

RESPONDING TO A RESIGNATION

This Practice Note considers the issues and the practical steps an employer should take into account when responding to a resignation by an employee. It further explains the validity of the employee's resignation, the notice period required to tender resignation and outlines the measures an employer should take to minimise liability for wrongful resignation.

Initial response

In order to deal with the resignation tactfully from the outset, the Human Resource officers should liaise with the employer to ensure that certain requirements are met in order for the resignation to be processed effectively.

The employee in turn, bears the responsibility to ensure it complies with the requirements stipulated in the employment contract and the company's Employee Handbook (if any) for its resignation to be processed.

The employer should take into account of the implications both legally and pragmatically to the company before responding to the employee's resignation.

Validity of Notice

An employee who intends to resign, should give notice in accordance to the contractual notice set out in the employment contract. However, if there is no specific provision in the contract as to the period of notice, then **Section 12 of the Employment Act 1955** will take precedence.

The provision confers the right to both the employer and the employee to provide notice at any time to terminate the employment contract. It states that the length of notice should be

the same for both the employer and the employee and the said notice should be made in writing.

The law necessitates a reasonable period of notice to be given to the other party and what amounts to a reasonable notice will depend on the circumstances such as:

- (i) Seniority of the employee;
- (ii) Employee's length of service;
- (iii) Employee's responsibilities;
- (iv) Employee's age; and
- (v) Likelihood of employee securing an alternative employment.

On another note, if the employee fails to provide a reasonable notice of resignation, the employer may seek payment in lieu of short notice from the employee.

Both, the employer and the employee, should be mindful of their contractual obligations when dealing with resignation in order to minimise the risk of a potential legal suit.

Lawful / Unlawful resignation

The law impresses upon the need to handle resignation with tact, in a professional manner and not forcefully in order for the resignation to be deemed to be lawful.

A resignation will be deemed lawful when reasonable notice is given to the other party by either the employee/employer to terminate its services in accordance with the contractual or statutory notice.

On the contrary, a resignation may be deemed to be unlawful under the following circumstances:

- (i) Insufficient notice given by the employee;

- (ii) Employee is forced to resign by the employer due to threat; and
- (iii) Employee is constructively dismissed by the employer.

Generally, the act of resignation may be deemed to be forceful where an employer is found to have coerced an employee to tender his/her resignation. In these circumstances, the onus is on the aggrieved employee to prove that he/she was forced to tender his/her resignation by the employer. See: [MST Industrial System Sdn Bhd v Foo Chee Lek \[1993\] 1 ILR 202.](#)

The law views forced resignation to be a de facto dismissal instead of a resignation. The Industrial Court in [Aezrine Shah Bin Abdullah v Fat Boys Records Sdn Bhd \[2017\] ILJU 65](#) held that there must be clear evidence of compulsion, an inevitable conclusion that the employee would be dismissed if he did not resign, and that the resignation was caused by the employer's threat.

Further, the Industrial Court in [Chong Kok Kean v Citibank Berhad \(Award No. 2290 of 2019 dated 16 August 2019\)](#) was of the view that the employee was not forced to resign. It went on to state that the employee bears the burden to prove that he was forced by the employer to resign. In reaching its decision, the Industrial Court found that the employer's actions in checking the employee's whereabouts did not amount to being oppressive, discriminatory or unusual and as such, the employee was not forced to resign.

Practical Steps

When an employee has expressed his/her intention to resign, it is important that upon acknowledging the resignation notice, both the employer and the employee should discuss or propose the next steps forward to ensure the employee's resignation handover is smooth.

An exit interview is also an important procedure which an employer should consider when dealing with a resignation.

In the event the employee complies with tendering his/her resignation according to the contractual notice period, the employer and employee should identify and resolve the outstanding work before the employee leaves the establishment.

An employer should consider adopting and implementing a non-disclosure agreement to protect the employer's business from any data leaks or misuse of confidential information.

Practically, the employer should also remind and advise the employee of their following obligations, amongst others upon being informed of the employee's intention to resign:

- (i) Employee is strictly bound by his/her contractual obligations until the period of his/her employment has ended;
- (ii) Preserve and maintain confidentiality of data and information pertaining to business;
and
- (iii) Employee should refrain from any activities which may lead to a conflict with his/her duties at the company.

Note: This article does not constitute legal advice on any of the issues addressed above. Please contact the following persons should you have any queries:

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