

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.