

Newsletter - February 2024 Employers Newsletter

Abandonment of Employment

We often field calls from frustrated employers wishing to terminate staff for abandoning their employment, whereupon on following a short discussion it prevails that abandonment of employment is not the case at all.

Abandonment of employment is a very specific situation where an employee is absent, without permission for a certain period of time, seemingly with no intention of returning and being non-communicative. Anything else is probably not abandonment, and needless to say terminating employment for the wrong reason often ends up with a successful personal grievance.

In many cases we see 'unauthorised absence' is usually the issue and needs to be treated very differently. Unauthorised absence is a misconduct issue and the process is very different. If the employer knows where the employee is, or has had any communication from them, abandonment of employment cannot be used.

There is no legal statute which defines a minimum time which before abandonment is applicable, it comes down to what is written (and agreed to) in the Employment Agreement, and in the absence of that, it is what could be considered fair and reasonable. Most often we see three days as a minimum period considered acceptable.

There is also an onus on the Employer to make all reasonable efforts to contact the employee in an attempt to establish their whereabouts and intentions, and only after all avenues of contact have been exhausted should termination occur. We strongly recommend that all contact attempts should be documented so the employer can clearly prove a paper-trail of evidence in this regard if the termination is challenged.

Unsurprisingly, dismissal and discipline process are the most contended of issues in terms of employers receiving personal grievances. The justification for disciplinary action is not usually the problem, the Courts largely dwell on process, and employee advocates know this.

Ensure you get your processes correct and follow our online discipline templates in your [Employers Toolbox](#). They are very comprehensive and easy to follow; misconduct, serious misconduct, performance management, redundancy, abandonment of employment and more.

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