

MANAGERS GUIDE - Ending Employment

The purpose of this section is to highlight the different methods in which employment with the company can end.

This is a very important section in the Go HR toolkit, as firstly it looks at resignation. The recruitment process and the time that goes into it can be very costly, so by finding out why people choose to leave our employment, we may be able to change the way we work to improve retention and lower recruitment costs. We also need to remember that even when our employees have made the decision to end their employment, they and their families and friends may still be our customers.

This section also covers the process we must follow when we may need to terminate an employee's employment with us. How we manage that process reflects on us as a business, and has an impact on remaining team members.

Company's Commitment

- To comply with all legislation, regulations and guidelines regarding terminations of employment.
- To provide individuals leaving the Company with all relevant documentation and contact details.
- To offer exit interviews to all leavers and to take any remedial actions required as a result.
- To ensure they discuss the reason for leaving with the individual and that all alternatives are explored, if appropriate.

Individual Commitment

- To give the appropriate period of notice
- To return all goods and equipment provide by the Company.
- To provide a forwarding address.
- To settle any outstanding monies owed to the Company before leaving.

Documents

Notification of Employee leaving form

Resignation

An employee may give notice to end his/her employment at any time. An employer cannot refuse to accept a resignation, but in the event of an employee tendering their resignation, every effort should be made to establish all of the reasons for that resignation.

It is important to spend some time with employees who are leaving to establish the reason why. As soon as an employee resigns you should complete a notification of employee leaving form and return it to Go HR along with the employees' holiday card and letter of resignation. Go HR will then produce a letter for the individual confirming the date of leaving and notify payroll. This must be done as soon as the individual resigns so that they are not over paid.

Employees on resigning will often discuss areas of concern relating to their job or employment which they would not raise whilst in employment. This can provide useful information relating to the Company and can enable improvements to be made to retain employees.

How much notice does the employee need to give

The amount of notice which an employee must give when terminating their employment is detailed in their individual contract of employment, a copy of which will be held by HR.

For most employees the standard notice is

- Within their probationary period is 1 week
- After completing their probationary period it is 1 month

What can I do if the employee does not give the required notice?

The former employee may be sued for breach of contract to recover any financial loss that may have been incurred by you due to the employee failing to serve the correct notice. However, given that financial loss is difficult to quantify, and such claims are costly, realistically there is little that can be done. However, if the employee was to issue an application to a Tribunal claiming breach of contract, it would be possible to counterclaim for provable loss.

What can I do if I do not want the employee to work their notice?

If you do not want an employee to work their notice, you would have to pay the employee for their notice period as stated in their contract of employment.

The exception to this is if both you and the employee mutually agree to reduce the notice period. This must be confirmed in writing.

Accepting a Resignation

Once an employee resigns, we MUST formally write to confirm their resignation has been accepted. Contact HR for a letter to be produced, ideally this notification should be the completed form. The letter will include an exit interview for the leaving employee to complete and return to Go HR or a manager in the company. We use this information to make enable us to make improvements to the working environment.

Completing the Notification of Leavers form

A form should be completed as soon as you receive a resignation. You need to fully complete the form so that the final payment can be calculated correctly. Go HR will check all the data and working out the accrued holiday entitlement and taken holiday to ensure that you have calculated it correctly.

If the leaving employee works in an area where there are variable shifts then the form needs to include the number of days that have actually been worked.

Any omissions on the form will result in a delay in the processing of the leaver.

A form needs to be completed for every type of employee leaver.

Retirement

The Company does not have a set retirement age so an employee can retire from the Company when they want to and would need to serve their normal contractual notice.

Dismissal

When has an employee been dismissed?

An employee has been dismissed if:

- The contract terminates with or without notice.
- A fixed-term contract (i.e. a contract with a stipulated termination date) under which an employee is employed expires without being renewed.
- The employee resigns (with or without notice) in circumstances where he/she is entitled to or has no choice but to resign by reason of the employer's conduct (this is usually known as 'Constructive Dismissal' which is detailed in this Section).

What makes a dismissal fair?

Unfortunately, at times the employment relation reaches a point for many reasons whereby the employee wishes to end the relationship, this is called a dismissal. For a dismissal to be fair, you would to satisfy the following requirements:

- The reason for dismissal was a statutory reason as set out below.
- That you acted reasonably, under the circumstances, in dismissing the employee for the above reason (e.g. did you follow a fair procedure which would normally involve verbal, written and final written warnings prior to dismissal?).
- The warnings would also have to be preceded by a proper disciplinary meeting.

For further information on the procedure refer to the Disciplinary section of the HR Toolkit.

What are the statutory reasons for dismissal?

- Capability or qualification of the employee for performing the work – this includes sickness
- Conduct
- Redundancy
- A statutory restriction which makes employment illegal
- Some other substantial reason justifying dismissal

Constructive Dismissal

An employee who has resigned may, in certain circumstances, allege that he/she has been constructively dismissed.

What is Constructive Dismissal

This is when an employee resigns as a result of a fundamental breach of contract which goes to the root of contract, on the part of their employer. It may also occur in the case of a series of breaches whereupon the employee resigns following the “last straw” incident.

Examples which may give rise to a claim of constructive dismissal

- Reducing pay
- Changing Hours
- Changing the nature of the work
- Changing the place of work
- Suspension without pay
- Overbearing conduct by an employer
- Threats of “resign or be sacked”

Automatic unfair reasons for dismissal

If a tribunal found that an employee was dismissed for any of the following reason, they would find that the employee has been automatically unfairly dismissed, irrespective of the employee's length of service:

- Pregnancy, including reasons related to maternity
- Disability
- Race
- Sex
- Age
- Sexual Orientation
- Trade union membership, non-membership or on grounds of trade union activities
- Refusing to work in contravention of the Working Time Regulations or to forgo a right conferred by those regulations.
- Change of ownership of a business or part of a business.
- Certain health and safety issues.
- Exercising a statutory employment protection right.
- Making a protected disclosure (whistle-blowing).
- Performing the duties of an employee representative in relation to redundancy, a business transfer of the Working Time Regulations.
- Standing as a candidate in an election to be an employee representative.
- Refusing to do shop work on a Sunday.
- Being a trustee of an occupation pension scheme.

Redundancy

Definition

A redundancy situation exists when there is:

1. A closure or intended closure of a business
2. A closure or intended closure of that part of the business when the employee works
3. A reduction or expected reduction in the need for the kind of work carried out by the employee

A redundancy situation is a valid statutory reason for dismissal and must be managed. However, it is important that where a redundancy situation exists that the proper and legal procedure is followed to avoid unfair dismissal claims. No redundancies can be considered without the agreement of the Company Director.

Giving References for ex-employees

Is there a legal obligation to provide a reference?

No. The legal obligation upon the provider of a reference is to ensure that it is accurate and is not misleading or defamatory. If a reference is given which is untrue and the recipient suffers a loss as a result of replying on it, the provider may be sued.

References are subject to the law of data protection.

Who can give a reference for an ex-employee

All official references on behalf of the Company must be issued by the HR department, only, for consistency and accuracy. The Company will provide a reference that confirms the ex-employees position, place of work and dates of employment only.