

ABANDONMENT OF EMPLOYMENT

A contract of employment, whether written or verbal, may be terminated when an employee abandons their employment duties. This is a form of repudiation of the contract as it is an act or declaration that the person has no intention of returning to work.

Examples of abandonment of employment include:

- > absence from work without explanation or authorisation;
- > the taking of leave without the appropriate authorisation (for example, from management or the employee's supervisor);
- > failure of the employee to present for work when requested by the employer without reasonable explanation or notice; or
- > failure of an employee to return from authorised leave at the previously agreed time without reasonable explanation or notice.

For abandonment of employment to occur, it must be reasonable for a person in the employer's position to conclude that the employee has shown a clear intention by their words or conduct that they have no intention of returning to their employment.

If an employee abandons his/her employment, the employer has two options:

- > choose not to take action, in which case the contract of employment will continue and the employee will be on a period of unpaid leave; or
- > follow the below process to accept the repudiation of the contract. This has the effect of terminating the employment contract, at which time the employer can then recruit/refill the vacated position. The contract, in this case, has not been terminated at the initiative of the employer.

If the latter option is chosen, it is imperative that the employer takes all reasonable steps to confirm that the employee's absence is in fact without explanation, prior authorisation, satisfactory reason or any intention to resume/continue their employment.

The Abandonment of Employment Process

Step 1: Establish the Unauthorised Absence

Establish that the employee's absence has not been authorised by any manager or other authorised person or whether any leave forms or online leave applications have been submitted.

Step 2: Reasonable Attempts to Contact the Employee

Contact the employee as soon as possible to determine the reason for the absence and whether the employee plans to return to work. If you cannot contact the employee on their contact details (e.g. mobile, home phone number or email), the employer should try calling their next of kin or emergency contact as they may be able to provide information regarding the employee's whereabouts.

Reasonable attempts ought to be made via each applicable method of communication (for example throughout the course of one to three days). Unsuccessful attempts to contact the employee personally or by telephone should be documented, including the date and times the attempts were made.

Step 3: First Letter

Where contact cannot be made, the employer should send a letter via registered mail to the employee's last known address.

The letter should include:

- > the facts which suggest abandonment and the last date on which the employee attended work;
- > a requirement to immediately notify the reason for the absence and intentions about returning to work; and
- > advise that if notification is not received within a reasonable period, or if the reasons for the absence are not acceptable, further action may be taken to bring about the termination of the employment contract.

Step 4: Second Letter

If the employee has not made contact by the period specified in the first letter, the employer should send a second letter by registered mail, which reiterates details from the first letter and outlines that:

- > the employee or a representative failed to contact the employer to explain their absence by the nominated date specified in the first letter;
- > the employee is required to immediately notify the reason for the absence and intentions about returning to work; and
- > if notification is not received within the period stated, or if reasons are unacceptable, it will be assumed that employment has been abandoned and the contract of employment will be deemed to have been terminated.

A copy of the first letter should be included with the second letter so there is no doubt as to what was expected from the employee regarding contacting the employer in the period specified.

Step 5: Confirmation Letter

If no reply is received within the nominated period, the employer should confirm in writing that the contract has been terminated through abandonment. This is a crucial step and signifies the end of the employment relationship and without it the contract remains "alive" with certain benefits and entitlements continuing to accrue. Written advice accepting the employee's repudiation of the contract should outline the:

- > circumstances constituting the apparent abandonment;
- > decision to terminate employment for failure to attend work or notify the employer of a satisfactory reason;
- > date of termination;
- > details of any termination payments and how these might be collected by or paid to the employee; and
- > details of any company property still in the employee's possession and the process for returning such property.



For **template letters**, please see our website or contact the Workplace Relations Advice Line on (03) 8662 5222.

Contacting the Victorian Chamber of Commerce and Industry

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Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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