

## Resignation - how much notice?

When an employee resigns, they may have to give notice to their employer. The notice period:

- starts the day after the employee gives notice that they want to end the employment
- ends on the last day of employment.

An employee's award, employment contract, enterprise agreement or other registered agreement ([www.fairwork.gov.au/Dictionary.aspx?TermID=2034](http://www.fairwork.gov.au/Dictionary.aspx?TermID=2034)) sets out how much notice (if any) they have to give when they resign.

Employees covered by a registered agreement should check the terms of their agreement for information. To find a registered agreement, go to the Fair Work Commission website (<https://www.fwc.gov.au/awards-and-agreements/agreements>) <sup>1</sup>.

An award and agreement free ([www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions](http://www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions)) employee doesn't have to give notice to an employer before resigning. An employment contract may require an employee to give notice.

See our Who doesn't get notice? page ([www.fairwork.gov.au/ending-employment/notice-and-final-pay/who-doesnt-get-notice](http://www.fairwork.gov.au/ending-employment/notice-and-final-pay/who-doesnt-get-notice)) to find more information about when notice periods don't apply to employees.

Use our Notice and Redundancy Calculator (<http://calculate.fairwork.gov.au/EndingEmployment>) to find information about minimum notice requirements or select your award from the list below.

Based on what you've told us, it looks like you're covered by the Children's Services Award 2010 [MA000120].

### Minimum notice period

An employee has to give the following minimum notice period when resigning:

Period of continuous service	Minimum notice period
1 year or less	1 week
More than 1 year - 3 years	2 weeks
More than 3 years - 5 years	3 weeks
More than 5 years	4 weeks

### Continuous service

The minimum notice period an employer has to give an employee is based on the employee's 'continuous service' with them.

Continuous service is the length of time an employee is employed by the business. Service includes authorised unpaid leave (eg. unpaid parental leave). Service will not include any periods of unauthorised leave or absences.

Read about whether casual service counts for notice ([https://www.fairwork.gov.au/library/k600005\\_does-casual-service-count-for-redundancy-pay-notice-](https://www.fairwork.gov.au/library/k600005_does-casual-service-count-for-redundancy-pay-notice-)) in our Library.

### Notice of termination not given

An employer can deduct up to one week's wages from an employee's pay if:

- the employee is over 18
- the employee hasn't given the right amount of notice under the award
- the deduction isn't unreasonable.

However, employers can only deduct pay from wages owed under the award. They can't deduct from other entitlements owed to the employee, such as accumulated leave or other overaward payments.

Check the award for more information about withholding pay when the minimum notice period isn't given.

To find out more about who this award applies to, go to the Children's Services Award summary ([www.fairwork.gov.au/awards-](http://www.fairwork.gov.au/awards-)

[and-agreements/awards/award-summary/ma000120-summary](#) .

Source reference: Children's Services Award 2010 [MA000120] clause 11 [☞ \(http://awardviewer.fwo.gov.au/award/show/MA000120\)](http://awardviewer.fwo.gov.au/award/show/MA000120)

An employment contract can't provide for less than the legal minimum set out in awards and agreements. Visit [Employment contracts \(www.fairwork.gov.au/awards-and-agreements/employment-contracts\)](#) to find out where to get advice about any other terms and conditions in the contract.

The information under the headings [Ending the notice period early](#) and [Giving more notice than required](#) is currently under review. All other information on this page remains current.

Please [get in touch with us \(https://www.fairwork.gov.au/contact-us\)](https://www.fairwork.gov.au/contact-us) if you have any questions.

## Ending the notice period early

When an employee has resigned and given their minimum notice, their employer can:

- let the employee work out the notice period, or
- tell the employee to leave early and pay them in lieu of notice instead.

If the employer decides to tell the employee to leave early and pay them in lieu of notice, they need to pay the full notice period that applies for dismissing an employee. Any time the employee has already worked during the resignation notice period doesn't count.

The amount paid to the employee must equal the full amount the employee would have been paid if they worked the full notice period. This includes:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime
- penalty rates
- any other separately identifiable amounts.

An employer who has told an employee to leave early can also decide to have the employee work out part of the dismissal notice period and provide payment in lieu of notice for the rest of it.

See [Dismissal - how much notice? \(www.fairwork.gov.au/ending-employment/notice-and-final-pay/dismissal-how-much-notice\)](#) for information about how much notice an employee needs to give.

### Example: Ending the notice period early

Joe has worked for his employer for 4 years when he decides to resign. According to his award, he needs to give his employer, Steve, 3 weeks' notice, which he does.

Joe has only worked 1 week of his notice period when Steve decides that he doesn't need Joe there for the rest of the time. Steve tells Joe to leave early. From the date he tells Joe to leave early, Steve now has to pay Joe 3 weeks' pay in lieu of notice for ending Joe's employment. He also needs to pay Joe for the week of notice that Joe worked after originally resigning. If Steve had told Joe on the day Joe resigned that he didn't need him at work for the 3 weeks' notice period, Steve could have paid Joe the 3 weeks' pay in lieu of notice.

## Giving more notice than required

An employee can give more notice than required in the award, registered agreement or contract. An employer doesn't have to accept this and can choose to only let the employee work the minimum notice period. When the employee resigns, the employer should tell the employee if they accept the full notice period or only want them to work the minimum period.

An employer might accept an employee's longer notice period but at a later date decide they want them to leave early or only work the minimum period. When ending the notice period early, the employer needs to let the employee work, or pay them in lieu of notice for the minimum notice period that applies for dismissing an employee from the date the employer tells the employee to end employment earlier. Any time the employee has already worked during the resignation notice period doesn't count.

## Taking leave during a notice period

An employee can take annual leave during a notice period if the employer agrees to the leave. An employer can't force an employee to take leave as part of the notice period.

Notice can include public holidays. They don't extend the notice period.

An employee can take sick leave during a notice period if they give:

- notice of the leave as soon as possible
- evidence if the employer asks for it (eg. medical certificate).

### No paid sick leave left

An employee who has used up all their sick leave can take unpaid sick leave. They have to give the employer notice and evidence.

Source reference: Fair Work Act 2009 s.22 and 117 (<http://www.comlaw.gov.au/Series/C2009A00028>)

## Think a mistake might have been made?

### For employees:

If you've lost your job, contact the Fair Work Commission (the Commission) first if you think you were sacked because of:

- discrimination ([www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work))
- a reason that is harsh, unjust or unreasonable
- another protected right.

You have 21 days starting from the day after you were dismissed to lodge an application with the Fair Work Commission. Check the information at the Commission website to find out if you can apply for:

- unfair dismissal (<https://www.fwc.gov.au/termination-of-employment/unfair-dismissal>) (not available if you lost your job because of a genuine Redundancy ([www.fairwork.gov.au/Ending-employment/Redundancy/default](http://www.fairwork.gov.au/Ending-employment/Redundancy/default)))
- a general protections dismissal (<https://www.fwc.gov.au/termination-employment/general-protections-dismissal>)
- unlawful termination (<https://www.fwc.gov.au/termination-employment/unlawful-termination>) .

If you think you haven't been paid everything you're owed:

- read about Notice and final pay ([www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default)) to find out what you should get
- see our Help resolving workplace issues ([www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default)) section for practical advice on:
  - talking to your employer about fixing your notice and final pay if it's wrong
  - getting help from us if you can't resolve it.

### For employers:

- check that the right Notice and final pay ([www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/default)) has been given
- read our Help resolving workplace issues ([www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default)) section for practical advice on:
  - talking to fix any problems
  - getting help from us if you still can't resolve it.

### What to do next:

- Use our Notice and Redundancy Calculator (<http://calculate.fairwork.gov.au/EndingEmployment>) to calculate notice periods when resigning
- Find an agreement on the Fair Work Commission's website (<https://www.fwc.gov.au/awards-and-agreements/agreements>) (<http://www.fwc.gov.au>)

### Help for small business

- Use the Small Business Fair Dismissal Code and checklist (DOCX 25.5KB) (<https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx>) (PDF 220.4KB) (<https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx>) to make sure that a dismissal is fair
- Find tools, resources and information you might need on our Small business page ([www.fairwork.gov.au/Find-help-for/Small-business/default](http://www.fairwork.gov.au/Find-help-for/Small-business/default)) .

### You might also be interested in:

- Who doesn't get notice ([www.fairwork.gov.au/Ending-employment/notice-and-final-pay/who-doesnt-get-notice](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/who-doesnt-get-notice))

- [Final pay \(www.fairwork.gov.au/Ending-employment/notice-and-final-pay/final-pay\)](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/final-pay)
- [Unfair dismissal \(www.fairwork.gov.au/Ending-employment/unfair-dismissal\)](http://www.fairwork.gov.au/Ending-employment/unfair-dismissal)
- [Dismissal - how much notice? \(www.fairwork.gov.au/Ending-employment/notice-and-final-pay/dismissal-how-much-notice\)](http://www.fairwork.gov.au/Ending-employment/notice-and-final-pay/dismissal-how-much-notice)

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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