



I have a twelve month employment contract. Can I terminate it early?

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If you have an employment contract with a set duration, it will almost always be possible to terminate that contract early. However, there are a number of consequences that may arise should you choose to do so.

Termination clauses in your employment contract

The first and most important piece of advice we can give is to make sure there is a termination clause in the contract.

You should consider how much notice you would want to give in the event you wish to move on. We recommend 4 weeks' notice. Although depending on the nature of your job, and any other provisions which have effect after the contract terminates, [like a restraint clause](#), you should seek advice on appropriate notice.

Notice periods

[Section 117 of the Fair Work Act 2009](#) (Cth) ('**FW Act**') generally provides the notice that employers are required to give, in the absence of a contractual term, for termination. Section 118 of the of the FW Act provides that an Award or enterprise bargaining agreement ('**EBA**') may provide for notice of termination to be given by employees.

If you want to resign, you should check your Award, EBA or employment contract. Usually, one of these documents will set out the required period of notice.

If you provide notice of termination in accordance with your contract, Award or EBA then there should not be any legal repercussions for you.

However, some people will find themselves in circumstances that fall outside of the norm and are not able to satisfy the required notice period. For example, you may wish to pursue another job opportunity at short notice or it may be unclear if there is a notice period at all.

Risks of early termination

If an employer commits a serious breach (or repudiation) of the employment contract, an employee is entitled to resign without notice. However, if you resign for your own reasons, before the contract term is up, and do not satisfy the notice period (if any), you will be in breach of contract.

If you are in breach, it is possible that a court could make an order for specific performance of the employment contract by you; see, for example, the case of [Quinn v Overland](#). However, this is unlikely as courts are generally reluctant to make these orders and have previously likened them to slavery.

It may also be possible for your employer to sue for damages. For example, if you resign without giving the required notice, a former employer may sue for the value of the unexpired term of the contract or the additional costs involved in finding a replacement. This is uncommon and unlikely to be cost effective for the employer. However, the risk increases for employees that are highly skilled and/or difficult to replace.

Failure to satisfy notice period

An employment contract can be terminated at any time by mutual consent.

For this reason, it may be worth requesting that you be released early and without having to serve out your notice period.

If you resign and do not satisfy the notice period, what may happen is that your employer will try and deduct an amount from your final pay in lieu of notice. Employers are not generally entitled to do this unless the deduction falls into one of the categories outlined under section 324(1) of the FW Act; or example, where the deduction is authorised under an Award or EBA.

Always seek advice from your Union or a lawyer if you are concerned about deductions made by your employer.

If your employer has deducted money from your final pay because you have not satisfied the notice period, seek legal advice immediately.

What if there is no notice period?

Where there is no prescribed notice period and an employer terminates a fixed term employment contract, they may be liable to pay the employee out for the remainder of the contract term.

On the other hand, an employee who terminates a fixed term contract early will be exposed to the risks mentioned above; however, in most cases the employee is unlikely to be pursued.

Other considerations when you terminate an employment contract early

‘Gardening Leave’

In some circumstances, an employer may direct an employee to stay away from work for the duration of the notice period. This is colloquially known as ‘gardening leave’ because the employee remains employed but is paid to stay at home and ‘tend the garden’.

The legality of gardening leave is somewhat grey and very often dependant on the facts of a particular employment and the relevant employment contract.

One view is that it breaches the employer’s duty to provide work and [deprives the resigning employee of the dignity of work](#). On another view, it is open to an [employer to lawfully and reasonably direct an employee not to attend work](#), provided they are paid.

Regardless, many employees may choose to go along with ‘gardening leave’ for obvious reasons.

Get help from an employment lawyer

If you are concerned about your rights under a new employment contract, in the event of early termination, the best advice we can give is to [have your employment contract reviewed prior to signing the contract or commencing employment](#).

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