

TERMINATION (CHECKLIST)

1. Treat dismissal as a last resort. It is expensive to replace employees and recruit and train new ones, and there is no guarantee that the new ones will be better!
2. Check the termination of employment provisions in the employee's award, enterprise agreement or contract. Ensure you comply with these provisions.
3. Check what legislative provisions apply. You cannot dismiss an employee for a prohibited reason (e.g. age, sex, family responsibilities etc.). If the employee is covered by the 'unfair dismissal' provisions of any legislation, you need to implement the dismissal in a procedurally fair manner, otherwise you may face a legal claim. 'Unfair dismissal' protections will definitely apply if the employer is a corporation with at least 15 employees, or a non-corporation that is not covered by the federal Fair Work Act 2009 (Cth), and the employee is not of a type excluded from the relevant Act's provisions.
4. Consult your business's Termination Policy and make sure you comply with the procedures outlined in the policy in terminating the employee's employment. If you intend to depart from the policy, obtain legal advice.
5. Notify the employee of his/her dismissal in writing, briefly stating the reasons. Notify the precise date the termination of employment will take effect, taking account of any notice provisions in the employee's contract of employment, award, enterprise agreement or applicable legislation (e.g. the minimum notice requirements in the Fair Work Act (Cth)), you must comply with. If the employee does not have an up-to-date contract of employment the issue of notice may be in question. As such, you should seek legal advice before terminating the employee's employment.
6. Where summary dismissal is a possibility, (e.g. for serious misconduct), fully investigate before making a decision whether or not to summarily terminate the employee's employment. Given the seriousness of the issue in question and possibility the employee's employment may be summarily terminated, you should not require the employee to attend work during the investigation period. However, you will need to continue to pay the employee during this time. Be sure to provide the employee with the opportunity to respond to all the allegations and consider these responses before making your decision whether or not to terminate the employee's employment. Having fully investigated the matter, if summary dismissal is justified, pay the employee only up until the date their employment with you is terminated, plus any accrued unpaid entitlements. If you are not sure whether the employee's actions warrant a summary dismissal, seek legal advice prior to terminating the employee's employment.
7. If you are concerned about the employee remaining in the business during any relevant notice period, and the employee's contract of employment, award or enterprise agreement allows you to make a payment to the employee in lieu of notice, do so. Alternatively, you may have the employee work out their notice from home (commonly known as placing the employee on gardening leave during their notice period).
8. Notify other parties affected by the termination, (e.g. the employee's superannuation fund, workers' compensation and other insurers (where relevant), other employees and managers, pay office, key customers etc.). Only advise them that the employee is leaving/has left the job, not the reasons for it. It is important to avoid any allegations of defamation being made by the dismissed employee.
9. Calculate the employees' payout entitlements as at the date the termination of employment will take effect and prepare a detailed statement to issue to the employee.

10. Always check the quantity of all monetary payout entitlements outlined in the statement are correct, before providing it to the employee. If you have over-calculated the entitlements owed and present this to the employee, you may in some circumstances be bound to pay the additional amounts you have offered, despite the fact a miscalculation has occurred. Likewise, if you have under-calculated the entitlements owed, you may be in breach of a relevant industrial instrument or applicable legislation, which may lead to a financial penalty, damages and/or interest on the unpaid entitlements being imposed. Calculations are often quite complex, particularly for long-serving employees, so it is recommended that you check them thoroughly. If you are unsure of the correct entitlements to offer or pay, or the relevant taxation treatment for each component, you should seek legal and relevant financial and taxation advice.
11. Arrange the return of any property of the employer which is in the employee's custody, possession or control (e.g. mobile telephone, laptop, business cards, office keys, security passes etc). Also, change any passwords and other security measures, which would allow the employee in question to continue to gain access to the business, its computer network etc.
12. Prepare and issue a statement of service if the employee has requested one. Alternatively, provide a statement of service where requested by the employee. If the employee has requested a written reference, it is advisable to seek legal advice before agreeing to this request. Legal action can arise if the reference you provide is not a true reflection of the employee's employment with your business and a future employer employs your former employee relying on that reference. Likewise, any reference you provide should not be defamatory.

13. Prepare an Employment Separation Certificate if Centrelink or the employee requests one.
14. Update the employee's employment records to record all details of the termination of the employee's employment.
15. Issue a Group Certificate to the relevant employee within required time period after the employee's employment ceases.

TOP TIP

Your Industry Training Consultant and the ASA Contact Hub are your main points of contact to guide you and support you on the journey.

Call us on 1300 363 831.