

## Termination of Employment:

Employment can end at the discretion of the employer or employee. When an employee is terminated this is usually due to one of the following:

- Redundancy
- Poor Performance
- Misconduct

## Termination Due to Underperformance:

- **Collect Necessary Info:** Start by gathering, collating and understanding all the information you will need to progress with the termination. This includes termination guidelines set out in company policies and procedures, what is written in the employee's employment contract regarding termination, relevant awards and enterprise agreements.
- **If underperformance has been an issue for some time**, you will also need to gather all documentation of discussions with the employee regarding their underperformance including dates the discussions occurred, who the discussion was with, outcome of the discussions. This could include emails, telephone calls or face to face discussion. You will need to reference discussions from the past 3-12 months in formal letters and meetings.
- **For recent underperformance** . Set up a meeting to address underperformance or misconduct. This meeting aims to openly discuss the situation and clearly sets out your expectations regarding performance and conduct moving forwards.
- **Proceed with a Formal Warning:** If needed, ie performance is not improving, issue a formal warning. This paves the way for termination and clearly communicates the seriousness of the issues.
- Your company Policies and Procedures will set out the Formal Warning Process. Some companies have 1 verbal warning and 2 written then termination. Each warning is delivered and discussed in a formal meeting.
- **Final Warning:** If performance or conduct doesn't improve, provide a final warning. This indicates the last chance for improvement before termination.
- **Terminate:** If performance or conduct has still not improved to the required level, termination of the employees employment is the final step. Have a final meeting and issue the Letter of Termination of Employment.
- **Review Obligations:** Determine the notice period and any payments owed to the employee according to company policies and legal requirements.
- All stages of the formal warning and termination process require specific documentation, meetings within certain timeframes and the opportunity for the employee to bring a support person with them to each meeting.

**Note:** For severe misconduct, employees can be terminated immediately. Summarily dismissed. Most workplaces are governed by the [Fair Work Act 2009 \(Cth.\)](#), in accordance with the Act there are several steps employers are required to take in order to not be liable for unfair dismissal.

## Termination due to redundancy:

- **Validate True Redundancy:** Confirm whether there is a genuine need for change, like business decline or restructuring.
- **Initial Meeting:**
  1. Schedule a meeting with the affected staff member, giving at least 48 hours' notice.
  2. Provide the option for a support person to attend with the staff member.
  3. Discuss business changes, reasons, and that their role will no longer exist due to downsizing, restructuring, or business decline.
  4. Avoid mentioning redundancy at this stage.
  5. Suggest redeployment options, and plan a follow-up meeting.
  6. Set a follow-up meeting for 4-7 days where you will be able to give the employee more information. Invite the staff member to bring a support person.
- **Second Meeting:**
  1. Inform staff members of redundancy due to downsizing, restructuring, and business decline.
  2. Say you have looked across the business however at this time there are no opportunities for redeployment with the business.
  3. Prepare redundancy details, payout, and last day.
  4. Decide whether they will work a notice period or will be paid in lieu of notice.
  5. Calculate redundancy pay and benefits.
  6. Issue Termination due to redundancy letter at the second meeting.
- **Exceptions for Small Businesses & Short Tenure:**
  1. Small businesses ( $\leq 14$  employees) and  $< 12$  months of service don't need redundancy pay.

This process ensures proper communication, legal compliance, and a fair approach to redundancy.

[Redundancy Checklist](#)

## Termination during Probation

Probation is a critical time for an employer and an employee.

It is common practice for either an employer or an employee to give 1 week's notice of termination of employment within the probation period. Probation periods are usually 3-6 months depending on the level of the role.

Within the Probation period, under the Fairwork Act, a company is not required to go through a Performance Management Process in order to terminate an employee. This means it is a lot quicker and simpler to terminate an employee during their Probation period than afterwards.

Hence, if you know an employee does not have the required skill set to perform their role or is not a good cultural fit for the team, it is better to terminate within the probation period than to wait until after.

- **Confirm Policies and Contract:** Review your company's rules and the employees' employment contract regarding termination during probation.
- **Evaluate:** Regularly assess the staff members' performance and behaviour in the early days of employment. This will ensure you are not caught out with any performance issues only arising at the end of probation.
- **Record:** Keep notes on issues, concerns and feedback provided to the employee.
- **Discuss:** Give constructive feedback and support and suggest improvements.
- **Make a decision on Permanency:** Based on progress, decide whether to continue with the staff members' employment  $\frac{3}{4}$  of the way through the probation period.
- **Terminate:** Meet with the employee to explain you have decided not to continue employment past the probation period. Provide the employee with a letter confirming termination of employment.
- **Paperwork:** Complete necessary termination forms.
- **Legal Compliance:** Follow labor laws and regulations.
- **Notify Relevant Parties:** Inform IT, payroll, etc.
- **Collect Company Items:** Get back company property.

If you have any questions or need further assistance, feel free to reach out to us.