

Notice of termination and redundancy pay and the National Employment Standards

Overview

Notice of termination and redundancy pay forms part of the National Employment Standards (NES). The NES apply to all employees covered by the national workplace relations system, regardless of any award, agreement or contract.

The NES establish the minimum entitlement to the notice period, or payment in lieu of notice, that an employer must give an employee to end their employment. This applies to all employees (other than casuals), not just those covered by the national workplace relations system.

The NES also outline the redundancy pay an employee may receive at the end of their employment. This entitlement only applies to employees covered by the national workplace relations system.

Notice of termination

An employer must provide an employee with **written notice** of the day of termination when ending their employment. Some exceptions apply (see below).

An employer may give notice to the employee by either:

- delivering it personally
- leaving it at the employee's last known address
- sending it by pre-paid post to the employee's last known address.

An employee may also need to give their employee notice of termination if their award of agreement specifies it.

What amount of notice must be given?

An employer must not terminate an employee unless they have either:

- given the minimum period of notice
- paid the employee instead of giving notice. This is paid at the employee's full pay rate as if they had worked the minimum notice period.

An employee's full pay rate includes the following:

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

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

Employees over 45 years old who have completed at least two years of service when they receive notice are given an additional week of notice.

Does notice of termination apply to all employees?

An employer does not need to provide notice of termination (or payment in lieu of notice) to employees who:

- are casual
- are employed for specific period of time, task or season (eg. a fixed term contract or a seasonal fruit picker)
- are fired because of serious misconduct (eg. engaging in theft, fraud or assault)
- have a training arrangement and are employed for a set period of time or for the length of the training arrangement (other than an apprentice)
- are daily hire working in the building and construction industry or meat industry
- are weekly hire in connection with the meat industry and whose termination depends on seasonal factors.

Redundancy

Redundancy occurs when an employer either decides they no longer need an employee's job to be done by anyone, or the employer becomes insolvent or bankrupt, and terminates their employment.

The job itself, not the employee, becomes redundant. Redundancy can happen when the business:

- introduces new technology (eg. the job can be done by a machine)
- slows down due to lower sales or production
- closes down
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens.

Pre 1 January 2010

An employee's current entitlement to redundancy pay can depend on whether they were entitled to redundancy pay before the introduction of the NES. If an employee was not entitled to redundancy pay before 1 January 2010, their period of continuous service will only start from 1 January 2010.

What redundancy pay is payable?

Employees receive redundancy pay based on their continuous period of service with their employer. This amount is paid at the employee's base pay rate for ordinary hours worked.

An employee's base rate of pay (other than a pieceworker) is the pay rate they receive for working their ordinary hours, but does not include the following:

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

Period of continuous service	Redundancy pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks*

* There is a reduction in redundancy pay from 16 weeks to 12 weeks for employees with at least 10 years continuous service. This is consistent with the *2004 Redundancy Case* decision made by the Australian Industrial Relations Commission.

Reducing redundancy pay

An employer can apply to the Fair Work Commission (FWC) to have the amount of redundancy they have to pay reduced if:

- the employer finds other acceptable employment for the employee, or
- the employer can't afford the full redundancy amount.

Does redundancy pay apply to all employees?

Some employees don't get redundancy pay when their job is made redundant.

The following employees don't get redundancy pay:

- employees whose period of continuous service with the employer is less than 12 months
- employees employed for:
 - a stated period of time
 - an identified task or project
 - a particular season
- employees fired because of serious misconduct
- casual employees
- trainees engaged only for the length of the training agreement
- apprentices
- employees of a small business.

What is a small business?

A small business employer, for the purpose of determining redundancy pay, is an employer who employs fewer than 15 employees at the time when notice is given.

To determine whether the employer has fewer than 15 employees, the following factors need to be considered:

- all employees employed by the employer at that time are to be counted
- a casual employee is not to be counted unless, at that time, they have been employed on a regular and systematic basis
- associated entities are taken to be one entity
- the employee being terminated and any other employees being terminated at that time are counted.

An award or agreement may have different redundancy provisions which could apply instead of those listed above. These provisions, such as industry-specific redundancy schemes, can override the listed exceptions. For example, the industry-specific redundancy scheme in the Building and Construction General On-site Award means that small business employers may need to provide redundancy payment.

To check which award you're covered by use our [Award Finder](#).

What happens if my employer goes bankrupt or into liquidation?

Sometimes businesses shut down because they aren't profitable or run out of money. This can mean that employees lose their jobs, and in some cases, the employer may not be able to pay them the wages and entitlements they are owed.

When a business is bankrupt, also known as going into liquidation or insolvency, employees can get help through the Fair Entitlements Guarantee (FEG).

The FEG is available to eligible employees to help them get their unpaid entitlements.

This can include:

- wages - up to 13 weeks unpaid wages (capped at the FEG maximum weekly wage)
- annual leave
- long service leave
- payment in lieu of notice of termination - maximum of 5 weeks
- redundancy pay - up to 4 weeks per full year of service.

It doesn't include:

- superannuation
- reimbursement payments
- one-off or irregular payments
- bonus payments
- non-ongoing or irregular commission.

For more information visit www.employment.gov.au/fair-entitlements-guarantee-feg, call the FEG Hotline on 1300 135 040, or email feg@employment.gov.au

Contact us

Fair Work Online: 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**