

## 117 Requirement for notice of termination or payment in lieu

### *Notice specifying day of termination*

- (1) An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

Note 1: Section 123 describes situations in which this section does not apply.

Note 2: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an employee by:

- (a) delivering it personally; or
- (b) leaving it at the employee's last known address; or
- (c) sending it by pre-paid post to the employee's last known address.

### *Amount of notice or payment in lieu of notice*

- (2) The employer must not terminate the employee's employment unless:
- (a) the time between giving the notice and the day of the termination is at least the period (the ***minimum period of notice***) worked out under subsection (3); or
  - (b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.
- (3) Work out the minimum period of notice as follows:
- (a) first, work out the period using the following table:

Period		
	Employee's period of continuous service with the employer at the end of the day the notice is given	Period
1	Not more than 1 year	1 week
2	More than 1 year but not more than 3 years	2 weeks
3	More than 3 years but not more than 5 years	3 weeks
4	More than 5 years	4 weeks

- (b) then increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given.

## 18 Meaning of ***full rate of pay***

### *General meaning*

- (1) The ***full rate of pay*** of a national system employee is the rate of pay payable to the employee, including all the following:
- (a) incentive-based payments and bonuses;

- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

*Meaning for pieceworkers in relation to entitlements under National Employment Standards*

- (2) However, if one of the following paragraphs applies to a national system employee who is a pieceworker, the employee's **full rate of pay**, in relation to entitlements under the National Employment Standards, is the full rate of pay referred to in that paragraph:
  - (a) a modern award applies to the employee and specifies the employee's full rate of pay for the purposes of the National Employment Standards;
  - (b) an enterprise agreement applies to the employee and specifies the employee's full rate of pay for the purposes of the National Employment Standards;
  - (c) the employee is an award/agreement free employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the National Employment Standards.

(Fair Work Act 2009)

## 123 Limits on scope of this Division

*Employees not covered by this Division*

- (1) This Division does not apply to any of the following employees:
  - (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (b) an employee whose employment is terminated because of serious misconduct;
  - (c) a casual employee;
  - (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (e) an employee prescribed by the regulations as an employee to whom this Division does not apply.
- (2) Paragraph (1)(a) does not prevent this Division from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Division.

*Other employees not covered by notice of termination provisions*

- (3) Subdivision A does not apply to:
  - (b) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or
  - (c) a daily hire employee working in the meat industry in connection with the slaughter of livestock; or

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|  | <ul style="list-style-type: none"><li>(d) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors; or</li><li>(e) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.</li></ul> |
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*Other employees not covered by redundancy pay provisions*

- (4) Subdivision B does not apply to:
- (a) an employee who is an apprentice; or
  - (b) an employee to whom an industry-specific redundancy scheme in a modern award applies; or
  - (c) an employee to whom a redundancy scheme in an enterprise agreement applies if:
    - (i) the scheme is an industry-specific redundancy scheme that is incorporated by reference (and as in force from time to time) into the enterprise agreement from a modern award that is in operation; and
    - (ii) the employee is covered by the industry-specific redundancy scheme in the modern award; or
  - (d) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.