

# Fair Work | Fact Sheet

## Notice of Termination and Redundancy Pay

The information in this sheet explains the National Employment Standard (NES) provisions in the Fair Work Act 2009 (Cth) (FW Act) dealing with notice of termination and redundancy pay. These will come into operation on 1 January 2010. The notice of termination NES will apply to all Australian employers. The redundancy pay NES will only apply to national system and Victorian employers.

There is no corresponding entitlements provided in the Australian Fair Pay and Conditions Standard contained in the Workplace Relations Act (WR Act). However the WR Act provides for an unlawful termination remedy if minimum statutory notice was not given, which will continue to apply for terminations prior to 1 January 2010.

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

An employee will be entitled to the following period of notice or pay in lieu of an employer's intention to terminate his or her employment:

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

An employee who is more than 45 years old and who has completed 2 years' continuous service is entitled to an additional week's notice.

Employees will be entitled to written notice of the day of termination. However, the day of termination cannot be before the day that notice is given. This entitlement is new. In order to be effective, employers will need to deliver notice to an employee personally, leave it at the employee's last known address or send it by pre-paid post to the employee's last known address.



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Employees will be entitled to payment in lieu of notice calculated upon the employee's full rate of pay reflecting the earnings that he or she would have received for the period if his or her employment had not been terminated, which may be inclusive of loadings, penalties, overtime payments and allowances.

### What employees are excluded from the notice NES?

The following employees are not entitled to notice under the notice NES:

- employees employed for a specified period of time, for a specified task or for the duration of a specified season;
- employees whose employment is terminated for serious misconduct (see below);
- casual employees;
- employees, other than apprentices, to whom a training arrangement applies and whose employment is for a specified period of time or is limited to the duration of the training arrangement; and
- other employees who will be named later in Regulations
- daily hire employees working in the building and construction industry;
- daily hire employees working in the meat industry in connection with the slaughter of livestock;
- weekly hire employees working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors.

Serious misconduct includes wilful or deliberate behaviour by the employee that is inconsistent with the continuation of the employment contract or conduct that causes serious and imminent risk to OHS or the reputation, viability or profitability to the employer's business. Serious misconduct refers to theft, fraud, assault, intoxication and refusal to carry out a lawful and reasonable instruction by the employer that is consistent with the employment contract. However, these kinds of conduct are not serious misconduct if the employee can show that in the circumstances the conduct did not make continuing employment unreasonable.

### Redundancy pay

Employers who employ 15 or more employees will be entitled to redundancy pay if their employment is terminated:

- at the initiative of the employer because the employer no longer requires their job to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
- because of the insolvency or bankruptcy of the employer.



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If an employee's employment is terminated in one of those circumstances, he or she will be entitled to the following amounts of redundancy pay:

<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

However, where an employee is award or agreement free and his or her terms and conditions of employment do not already provide for redundancy pay immediately before 1 January 2010, an employee's service with an employer before that date will not be taken in to account for the purpose of calculating an employee's entitlement to redundancy pay.

Redundancy pay will only be based on an employee's base rate of pay for his or her ordinary hours of work.

In the event of a transfer of employment from one employer to another, employees will not be entitled to redundancy pay where:

- the employee's prior service is recognised; or
- the employee rejects an offer of employment on substantially similar terms and conditions.

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If an employer obtains acceptable employment for the employee elsewhere or cannot pay the amount required for redundancy, the employer may apply to Fair Work Australia to reduce the amount.

### What employees are excluded from the redundancy pay NES?

The following employees are not entitled to redundancy pay under this NES:

- employees employed for a specified period of time, for a specified task or for the duration of a specified season;
- employees whose employment is terminated for serious misconduct;
- casual employees;
- employees, other than apprentices, to whom a training arrangement applies and whose employment is for a specified period of time or is limited to the duration of the training arrangement; and
- employees covered by an industry-specific redundancy scheme in a modern award;
- employees covered by an enterprise agreement which contains an entitlement to redundancy pay under a scheme if:
  - the scheme is an industry-specific redundancy scheme that is incorporated by reference into the enterprise agreement from a modern award that is in operation; and
  - the employee is covered by the industry-specific redundancy scheme in the modern award; and
- other employees who will be named later in Regulations.



Find out more at:  
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