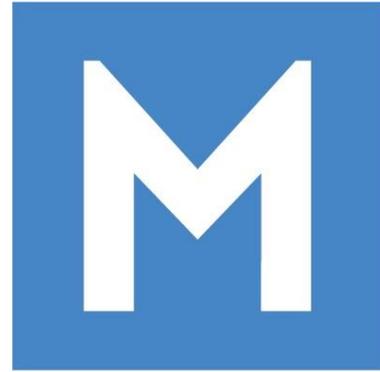




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## ***Notice Period: An Explanation***

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*'Just being honest that's all'*

# Notice Period: An Explanation

## Definition of Notice Period

*'The period of time between the date an employee is informed of their dismissal or the date of their resignation and the date when the Contract of Employment comes to an end'*

## The legislation: Notice

The Employment Rights Act 1996 (ERA 1996) section 86: Rights of employer and employee to minimum notice

*(1)The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more*

*(a)is not less than one week's notice if his period of continuous employment is less than two years,*

*(b)is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and*

*(c)is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.*

*(2)The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.*

*(3)Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.*

*(4)Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.*

*(5)*

*(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.*

### What does all this mean?

Regardless of what the Contract of Employment states, an employee who has worked for over a month is entitled to the statutory minimum period of notice which is set out in section 86 of the ERA 1996. This is 1 weeks' notice pay for each completed year of service up to a maximum of 12 weeks. The Contract of Employment cannot supercede this statutory right, however, the contract can state notice which gives the employee more than the statutory minimum.

If an employee is dismissed without the employer giving the employee the correct notice then the employee can bring a claim against the employer for Wrongful Dismissal. Broadly speaking (depending on context) a wrongful dismissal occurs when the employer dismisses the employee without either any notice or short notice, without any justification for doing this (one justification is summary dismissal after a finding of gross misconduct).

A wrongful dismissal may also come about if the employer dismisses an employee without following a procedure outlined in the Contract of Employment. A wrongful dismissal may also come about if the employee resigns in response to an employers breach of contract – 'Constructive Dismissal'.

A wrongful dismissal claim is essentially a breach of contract claim or put simply a contract claim. In other words, the 'claim' is for the money or wages the injured party has lost because of the wrongful dismissal and the injured party is now suing for recovery of that financial loss.

### Let's get technical (pay): Contract, contract, contract

We have to accept the statutory minimum (ERA, 1996 sec 86) as a given which cannot be changed; that is the first side of notice period and money or pay. Once we have done this we can now move on and discuss the second side of the issue – the Contract of Employment and its links to wrongful dismissal.

If the contract states that a particular procedure has to be followed for a particular event before an employee is dismissed then a dismissal that proceeds without the procedure being followed could be wrongful. However, only if that procedure was a contractual entitlement, if the court decides, based on the facts of a particular case, that the procedure

was not a contractual entitlement, but only a statement of the employer's current policy, then that will not be seen as a contract claim.

Instead, it may be seen as a claim for Unfair Dismissal. The right not to be dismissed unfairly is a statutory right, while contract claims are not backed by statute (told you it was technical). So, it is all about what is in the contract and it's all to do with benefits, money and loss, which takes us nicely back to our definition of Notice Period:

*'The period of time between the date an employee is informed of their dismissal or the date of their resignation and the date when the Contract of Employment comes to an end'*

I have underlined the keywords in the definition and I hope that this makes clear that there is a period of time between when someone is dismissed or they resign and when the contract actually comes to an end. That gap in between the event and the end of the contract is the notice period. During that period the employee is entitled to the basic minimum (ERA 1996 sec 86) and the entitlements they would normally receive under the Contract of Employment. Entitlements in this scenario equal benefits which in turn equal money and in the work context this is pay.

In the gap between dismissal/resignation and the end of the contract, any benefits or payments due under the contract fall within the parameters of notice pay. These could include (not an exhaustive list):

- Contractual rights to redundancy payments
- Health insurance
- Bonus/Commission
- Contractual overtime
- Pension payments/contributions
- Company car allowances
- Car allowance
- Any other contractual benefit or payment

During the gap period (notice period) between dismissal and the end of the contract, if an employer does not pay any entitlement, benefit or payment that the employee would normally receive then the employee could bring a contract claim against the employer.

#### Payment in lieu of notice

There are instances where the employer dismisses an employee and then does not want that employee coming into work during the notice period. This may be for any number of

reasons including, for example, the employer feels that the employee's presence at work, post-dismissal, could have a negative impact on other employees or a negative impact on the employer's operations. In this situation the employer has 3 options available:

- (1) The employee might just want to leave without notice, in which case get a signed agreement off the employee. There is nothing to stop the employer from coming to a mutual agreement with the employee because ERA 1996 section 86 allows an employee to '*waive the right to a notice period*'
- (2) The employer could pay the employee 'wages' in lieu of notice, and this option is a common route that employers take. However, where employers fall foul of the law when taking this route, they forget the term 'wages' means the normal wages an employee would get including all the contractual benefits (overtime, healthcare, car allowances etc, etc) they would normally receive. Instead, employers only pay the statutory minimum and when they do this-this represents a wrongful dismissal and subsequently a contract claim.
- (3) The third option open to an employer is to put the employee on 'Garden Leave'. This means that the employee would continue to be paid their normal wages in full but will not be required to come into work. There are some problematic issues related to this course of action which goes beyond the scope of this small information paper, however as long as the garden leave does not have a negative impact of an employees long-term career prospects or long-term work prospects the option of placing an employee on garden leave will always be open to an employer.

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