



Factsheet:

Leaving your job – do not walk away

An employment arrangement between an employer and you may end for a range of reasons such as resignation, redundancy or dismissal.

There are specific rules in place to make sure that you are protected when employment in your job ends, for whatever reason.

Put it in writing

You can resign from your job verbally, but to avoid any misunderstanding it is best to confirm the resignation in writing, clearly stating the date you will be leaving.

Most awards say that an employee has to give their employer a period of notice before they leave.

If you want to leave your job, make sure you check your award to find out how much notice you have to give. If you do not – you might miss out on wages.

Give notice

Generally, an employer must give an employee notice if they are terminating their employment (unless it is an instant dismissal). The amount of notice is based on the length of time the employee has been working and is set out in the award.

Poor performance and misconduct

You can be dismissed for poor performance if your work history shows that you have not been meeting the expectations outlined in the contract of employment or job description.

Your employer must make you aware that they are not happy with your performance and you must be given time to improve your performance.

When issuing a final warning, your employer needs to tell you that if your performance does not improve, your employment will be terminated.

You can also be dismissed for breaking company rules or policies – but only if the rules have been made clear and that your employer is sure you understand the rules.

Warnings

Your employer does not have to give you three warnings before you are dismissed for poor performance, unless it specifically says so in the award or agreement that you work under.

Dismissal

Even if dismissed there must be a valid reason. You can only be dismissed for:

- poor performance
- misconduct
- extremely serious misconduct – resulting in an on-the-spot termination
- or if the business goes bankrupt or is sold.

What entitlements could you be owed?

In your final pay, you should receive:

- outstanding wages still owed
- payments being made instead of a notice period of termination by your employer – this could be between 1.5 weeks pay, depending on how long you have worked there
- accrued annual leave



- redundancy or severance pay entitlements (if applicable)
- long service leave entitlements (if applicable).

On-the-spot dismissal

A summary dismissal is an instant or on-the-spot termination. This usually happens when your employer has reasonable grounds to believe you are guilty of extremely serious misconduct. This includes theft, fraud, violence or serious breaches of health and safety procedures.

A summary dismissal means that your employer can dismiss you without giving notice or payment instead of notice.

Unfair dismissal

Your employer must have a valid reason for dismissing you, based on poor performance, bad conduct or changes to the operations of the business.

A dismissal is unfair when it is harsh, unjust or unreasonable. The Fair Work Commission will look at the facts and decide based on whether:

- a valid reason was given for the dismissal
- you were given an opportunity to respond
- your employer unreasonably refused to allow you to have a support person present
- you were given any prior warnings about your actions
- the size of the business or lack of HR expertise had an impact on the processes followed by your employer.

You may have a support person come with you to any discussions with your employer about dismissals (as long as they are not a lawyer acting in a professional capacity).

Unlawful dismissal

Unlawful dismissal happens if you are dismissed for any of the following reasons:

- temporary absence from work because of illness or injury
- trade union membership or participation in trade union activities
- non-membership of a trade union
- seeking office or acting as a representative for employees
- filing a complaint or participating in proceedings against your employer
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- absence from work during parental leave
- reasonable temporary time off work to volunteer for an emergency management activity such as working as a registered volunteer for the State Emergency Service (SES).

Useful websites and contacts

Fair Work Ombudsman

Hotline: 13 13 94 www.fairwork.gov.au

Work Cover NSW

Hotline: 13 10 50 www.workcover.nsw.gov.au

NSW Industrial Relations

Hotline: 131 628 www.industrialrelations.nsw.gov.au



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Master Builders Association
New South Wales