

# What are your legal obligations if an employee resigns?

Legal information for community organisations

## This fact sheet covers:

- ▶ written acknowledgement
- ▶ notice requirements
- ▶ final pay
- ▶ record keeping, and
- ▶ exit procedures

**Your organisation may face legal issues if you miss essential steps after an employee resigns.**

We have set out steps below to help you avoid legal difficulties when an employee resigns.



### Disclaimer

This fact sheet provides information on legal obligations when an employee resigns. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.



### Note – constructive dismissal

An employee who resigns because they felt forced to do so or because they felt they had no other choice may claim they have been 'constructively dismissed' by the employer. In these circumstances, legal entitlements might apply.

Constructive dismissal is complex and you may need legal advice.

## Acknowledge an employee's resignation in writing

An employee can resign verbally or in writing. Preferably, ask the employee to provide their resignation in writing.

Following a verbal or written resignation, it is a good idea for your organisation to acknowledge the resignation in writing and specify the employee's final day of work to avoid confusion.

## Honour the employee's notice requirements, or come to an agreement

Check your employee's conditions of employment to see what they say about the notice period on resignation. Your employee's notice requirements might be set out in the National Employment Standards (NES) or in the terms of an enterprise agreement, modern award or employment contract.

If the employee wants to vary the notice period so that the employment ends immediately or before the end of the notice period, and you agree to that arrangement, then the employee is relieved from observing the applicable notice period. You will only have to pay the employee for the part of the notice period that they work.

If you require the employee to continue working during the notice period, and the employee refuses to do so, the employee is not entitled to be paid for time not worked.

If you don't want the employee to continue working for all or part of the notice period, you may be able to pay the employee in lieu of the balance of the notice period.



For more information on notice periods, see [the Fair Work Ombudsman webpage on resignation and notice](#).

## Work out the employee's accrued entitlements

Some accrued entitlements must be paid to the employee on the termination of their employment.

At a minimum, employees are entitled to:

- outstanding wages up to and including their final day of work including superannuation contributions, loadings, monetary allowances, overtime and penalty rates
- a payment in lieu of accrued but untaken annual leave (which may include annual leave loading), and
- a payment in lieu of accrued long service leave entitlements if applicable (see 'Long service leave' below)

Employees are not generally entitled to a payment in lieu of accrued personal/carer's leave. However, it's important to check any applicable modern award, enterprise agreement or employment contract.

The [Fairwork Ombudsman has published tools](#) to help work out an employee's final pay.

In addition to calculating final payments of annual leave and accrued long service leave, also:

- check with the Australian Taxation Office to see if any part of a lump sum is an eligible termination payment
- pay any remaining superannuation contributions
- include relevant pay as you go (PAYG) withheld amounts in your next Business Activity Statement (BAS), and
- collect information for your next fringe benefits tax (FBT) report

### Long service leave

In some cases, employees may be entitled to a payment for accrued long service leave (or a pro-rata amount) when they resign. This will depend on the requirements under the applicable long service leave legislation, or any modern award or enterprise agreement providing for long service leave entitlements.



The [Fair Work Ombudsman website](#) has further information on long service leave.



## Record keeping

Under the [Fair Work Act 2009 \(Cth\)](#) an employer must keep employee records for seven years, which must include:

- basic employment details (including employee and employer names and employment status)
- pay
- overtime hours
- averaging arrangements
- leave entitlements
- superannuation contributions
- termination of employment (where applicable)
- individual flexibility arrangements, and
- guarantees of annual earnings

## Visa holders

If the employee holds a visa to work in Australia, you may have an obligation to tell the Department of Home Affairs that the employee's employment has ended.



### More information

For more information, see the [Department of Home Affairs webpage 'Change of situation'](#).

## Exit procedures

Consider developing a standard exit procedure that includes the following steps:

- make a time with the employee to complete a handover of duties
- confirm the employee's contact details
- fill the vacancy so the present employee can help train their replacement
- remind the employee of any contractual obligations that continue after their employment ends, such as the need to comply with post-employment restraints and obligations around using confidential information and intellectual property
- make sure the employee returns security passes and other property of the organisation, and
- cancel computer codes and passwords after the employee leaves

If appropriate in the specific circumstances, you may also wish to organise an exit interview with the employee to gather feedback on their experience with your organisation and improvement areas.

You are not obliged to provide a reference or a statement of employment for an employee who is leaving but if you do, make sure everything you say is accurate.