

**EMPLOYMENT LAW**

## Resignation And Retirement

*To learn about various aspects of the law surrounding the resignation and retirement of employees, read this LegalWise QuickLaw guide.*

**For all your resignation and retirement answers, follow our guide below:**

1. *When does an employment relationship end?*
2. *When is an employee allowed to resign?*
3. *When can an employee retire?*
4. *Does a retiring or resigning employee become entitled to a payment of a pension fund benefit?*
5. *Are former employees entitled to unemployment benefits upon resignation or retirement?*
6. *Can an employer prevent an employee from working for a competitor when s/he resigns or retires?*
7. *How can LegalWise assist you?*

### **1. When does an employment relationship end?**

- An employment relationship is the relationship between an employee and his/her employer. The most common form of an employment relationship is that of being permanently employed (an employment contract which continues without a set end date).
- An employment relationship can be terminated by:
  - Dismissal.
  - Retrenchment.
  - Resignation.
  - Retirement.
- Dismissal and retrenchment are manners in which the termination will generally come from the employer.
- Resignation and retirement are manners in which an employee terminates the employment contract.

## **2. When is an employee allowed to resign?**

- An employee can decide at any time when s/he wants to resign. However, the terms and conditions of the employment contract may deal with aspects such as notice periods.
- The following notice periods are the minimum amount of time that must be given if an employee wants to resign:
  - one week – if the employee has been employed for less than six months;
  - two weeks – if the employee has been employed for more than six months, but not more than one year; or
  - four weeks – if the employee has been employed for more than one year or is a farm worker or domestic worker who has been employed for more than six months.

## **3. When can an employee retire?**

- There is currently no specific law that provides, in general, at what age a person must retire. However, the laws relating to persons who are members of the Government Employees Pension Fund (“GEPF”) provide for specific retirement ages, such as 55, 60 or 65 years.
- If a person is not a government employee, the ordinary retirement ages are usually 60 or 65 years of age. An employee cannot be forced to retire, unless his/her employment contract has a condition where s/he must retire at a certain age or a rule sets the date of retirement. The rules of a pension fund can also determine a retirement age that must be complied with.
- This means that an employee can work for as long as s/he is able to, unless there is an agreed upon retirement age.

## **4. Does a retiring or resigning employee become entitled to a payment of a pension fund benefit?**

- Yes, however, only if the person was a member of a pension fund.
- If a person was a member of a private pension fund, s/he will be entitled to the following benefits:
  - At resignation – s/he will be entitled to withdraw his/her entire pension in a lump sum (once-off amount). A person can also decide to leave his/her benefit at the pension fund, or transfer it to another pension fund.
  - At retirement – s/he will only be allowed to withdraw one-third of his/her pension benefits as a lump sum. The other two thirds must be reinvested to ensure that a monthly

pension is paid out from that benefits.

- If a person is a government employee and a member of the GEPF, there are different rules that will apply when dealing with benefits. For example, if a member of the GEPF retires with less than 10 years of service, s/he may receive a once-off lump sum. If a member of the GEPF retires with more than 10 years of service, s/he may receive a once-off lump sum and a monthly pension.

## **5. Are former employees entitled to unemployment benefits upon resignation or retirement?**

- An employee who had resigned or retired may not claim unemployment benefits from the Unemployment Insurance Fund (“UIF”).
- A claim against the UIF can be instituted for one of the following reasons:
  - the termination of his/her employment by the employer or the ending of a fixed term contract;
  - where s/he was dismissed;
  - where s/he has been declared insolvent; or
  - if his/her employer dies, in the case of domestic workers.

## **6. Can an employer prevent an employee from working for a competitor when s/he resigns or retires?**

- Yes, this can be set out in the employment contract as part of a restraint of trade clause.
- A restraint of trade is a clause in an employment contract that protects certain interests (such as confidential information) of one party by restricting the other party from entering into employment, exercising his/her profession or going on the same business venture with anyone else for a specified period and within a specified area.
- There is no rule about when these clauses will be considered to be fair or unfair and will depend on the specific circumstances of each matter.
- Generally speaking the more restrictive a restraint of trade clause is, the more justification is required by a previous employer to enforce it. For example, a period of three years might be considered as a reasonable period for the restraint of trade.

## **7. How can LegalWise assist you?**

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