

# TIPS ON TERMINATION OF EMPLOYMENT

It's not all farewell cards and goodbye lunches when a permanent employee moves on. Final pay should include several key entitlements...



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**Q: I have a permanent employee whose employment is coming to an end. What entitlements do I need to pay on termination of employment and when is the final pay due?**

**A:** In terms of the entitlements that need to be paid on termination, a permanent employee's final pay will generally include:

- outstanding wages
- accrued and untaken annual leave and annual leave loading
- long service leave (if applicable)
- redundancy pay (if applicable)

It will not include accrued and untaken personal (sick/carer's) leave as this is not paid out on termination.

In terms of timing, most Modern Awards specify that you must pay an employee their final pay no later than seven days after the day on which their employment terminates (which may be different to their last day of work). An exception may apply to payments in lieu

of notice in the event you terminate an employee without notice. This is because under the *Fair Work Act 2009* you must not terminate an employee without notice unless you have paid the employee the relevant payment in lieu of notice. This does not apply in cases of serious misconduct. In practical terms, this means that any payment in lieu of notice must be paid at the time of termination.

If you do not pay an employee their termination entitlements on time, you may be in breach of the *Fair Work Act* or Modern Award and if so, penalties may apply. You should also consider any relevant terms in the employee's contract of employment.

**Q: The employee has asked for a reference once they leave. Should I give one?**

**A:** Before deciding whether to give a reference, you should first consider whether you are required to give one, for example by law or under a contract, policy or other agreement. If there is no requirement to give a reference, you are under no obligation to provide one, but you may choose to give one at your discretion.

A reference may help a former employee to move on and secure a position elsewhere. This may be important to you if the employment relationship did not end particularly well and you want the employee to focus their attention elsewhere or if the relationship ended amicably and you want to support the employee transition to a new role.

You should note that there may be legal risks associated with providing references. These risks could potentially

include negligence, defamation or discrimination claims, but this does not necessarily mean that these claims are likely. It would obviously depend on the circumstances.

If you do give a reference, whether in writing or verbally, the reference should be honest, accurate and fair. It should not include misleading, false or irrelevant personal information.

Often the best option for employers is to provide a statement of service instead of a reference. A statement of service typically sets out the employee's start date, end date, position and a summary of their duties, and does not comment further. As the information in a statement of service is generally a matter of fact and not opinion, it is more likely to minimise your exposure to risk.

**If you have any questions about final pay on references or termination of employment, please contact the Professional Services team. **



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