

Employment Agreement - Terminating

Terminating an Employment Agreement

Whilst an employee is free to resign at any time upon giving notice to their employer in the manner set out in their employment agreement, an employer cannot terminate an employee's employment without legitimate reasons.

Reasons for termination of employment by an employer can include:

Redundancy / Restructuring

An employer, when considering restructuring or redundancies for any other reason, is required to consult with affected employees and obtain feedback concerning proposed redundancies.

The employer is required to act in good faith in listening to any proposals which any employee may have concerning a possible redundancy.

Most redundancies can be justified on economic grounds, but an employer must follow appropriate procedures when addressing the possibility of redundancies with any employee.

The obligation to consult with affected employees also arises should the employer be in the process of considering selling their business or part of their business.

Performance Related Reasons

If an employer wishes to dismiss an employee for performance reasons (for example, continued failure to meet reasonable performance objectives / requirements), that employer must follow an appropriate process.

It is important that correct legal procedures are followed by an employer. Should the employer fail to do so, the employee may be entitled to bring a personal grievance against the employer.

Serious Misconduct

In cases of serious misconduct, for example, theft or being under the influence of illegal drugs while at work, employers are entitled to dismiss an employee summarily (i.e. immediately).

However, an employer cannot simply dismiss the employee for serious misconduct immediately on the receipt of an allegation. The employee should first be given the opportunity to respond to the allegation of serious misconduct.

The employee is sometimes suspended on full pay until an **Investigation Meeting** and, if necessary, a **Disciplinary Hearing** occurs.

It is important that any dismissal is undertaken in a procedurally fair manner, and in accordance with the affected employee's Employment Agreement.

What is a Personal Grievance?

Personal grievances generally fall into two categories:

1. Unjustified dismissal: Where the employee is no longer working for the employer, either because their employment has been terminated in a procedurally unfair manner or they claim to have been constructively dismissed (forced to resign).
2. Serious disadvantage within the workplace: Where the employee is still working for the employer but alleges that some conduct by the employer is unreasonable or otherwise unjustified.

An employee has up to 90 days to raise their personal grievance with an employer.

An employee's personal grievance may result in both parties attending a Mediation Hearing organised through the Department of Labour.

If the personal grievance is not resolved at a Mediation Hearing, the matter may proceed to an Employment Relations Authority Hearing.

How can we help?

ARL Lawyers have considerable experience in employee and employer rights as set out in the Employment Relations Act 2000. We can assist you by:

- Preparing or reviewing employment agreements
- Assisting with redundancy processes
- Representing you at investigation meetings, disciplinary hearings or mediation / Employment Relations Authority hearings

If you would like to know more about terminating employment, personal grievances, or would like to seek further advice, please contact a member of our Disputes Resolution Team.