

Chapter 9: Termination of Contract of Employment

Termination of Employment Contract by Notice or Payment in lieu of Notice

A contract of employment may be terminated by the employer or employee through giving the other party due notice or payment in lieu of notice. The length of notice or the amount of payment in lieu of notice required are:

Table 1

Employment Condition		Length of Notice	Payment in lieu of Notice	
During probation period	within the first month of probation	not required	not required	
	after the first month of probation	where contract makes provision for the required length of notice	as per agreement, but not less than 7 days	Table 2
		where contract does not make provision for the required length of notice	not less than 7 days	Table 2
For a continuous contract* with no / after probation period	where contract makes provision for the required length of notice	as per agreement, but not less than 7 days	Table 2	
	where contract does not make provision for the required length of notice	not less than 1 month	Table 2	

* For a non-continuous contract with no / after probation period, the length of notice shall be the agreed period; please refer to Table 2 for the corresponding payment in lieu of notice.

Table 2

Notice period expressed in days or weeks	<p>Average daily wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given*</p> \times <p>Number of days in the notice period for which wages would normally be payable to the employee</p> <p>=</p> <p>Payment in lieu of notice</p>
Notice period expressed in months	<p>Average monthly wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given**</p> \times <p>Number of months specified in the notice period</p> <p>=</p> <p>Payment in lieu of notice</p>

*In case a notice has not been given, one shall adopt the average daily wages of the employee in the 12-month period preceding “the day when the contract is terminated”.

**In case a notice has not been given, one shall adopt the average monthly wages of the employee in the 12-month period preceding “the day when the contract is terminated”.

NOTE: In calculating the average daily / monthly wages, (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods, should be excluded. (see Appendix 1 for details)

Termination of Employment Contract Without Notice or Payment in lieu of Notice

An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment:

1. wilfully disobeys a lawful and reasonable order;
2. misconducts himself;
3. is guilty of fraud or dishonesty; or
4. is habitually neglectful in his duties.

Taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment without notice or payment in lieu.

NOTE: Summary dismissal is a serious disciplinary action. It only applies to cases where an employee has committed very serious misconduct or fails to improve himself after the employer's repeated warnings.

An employee may terminate his employment contract without notice or payment in lieu of notice if:

1. he reasonably fears physical danger by violence or disease;
2. he is subjected to ill-treatment by the employer; or
3. he has been employed for not less than five years and is certified by registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work he is being engaged (see Chapter 11).

Statutory Restrictions on Termination of Employment Contract

An employer shall not dismiss an employee under the following circumstances:

Maternity protection	An employer shall not dismiss a female employee who has been confirmed pregnant and has served a notice of pregnancy.
Paid sick leave	An employer shall not dismiss an employee whilst the employee is on paid sick leave.
Giving evidence or information to the authorities	An employer shall not dismiss an employee by reason of his giving of evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.
Trade union activities	An employer shall not dismiss an employee for trade union membership and activities.
Injury at work	An employer shall not dismiss an injured employee before having entered into an agreement with the employee for employee's compensation or before the issue of a certificate of assessment.

Offences and Penalties

An employer dismissing an employee under the above circumstances is liable to prosecution and, upon conviction, to a fine of \$100,000.

Termination Payments

The items and amount of payments payable to an employee on termination of employment or expiry of the contract depend on a number of factors such as the length of service, the terms of employment contract and the reason for termination of contract. For quick reference, termination payments usually include:

- outstanding wages;
- payment in lieu of notice, if any;
- payment in lieu of any untaken annual leave, and any pro rata annual leave pay for the current leave year;
- any outstanding sum of end of year payment, and pro rata end of year payment for the current payment period;
- where appropriate, long service payment or severance payment;
- other payments under the employment contract, such as gratuity based on the length of service, provident fund, etc.

Time of Making Termination Payments

An employer shall pay all the termination payments, except for severance payment, to the employee as soon as practicable and in any case not later than seven days after the date of termination or expiry of contract.

For severance payment, an employer shall make payment not later than two months from the receipt of a notice from an employee claiming for severance payment.

Offences and Penalties

An employer is required to pay interest on the outstanding wages due to the employee if he fails to pay wages to the employee within seven days after the termination or expiry of contract.

An employer who wilfully and without reasonable excuse fails to pay termination payments when they become due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.