

## EMPLOYERS' GUIDE PART 6: TERMINATION OVERVIEW

This overview briefly explains your responsibilities as an employer for the termination of your employees' employment. For more detail or an explanation of any technical terms, please refer to the accompanying factsheets.

### IMPORTANT NOTE

*Termination of employment is a complex area. The law is often not 100% clear and interpretations of the law can change following court decisions. This section of the Employers' Guidebook sets out the current situation and is intended to give general guidance rather than legal advice. Termination of employment is the main cause of disputes between employers and employees. If you are terminating staff and are unsure of procedures we strongly recommend seeking advice from a labour officer or a lawyer.*

### WHAT ARE THE CORRECT METHODS OF TERMINATION?

Methods of termination largely depend on the type of contract and also the reasons for termination. There are also rules regarding the payment of severance and other benefits to employees leaving your employ that you must follow.

There are five accompanying factsheets to this chapter:

- Termination of open ended contracts by notice
- Termination of fixed term contracts by expiry or notice
- Termination by the employer due to serious misconduct by the employee
- Payments on termination
- Severance payments

### HOW DO I TERMINATE THE EMPLOYMENT OF AN EMPLOYEE ON AN OPEN ENDED CONTRACT?

You do not need to give the employee a reason for termination but you must give notice of termination (verbally or preferably in writing).

For employees employed by you **for under three years**, termination notice is a minimum of one pay period or fourteen days before the end of the month of notice.

For employees who have worked **for more three years** you must give three months notice.

You may pay employees wages *in lieu* of notice.

### HOW DO I TERMINATE AN EMPLOYEE ON A FIXED TERM CONTRACT?

A fixed term contract has a stated expiry date. The employee's contract comes to an end on the date stated. As the employer you need to pay all outstanding wages and any other payments on this final date of contract.

If an employee continues to work beyond the fixed date without any amendments to the original contract, then the contract becomes an *open ended contract* and the process of terminating an open ended contract will then apply.

### WHAT IS SERIOUS MISCONDUCT AND CAN I TERMINATE AN EMPLOYEE IMMEDIATELY FOR THIS?

Serious misconduct is taken to mean conduct that is generally beyond simple performance problems. Examples of serious misconduct may include stealing, fraud and wilful disobedience of a valid instruction.

Serious misconduct **is not** membership of a union or making a complaint in good faith about an employer. Serious misconduct is not necessarily sufficient grounds for instant dismissal. Instead you must follow correct procedures before dismissal.

### WHAT MUST I PAY EMPLOYEES UPON TERMINATION?

You must pay employees for all the work they have done up to their date of termination plus any unused annual leave entitlements.

If an employee owes you money (for example advance leave or salary) then you are entitled to make a reduction of up to 1/3 of their total final remuneration for this. As a good employer, all calculations for final payment of employees should be in writing.

### DO I HAVE TO PAY SEVERANCE TO A DEPARTING EMPLOYEE?

Unless your employee is terminated for serious misconduct you do have to pay severance if you terminate employment, the employee has worked for you for 12 months or more and works for at least four days a week.

Severance is also payable to employees who resign voluntarily after six years of employment with you.