



HR Broadcast – Termination and PILON

Pay in lieu of notice, which is often referred to as PILON is an important contractual clause if you are terminating an individual's contract of employment, as it affects whether a person is required to work their notice period. The clause will be in the contract of employment and may stretch to a number of paragraphs. The clause will basically be saying something like, "The Company reserves the right to make a payment in lieu of notice for all or any part of your notice period on the termination of your employment."

Having a PILON clause has the advantage of giving the business flexibility, so you do need to consider what the effect may be if you need to have an employee leave the business immediately but the contract of employment has no PILON clause. These implications are as follows:-

1. Dismissal without notice is a serious breach of contract on the employer's part (unless it is due to gross misconduct committed by the employee within a disciplinary process). To dismiss someone without notice means that you are denying the employee their contractual right to work out their notice period, which is wrongful dismissal, and the employee may bring a tribunal complaint against you.

2. In the absence of a PILON clause, any financial incentive that is given to an employee to leave quickly will be deemed damages for your breach of contract. This means that, as a minimum, you will need to put the employee in the same financial position they would have been had you honoured the contract and let them work out their notice period. (Please be aware that notice pay, in

addition to basic salary, should allow for any bonus, commission, annual leave and benefits that they would have received during their notice period). On the other hand, if you had a PILON clause in place, you could limit this sum to payment of wages/salary only. The employee would have consented to this when signing the contract.

3. Some employers include restrictive covenants in their contracts of employment, mainly for the more senior, specialist or sales type roles, such as a no competition or non-solicitation clause for a fixed period, perhaps three to six months – depending on what is required to protect the interests of the business. Employers may not be permitted to rely on restrictive covenants if they have acted in breach of contract. So, for example, if there is no PILON clause in the contract but nevertheless a payment in lieu of notice is made, there would be a technical breach of contract which could have the effect of preventing reliance on those restrictive covenants; in some circumstances this could be extremely important.

On the other hand, depending on the circumstances, an employer may not be concerned about enforcing such covenants and a PILON may well be worthwhile.

If you still wish to go ahead with an immediate dismissal for whatever reason the safest way to terminate the contract in the absence of a PILON clause is via a settlement agreement, but that may attract a drafting fee, and will include a fee for the employee to receive independent legal advice.