

ISSUE ARISING FROM TERMINATION

PRACTICE NOTE

CONTRACTUAL NOTICE

This Practice Note provides guidance on the notice period to be given under a contract of employment when terminating the contract.

What is a notice period?

A notice period can be defined as the amount of time (usually calculated by the number of working days) an employee has to work between handing in their notice and actually leaving the employment.

Pursuant to **Section 12 of the Employment Act 1955**, it is mandatory to give notice of termination of employment to the other party. Either party to a contract of employment must give to the other party notice of intention to terminate the employment.

The Requirements

A contract of employment should provide for the notice period to be given when terminating the contract. There may be other additional terms agreed between the parties, such as a requirement that such notice must be given in writing or the option for the employer to shorten the notice period by making payment in lieu of notice.

Parties can set the notice period before entering the contract. When deciding the length of contractual notice period, it is important for the employer to consider the employee's role in the company. The employer may want to set a longer notice period if the employee's role is higher up and hard to replace.

It is important that the notice must be clear and definite. It is the norm in most contracts of employment that notice must be given in writing. As a matter of good practice, once an oral notice is given, it is advisable that a written notice should follow to confirm acceptance of the notice and outline the next steps to be taken during the notice period.

The number of days of the notice period must be calculated accurately. If the employee who is dismissed with notice is not satisfied with the termination by the employer, he is entitled to challenge the termination by the employer. The time period to make a written representation to the Director General of the Industrial Relations Department pursuant to **Section 20(1) of the Industrial Relations Act 1967** has to be complied strictly. The written representation must be filed within 60 days from the expiry of the notice of termination. See: **Section 20(1A) of the Industrial Relations Act 1967**.

Withdrawal of the Notice

Once notice is given, it can only be withdrawn with the agreement of the parties. In [*Percetakan Keselamatan Nasional Sdn Bhd v Jamaliah Md. Yusoff \[2001\] 2 ILR 536*](#), the Industrial Court held that:

“The giving of a notice terminating a contractual employment, whether by employee or employer, is the exercise of the right under the contract of employment to bring the contract to an end, either immediately or in the future. It is a unilateral act, requiring no acceptance by the other party, and like a notice to quit a tenancy. Once given it cannot in my view be withdrawn save by mutual consent.

*In view of the decisions in [*Syed Aman Syed Hassan v. Mara Institute of Technology \[1993\] 1 CLJ 228*](#) and [*Riordan v. The War Office \(Supra\)*](#) which are more authorities than the authorities cited by the claimant, this court takes the stand that there is no legal obligation on the part of a company to communicate*

its acceptance of resignation and that a resignation notice tendered cannot be withdrawn except with the consent of the employer."

Failure to comply with the contractual notice

A failure to give the required notice when terminating the contract can be constituted as a breach of contract. A breach of contract would entitle the party who has suffered from the breach to seek appropriate legal remedies.

The employer may be able to recover a sum of money equal to the salary that the employee would have earned during the notice period if the employee resigns without serving the contractual notice period in full.

For the employee who has been dismissed short of notice, he or she may bring a claim for damages representing the period of notice agreed but not served upon him or her against the employer. This is often referred to as "payment in lieu of notice". In the meantime, the employee can also file a complaint of unfair dismissal to the Industrial Relations Department pursuant to **Section 20 of the Industrial Relations Act 1967**.

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:

1. Rohan Arasoo Jeyabalah
Partner
rohan@hlplawyers.com
2. Teoh Yen Yee
Senior Associate
yenyee@hlplawyers.com
3. Esvine Maria Saganathan
Associate
esvine@hlplawyers.com

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