

## 6.7 Terminating Employment

Please note: this information is changing with the Fair Work Bill and Amendments from 1 July 2009.

Employment ends when an employee resigns, is made redundant or is dismissed. A definition of these actions is as follows:

### Resignation

An employee has a right to resign but should give the employer notice in writing, with the notice period being within company/government guidelines.

### Redundancy

A job/position becomes redundant when the work performed by an employee is no longer necessary, because the job/position has been replaced by technology or the work is restructured.

Employees may be entitled to redundancy benefits, depending on the state award or the agreement they were employed under.

### Dismissal

In order to dismiss an employee you must have a valid reason. This reason must be based on poor performance, conduct or changes to your operational requirements. Dismissing an employee can take a number of forms, each with differing requirements. You must make sure you understand these requirements to ensure you avoid any legal problems later.

A dismissal is unfair when it is 'harsh, unreasonable or unjust'. There are both federal and state laws governing unfair dismissal. States and territories have publications outlining whether a termination is lawful and whether the reasons for termination are valid and fair considerations.

In general, it is better to give written notice of the termination, outlining the details of why the termination is occurring and giving the required notice period specified in the award or agreement.

Most awards specify that the party wishing to terminate the employment should give the other party appropriate advance notice, usually one week. Some awards provide for an initial employment qualifying period during which no notice is required. Other awards need more than one week's notice.

To avoid any misunderstanding or dispute, notice should be given to your employee in writing or perhaps in front of a witness, even though this may not be a requirement of the relevant award.

The requirement for you to give notice is waived if there is a breach of contract in the form of your employee's misconduct. You may also have the right to pursue a civil claim for damages.

The following links will offer you information to assist with the correct procedures and responsibilities when an employee is no longer working for you.

[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

[www.business.gov.au](http://www.business.gov.au)

[law.ato.gov.au](http://law.ato.gov.au)

[www.workchoices.gov.au](http://www.workchoices.gov.au)

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