

TERMINATION OF EMPLOYMENT

Minimum Notice

The minimum notice periods required to terminate an employment contract are laid down by law. An employee who has worked for 1 month or more must give and receive notice of termination of employment. These periods must be set out in the written employment particulars to be made available on the commencement of employment.

The legal minimum notice to be given by an employer is 1 week in the case of an employee who has been employed for 1 month or more but less than 2 years. This increases to 2 week's notice for an employee for 2 years with 1 additional week's notice for each further year of continuous employment up to a maximum of 12 weeks.

The statutory periods of notice can be varied by contract. Employment contracts may stipulate longer periods, but not shorter periods. If more than 20 workers are affected, special consultation requirements apply.

The minimum notice which must be given by an employee is at least 1 week if he has been an employee for more than 1 month.

An employer may offer pay in lieu of notice. This may only be insisted on if the contract allows or the employee agrees. It should cover salary, bonus and other benefits.

Under certain circumstances, the minimum notice period does not apply. If an employer dismisses summarily for gross misconduct, no notice may potentially be required. However, unless there is a proper investigation and a fair hearing, it is possible the dismissal will be deemed unfair.

Some employees can be required to work out their period of notice without going to work. This is known as a "garden" or "gardening" leave. The employee stays on the

payroll and is still employed. There should be an express term in a contract of employment requiring gardening leave.

Retirement

Retirement raises certain legal issues. The Age discrimination legislation provides that the retirement age is 65. There is a statutory procedure which must be followed between 6 and 12 months before the employee's intended retirement date. The retiring employee must be notified in writing and he or she has a right to request to work beyond this period. If this occurs the employer must meet to discuss it. If the request is partly or wholly refused the employee has right to appeal. It is lawful to insist that a woman retires at a different age to a man.

The statutory and default retirement age in the England and Wales is 65. It is possible to different retirement age. The retirement age must be objectively justified.

The UK state pension age is currently 65 for men and 60 for woman. If there is an occupational pension scheme and the employer is a member, it is necessary to work out entitlements on retirement. If the scheme is a money purchase arrangement, the employee must be advised that he has a right to purchase an annuity from an independent provider other than the one that is running the pension scheme.

Post Employment restrictions

Some contract of employments include restrictive covenants by employees. They are designed to prevent employees disclosing or using confidential information or trade secrets. They may prevent an employee working for a particular period within an area or in a field of work.

So called "restrictive covenants" can be potentially invalid at common law and must be very carefully drafted so as to ensure that they do not go any further than necessary to protect the employer's legitimate interests. It is not permissible to restrict competition by itself. There must be some objectively justifiable reason for the restrictive covenant.

Maternity Leave

If an employee intends to take maternity or paternity, he or she must give notice before the end of the 15 week before the expected date of birth.

Employees returning from maternity or adoption leave do not have to give notice of their return at the end of their leave period. The employer is responsible for informing the employee. If an employee does not wish to return at the end of the leave period, he or she must give normal notice. Employees are not required to state in advance whether s/he intends to return.

A dismissal connected with paternity, maternity adoption or parental leave is regarded as unfair. It may be possible to justify a dismissal on other grounds. If there is a redundancy during a women's maternity leave she is entitled to be offered suitable alternative vacancy where there is one.

References

An employer does not generally have to give a reference unless this is required under the employment contract. The legal implications of references should be carefully considered. They must be true, accurate and fair representation. There is a possibility that an ex-employee could bring an action for libel and defamation if the reference is defamatory.

An unsatisfactory reference for a good employee can cause difficulties in terms of unfair dismissal and could lead to a claim for damages by the new employees if the reference is materially incorrect. Conversely, an inaccurate reference may make the maker liable to a future employer.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

© Lavelle Coleman 2009