

Legislations of terminating employment

Rights to Notice

Current employment legislation gives the right both to employer and employee a minimum period of notice of termination of employment.

If a contract of employment gives the employer or the employee rights to longer notice than the minimum in the legislation, then the longer period of notice applies.

The legislation does not prevent either employers or employees from waiving their rights to notice or from accepting a payment in lieu of notice. Nor does the recent legislation affect the right of either party to terminate the contract without notice if the conduct of the other justifies it. The question of whether termination without notice is justified depends on the circumstances of the individual case and in the event of dispute can be finally determined only by the courts or employment tribunals.

Where the right to minimum notice does not apply

The employee's right to a minimum period of notice does not apply to:

- Anyone who is not an employee, for example an independent contractor or freelance agent.
- A person employed as a seaman on a ship registered in the United Kingdom under a crew agreement the provisions and form of which are of a kind approved by the Secretary of State for Transport.
- Crown servants and members of the armed forces.
- Most employers who have fixed-term contracts.

Continuous Employment

A period of continuous employment forms the basic qualification for a number of individual rights under the employment protection legislation, including rights to notice and to receive a written statement of reasons for dismissal; each right has its own qualifying period.

Notice to be given by an Employer

An employer is required to give an employee:

- at least one week's notice if the employee has been employed by the employer continuously for one month or more but less than two years;
- at least two weeks notice if the employee has been employed by the employer continuously for two years; and
- one additional week's notice for each further complete year of continuous employment for a period of less than 12 years continuous employment, and at least 12 weeks notice if the employee has been employed by the employer continuously for 12 years or more.

Notice to be given by an Employee

An employee is required to give his her employer at least one weeks notice if employed continuously for one month or more by that employer. This minimum is unaffected by longer service.

Fixed-term and specific task contracts

Generally, no notice of the expiry of a fixed-term contract will need to be given, but if the contract is terminable by notice before its expiry the minimum notice provisions, (see above) will apply to such early termination.

Employees who have been continuously employed for three months or more, after being engaged originally on a contract specifying a fixed term of one month or less, are entitled to a minimum period of notice, as are employees engaged for three months or less for a specific task who have been employed continuously for more than three months. This benefits employees who are employed under a series of short-term contracts.

When notice can be given

Unless a contract states otherwise, notice can be given on any day. Normally the period of notice will run from the start of the following day, so that if, for example, a weeks notice is given on the Monday, the period of notice will begin on the Tuesday and expire at the end of the following Monday. But there may be conditions in the contracts to be taken into account.

Termination of employment on redundancy

An employee who is being dismissed as redundant is still entitled to receive due notice of termination under his or her contract or the legislation, whichever provides the longer period.

Transfer of an undertaking

When a business or undertaking or part of it, is transferred to a new owner, employees who are employed by the old owner at the time of transfer automatically become the employees of the new owner, as if their contracts of employment were originally made with the new owner. The new owner takes over the employment liabilities of the old owner, with the exception of criminal liabilities and occupational pension rights.

Right to minimum pay during the notice period

An employee whose contract of employment specifies normal working hours and who works throughout those hours during the period of notice is entitled to receive normal pay for that period in accordance with the terms of contract.

With certain exceptions, in the case of an employee whose contract of employment specifies normal working hours, the legislation provides for a minimum hourly rate of pay during the minimum period of notice for an employee who is:

- ready and willing to work, but no work is provided:
- incapable of work because of sickness or injury:
- absent from work wholly or partly because of pregnancy, childbirth or parental leave:
- on holiday in accordance with the terms of employment.

The minimum average hourly rate of pay is produced by dividing a weeks pay by the number of normal weekly hours.

Sick pay and holiday pay and right to notice

An employee is not entitled to be paid twice for the same period. If, therefore, during the period of notice an employee is sick and is paid sick pay by the employer, or is on holiday in accordance with the terms of the contract and is receiving holiday pay, the employer may reduce the notice pay by the amount of sick pay or holiday pay which is paid to the employee provided it is in respect of the same period.

Insolvency of an Employer

Under the insolvency provisions of the legislation, the Department of Trade and Industry may pay from the National Insurance Fund certain debts owed to employees by insolvent employers. These include arrears of pay (including sick pay) holiday pay and compensatory notice payment of employees have suffered financially because they have not been given proper notice.