

NATIONAL EMPLOYMENT STANDARDS – NOTICE OF TERMINATION OR PAYMENT IN LIEU OF NOTICE

Fair Work Act 2009 (Cth)  See Fair Work Act s. 117

The National Employment Standards (“NES”) came into effect on 1 January 2010 and covers employers and employees under the national workplace system. Under the NES, employers must not terminate an employee’s employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

The employer must give the written notice of termination to the employee by:

- > delivering it personally;
- > leaving it at the employee’s last known address; or
- > sending it by Registered Post (where they have to sign to say they have received it) to the employee’s last known address.


The employer must provide the minimum notice required (below) or pay the employee in lieu of notice of at least the amount the employer would have been required to pay to the employee at the full rate of pay* for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

Annual leave does not accrue on the payment in lieu of notice, the employee has not worked the hours during the notice period for the annual leave to accrue.

Full Rate of Pay (for employees other than pieceworkers) means the rate of pay which is payable to an employee, including incentive-based payments and bonuses, loadings, monetary allowances, overtime, penalty rates, and any other separately identifiable amounts.

Notice of Termination

Employee’s period of continuous service with the employer at the end of the day the notice is given	Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

 **Note:** Increase the period by one week if the employee is over 45 years old and has completed at least two years of continuous service with the employer at the end of the day the notice is given.

Circumstances Where Notice of Termination Does Not Apply:

- > an employee employed for a specified period of time, for a specified task, or for the duration of a specified season (i.e. seasonal employee or fixed term contract);
- > an employee whose employment is terminated because of serious misconduct;

- > a casual employee;
- > upon the completion of employment that is for a specified period of time, or is for any reason limited in duration, such as a registered apprenticeship or training arrangement;
- > a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures);
- > a daily hire employee working in the meat industry in connection with the slaughter of livestock; or
- > a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors.

It is important to note that an industrial instrument (i.e. award, agreement or employment contract) may include additional provisions regarding the period of notice required to be given by an employer or employee. Such instruments, if applicable, should be consulted in conjunction with the provisions in the NES.

Most industrial instruments will stipulate the notice of termination required to be given by an employee. This is often the same as that required by the employer, without the requirement for an additional week of notice based on the age of the employee concerned. If an employee fails to give the required notice to the employer, there may be scope to withhold depending on the clause in the industrial instrument. Employers should check the clause appearing in the applicable instrument.

Employers do have the ability to create organisational policies stipulating the notice requirements for an employee and ensuring all resignations are made in writing.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

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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