

TERMINATION OF EMPLOYMENT

APPLICATION

These rules on termination of employment do not apply to employees who work less than 24 hours per month.

NOTICE PERIODS

The length of employment determines the notice period:

- Where an employee has worked for six months or less – 1 week notice.
- Where an employee has worked for more than six months but less than 12 months - 2 weeks' notice.
- Where an employee has worked for 12 months or more - 4 weeks' notice.
- Where an employee is a farm worker or domestic worker and has worked less than six months – 1 week notice.
- Where an employee is a farm worker or domestic worker and has worked six months or more – 4 weeks' notice.

The notice period may be reduced by a collective agreement from four weeks to not less than two weeks for an employee who has worked for 12 months or more.

Notice must be given in writing. However, illiterate employees may be given notice verbally. Notice may not be given during leave or run concurrently with leave.

PAYMENT INSTEAD OF NOTICE

An employer may pay the employee for the notice period without requiring the employee to work. The employee must be paid for the notice period, unless both parties agree otherwise.

ACCOMMODATION PROVIDED BY EMPLOYER

If the employer terminates employment before the end of the required notice period or gives payment instead of notice, the employer must continue to provide accommodation for a month, or until the contract could legally be ended, whichever is longer.

PAYMENTS ON TERMINATION

The employer must pay for time off accumulated but not taken (e.g. overtime worked in terms of an agreement, for example Sunday work etc.) and leave accumulated, but not taken.

SEVERANCE PAY

Severance pay only applies in cases of retrenchment. An exception to this is Section 198B (10) of the LRA which provides that an employee employed on fixed-term contract on a specific project for a period exceeding 24 months, subject to the terms of any applicable collective agreement, will be entitled to severance pay in an amount of 1 week's remuneration for each completed year of service on expiry of the fixed-term contract. However, such employees will not be entitled to any severance pay should the employer offer or procure employment with a different employer, prior to the expiry date of the fixed-term contract, and when the new employment commences at the expiry date of the contract on the same or similar terms.

Should a collective agreement provide that employees employed on fixed-term contracts for more than 24 months will not be entitled to any severance pay, such clause will supersede the provisions of Section 198B (10).

Severance pay must equal at least one week's pay for each completed year of continuous service. Previous employment with the same employer, but broken by periods of less than one year, is still regarded as continuous service, unless there was a previous retrenchment.

Payment includes the cash value of any payment in kind, but excludes gratuities ('tips'); allowances paid to allow the employee to work (for example, a uniform allowance); and discretionary payments not related to hours of work or work performance (for example, a birthday bonus).

An employee who unreasonably refuses an offer of alternative employment is not entitled to severance pay. Payment of severance pay does not affect an employee's right to any other payments, such as notice pay (if relevant), leave pay and outstanding remuneration.

CERTIFICATE OF SERVICE

The employer must give the employee a certificate of service which states:

- The employee's full name;
- The name and address of employer;
- A description of a council (for example a bargaining or statutory council) or Sectoral Determination where applicable;
- Dates of commencement and termination of employment;
- Title of job, or a brief description of work;
- Remuneration at date of termination; and
- Reason for termination (only if the employee requests this).

Where an employee absconds, he or she is still entitled to a Certificate of Service.

RELEVANT LEGISLATION

The Labour Relations Act 66 of 1995 (s198B (10))
Basic Conditions of Employment Act 75 of 1997 (s35 (5), s84 as amended).