



Motor Traders' Association of NSW Information Guide

Resignation

If an employee is a part time or full time employee, they must provide the required notice when resigning. If the employee is covered by an Award, the notice required is as follows:

Time served	Notice required
1 day to 1 year	1 week
1 year to 3 years	2 weeks
3 years to 5 years	3 weeks
5+ years	4 weeks

If an employee is Award-free, then their Contract of Employment must refer to the notice required on resignation.

If an employee offers less notice than what is required, you are able to:

1. Respond to the employee's resignation, advising that you are happy to provide the notice required, even though it is less than what is legally required; or
2. Respond to the employee's resignation (in writing) advising that the employee is to provide X weeks' notice, instead of the notice actually provided and that the company is requiring the employee to work out such notice. If the employee refuses to work out the required notice e.g. only provides 2 weeks' notice, instead of 4 weeks, and the employee is under the Vehicle Award or the Clerks Award, then the employer is able to withhold the balance of the notice period not worked out from any remuneration owing to the employee on termination.

If an employee provides the required notice and the employer does not want the employee to work out the notice offered by the employee then there are two options:

1. You can try to negotiate with the employee to waive the requirement to provide notice. If the employee is okay with this agreement (and will finish that day), a clear agreement has to be made in writing.

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2. However, if the employee refuses to finish early and wants to work out his/her notice period, then the employer must pay the employee out for the remainder of the notice period if the employer does not want the employee physically working.

What happens if an employee resigns during a disciplinary process?

When conducting a disciplinary meeting with an employee, employers must exercise particular care and discretion to ensure that the interview achieves its proper purpose, that is, to warn the employee that they must modify, remedy their conduct/performance or face possible termination.

Employers must ensure that the interview does not deteriorate into an exchange where the employee effectively rejects the process. Often, employees in responding to their employer's concerns adopt a negative tone and demand that the employer terminate them. *"Why don't you just sack me?"*, has become a common response by employees to a poorly handled disciplinary interview. Having a witness present at the meeting to keep minutes may overcome this response.

Employers who experience such a response should be firm and restate to the employee the purpose of the disciplinary interview. If an employee wishes to resign, then this is a personal decision which must come from them.

Where an employee verbally resigns, whether in the "heat of the moment" or otherwise, the employer must obtain some record of the discussion or resignation. Employers who receive verbal resignations should ask the employee, *"Would you mind putting your resignation in writing?"* If the employee refuses to provide a written statement, the employer is best advised to get someone to witness the verbal resignation, and then prepare a written response to the employee's resignation. The employer must never write the resignation letter for the employee. If this occurs, the employee can claim that they were constructively dismissed because their employer wrote their resignation letter for them.

If an employee refuses to put their resignation in writing, and only verbally resigns, the template on the following page can be used.



Employment Relations Information guide

Sample Only

Confirmation of Witnessed Resignation

Send via registered mail on company letterhead

[Insert date]

[Employee's name]

[Employee's last known address]

Dear Employee,

I refer to your conversation with both myself and the Business Principal of this company on [insert date] at approximately [insert time], in which you indicated your verbal intention to resign from your position as car detailer.

Management of the company has given consideration to your advice and accepts your resignation with effect from [insert date]. Please find enclosed a cheque representing outstanding annual leave entitlements etc.

Yours sincerely,

[Manager/Supervisor]

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This Information Guide is provided by the Motor Traders' Association of New South Wales for its Members. Information provided is intended to be a guide only. Specific advice should be sought by calling 02 9016 9000.