



**ISSUE ARISING FROM TERMINATION**

**PRACTICE NOTE**

**PAYMENT IN LIEU OF NOTICE**

This Practice Note provides guidance on Payment In Lieu of Notice to be given prior to terminating a contract of employment.

**What is Payment In Lieu Of Notice?**

Payment In Lieu of Notice is given where an employer compensates an employee's immediate dismissal by paying the employee a sum equivalent to the salary that he would have earned during the contractual notice period.

Payment In Lieu of Notice is necessary for instances where the employer requires an immediate end to the employment of the employee. In this regard, when Payment In Lieu of Notice is given, the employer can cut ties with the employee by bringing the contract of employment to an immediate end.

In a situation where the employee chooses to end the contract of employment unilaterally without giving due notice, the employer may be able to recover a sum of money equivalent to the salary that the employee would have earned during the notice period.

However, if the employee has committed a gross misconduct, then the employer may be entitled to terminate the contract of employment immediately without giving any prior notice and without Payment In Lieu of Notice.

## **Doctrine of Election**

If an employee is dismissed without notice, short of notice or salary in lieu of notice as provided under the Employment Act 1955 or under the terms of the contract of employment, but accepted any other benefits in lieu of that, the doctrine of election applies in such situation. In the circumstances, the employee is prohibited from claiming Payment In Lieu of Notice or challenging the termination for want of notice.

In cases such as [\*Eastern Mining and Metals Co. Sdn. Bhd. v M.M. Ismail & Ors \[1976\] 1 MLJ 166\*](#) and [\*Lee Kim Seng v Acme Canning Sendirian Berhad \[1977\] 2 MLJ 141\*](#), the Federal Court held that if the employee had elected to accept greater benefits for the termination, he could not at the same time claim the lesser benefits under his individual terms of employment. The principle of approbation and reprobation or doctrine of election applied in these cases.

*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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11 February 2021