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# Contractual Notice



## Contractual notice

In general, employers are free to give notice of dismissal at any time, unless they have expressly or impliedly agreed not to in the contract. There is no breach of contract as long as they allow the employee to work out his notice or (if provided in the contract) pay him in lieu.

However, employees whose contractual rights have not been breached may also have statutory rights. For example, a dismissal may not be in breach of contract but it may still be unfair.

## Dismissing on notice

All contracts of employment must include the length of notice that the employee is entitled to receive in order to terminate the contract. There are also statutory minimum rights to notice. If the notice period in the contract is different from statutory notice, then the employee will be entitled to whichever is the longer.

References: ERA 1996, s 1(4)(e)

Notice of dismissal can be given orally or in writing but should be clearly communicated. Where ambiguous words are used, it is only effective as notice of dismissal if a reasonable person in the position of the employee would have thought that they were being dismissed.

References: *Gale v Gilbert* [1978] IRLR 453

## Dismissal during long-term incapacity

Some employers provide health insurance benefits for employees which last for as long as they are employed. For example, they may provide a permanent health insurance (PHI) scheme, which continues to pay an employee on long-term sickness absence all (or, more usually, a proportion) of his salary after he has exhausted his entitlement to sick pay under the terms of his employment contract.

Where an employee's entitlement to benefit under the employer's PHI scheme is dependent upon the continuance of the employment relationship, it has been held (by the High Court) that a term should be implied into the contract of employment to the effect that, except for summary dismissal, the employer will not terminate the contract while the employee is incapacitated from work.

References: *Aspden v Webbs Poultry* [1996] IRLR 521

However, it would seem that it will not always be appropriate to imply such a term. The EAT more recently held that no such term should be implied in a case where:

References: *Lloyd v BCQ* (UKEAT/0148/12/KN, UKEAT/0239/12/KN)

- o a written employment contract had been entered into with the employee, subsequent to the commencement of the PHI scheme that:
  - made no mention of the scheme, and
  - contained an entire agreement clause
- o there was, in all the circumstances, no contractual right to receive benefits under the scheme, and
- o the contract gave the employer a specific express power to dismiss in the event of prolonged illness

## Withdrawing notice of dismissal

Once notice of termination has been given, it cannot be withdrawn unilaterally. If your employer changes his mind during your notice period, your notice of dismissal still stands unless you agree that it can be withdrawn. If you refuse to allow your employer to withdraw notice of termination because you want to bring a claim of unfair dismissal, any damages you receive may be reduced if the Tribunal considers that you should have allowed your employer to withdraw the notice and carried on working.

References: *Riordan v War Office* [1959] 3 All ER 552

### **Termination without notice**

An employer or employee can lawfully terminate the contract without notice:

- o **by agreement** -- where the parties both agree, the contract can be terminated on short or no notice. Termination by mutual consent is not a dismissal so the employment tribunal will look carefully at the agreement to make sure it is not being used to deprive the employee of his statutory rights
- o **on expiry of a fixed term or limited term** -- but this is treated as a dismissal for unfair dismissal and other statutory purposes
- o **because the employer has committed gross misconduct**
- o **because the employee is entitled to resign without notice**
- o **by making a payment in lieu of notice** in accordance with an express contractual right to do so