissal (without notice) for serious misconduct
- Redundancy
- End of fixed-term contract
- Abandonment of employment
- Retirement

3. Types of Termination

3.1 Resignation

When an employee voluntarily ends their employment:

- Must be provided in writing
- Notice period as per contract or award applies
- Employee works out notice or forfeits pay
- Employer may waive part or all of notice period

3.2 Termination by Employer

Where [Company Name] ends the employment relationship:

- Must be for a valid reason (conduct, capacity, redundancy)
- Fair process must be followed
- Appropriate notice or payment in lieu provided
- All entitlements paid

3.3 Summary Dismissal

Immediate termination without notice for serious misconduct:

- Only for serious misconduct as defined in Fair Work Regulations
- Investigation must be conducted first
- Employee given opportunity to respond
- No notice period or payment in lieu required
- All other entitlements still payable

3.4 Redundancy

Where a position is no longer required:

- Genuine redundancy requirements must be met
- Consultation obligations apply
- Redeployment options considered
- Redundancy pay applies (based on service)
- Notice requirements apply

4. Notice Periods

4.1 Minimum Notice by Employer

The Fair Work Act sets minimum notice periods:

- 1 year or less service: 1 week
- More than 1 year to 3 years: 2 weeks
- More than 3 years to 5 years: 3 weeks
- More than 5 years: 4 weeks
- Additional week if employee is over 45 with 2+ years service

4.2 Contractual Notice

- Employment contracts may provide for longer notice
- Check applicable award or enterprise agreement
- The greater of statutory and contractual notice applies

4.3 Notice by Employee

- As specified in employment contract
- Or as per applicable award
- Commonly 2-4 weeks for most roles

4.4 Payment in Lieu

- Employer may pay instead of requiring notice to be worked
- Employee receives full pay for notice period
- Employment ends immediately

5. Final Pay and Entitlements

5.1 Final Pay Includes

- Wages up to and including final day
- Accrued but untaken annual leave
- Long service leave if applicable
- Payment in lieu of notice if applicable
- Redundancy pay if applicable
- Outstanding allowances and reimbursements

5.2 Timing of Payment

- Within 7 days of termination (or sooner if required by award)
- May be processed on next regular pay cycle
- Final payslip provided

5.3 Deductions

Only lawful deductions may be made from final pay:

- Tax as required
- Overpayments with written consent
- Other authorised deductions

Cannot deduct for notice not worked unless authorised.

6. Unfair Dismissal

6.1 Eligibility

Employees may claim unfair dismissal if they:

- Have completed the minimum employment period
- Were covered by the national workplace relations system
- Earned below the high income threshold OR were covered by an award/agreement

6.2 Minimum Employment Period

- 6 months for small business employers (fewer than 15 employees)
- 12 months for other employers

6.3 What Makes a Dismissal Unfair

A dismissal may be unfair if:

- It was harsh, unjust or unreasonable
- It was not a case of genuine redundancy
- It was inconsistent with the Small Business Fair Dismissal Code (small business only)

6.4 Valid Reasons

Valid reasons for dismissal include:

- The employee's conduct
- The employee's capacity to do the job
- Operational requirements (redundancy)

7. Unlawful Termination

Termination is unlawful if the reason includes:

- Discrimination (race, sex, age, disability, etc.)
- Temporary absence due to illness or injury
- Trade union membership or activities
- Making a workplace complaint
- Refusing to breach a law
- Exercising a workplace right

Unlawful termination claims can be made regardless of length of service.

8. Procedural Fairness

Before terminating employment (except serious misconduct), [Company Name] will:

- Advise the employee of concerns
- Provide specific details of issues
- Give the employee opportunity to respond
- Genuinely consider the response
- Allow a support person at meetings
- Make a fair and reasonable decision

9. Redundancy

9.1 Genuine Redundancy

A redundancy is genuine when:

- The job is no longer required
- Consultation requirements have been met
- Reasonable redeployment has been considered

9.2 Redundancy Pay

Employees with at least 1 year of continuous service are entitled to:

- 1-2 years: 4 weeks pay
- 2-3 years: 6 weeks pay
- 3-4 years: 7 weeks pay
- 4-5 years: 8 weeks pay
- 5-6 years: 10 weeks pay
- 6-7 years: 11 weeks pay
- 7-8 years: 13 weeks pay
- 8-9 years: 14 weeks pay
- 9-10 years: 16 weeks pay
- 10+ years: 12 weeks pay

Small business employers (fewer than 15 employees) are exempt from redundancy pay.

9.3 Consultation

- Notify employees likely to be affected
- Discuss reasons and measures to mitigate impact
- Consider employee views
- Provide relevant information

10. Abandonment of Employment

If an employee is absent without notification or approval:

- Attempt to contact the employee
- Send written notice requesting contact
- Allow reasonable time for response
- If no response, employment may be deemed abandoned
- Confirm in writing

11. Return of Property

- All company property must be returned on or before the last day
- This includes equipment, keys, cards, documents
- Unreturned property may be recovered legally
- Final clearance required before last day

12. Documentation

For all terminations, documentation should include:

- Termination letter with reasons
- Final pay calculation
- Leave balances
- Property return checklist
- Evidence of process followed
- Employment separation certificate (on request)

13. Responsibilities

13.1 Managers

- Follow proper processes
- Seek HR/legal advice before terminating
- Document reasons and process
- Treat employees with respect
- Ensure proper handover

13.2 HR

- Advise on legal requirements
- Ensure compliance with policy
- Process final pay and entitlements
- Maintain records
- Handle exit administration

13.3 Employees

- Provide required notice for resignation
- Complete handover activities
- Return company property
- Cooperate with exit processes

14. Review

This policy will be reviewed:

- At least annually
- When legislation changes
- When significant issues arise

Employee Acknowledgement

I acknowledge that I have read and understood [Company Name]'s Termination of Employment Policy. I understand the processes that apply when employment ends and my obligations regarding notice and handover.

Employee Name: _____

Signature: _____

Date: _____