

What happens when an employee resigns?

What is resignation?

Resignation is when the employee decides to end the employment relationship. It should be noted that the employer does not need to accept the resignation for it to be valid, as a resignation is a unilateral act giving rise to the end of the employment relationship.

An employee is required to give an employer notice that s/he intends to resign. The purpose of giving notice is to advise the employer in advance of the date on which the employee will officially cease to work.

Resignations should ideally be in writing. However, a verbal resignation still has the effect of ending the employment relationship. Section 37(1) of the Basic Conditions of Employment Act 75 of 1997 (BCEA) requires an employee to serve the following notice periods:

- **One (1) weeks' notice**, if the employee has been employed for six (6) months or less.
- **Two (2) weeks' notice**, if the employee has been employed for more than six (6) months, but not more than one year.
- **Four (4) weeks' notice**, if an employee has been employed for one (1) year or more or is a domestic worker or a farm worker who has been employed for more than six (6) months.

An employer may require the employee to work out the notice period, or require the employee to leave immediately, in which case the employer must pay the employee for the notice period.

Similarly, an employee who does not work out the notice period owes the employer an amount equal to what would have been earned in wages during such period. Employers often have difficulty claiming such money because the BCEA does not allow an employer to make wage deductions without an employee's consent. This may be remedied by way of the inclusion of a clause to this effect in the contract of employment/written particulars of employment or a collective agreement.

Voluntary resignation

A voluntary resignation is where the employee intends to terminate the employment relationship of his/her free will.

An employee who resigns voluntarily may not claim UIF benefits.



Because resignation is a unilateral act, the employer does not need to 'accept' or agree to an employee's resignation. If an employee resigns in anger or to avoid disciplinary action, and later wants to withdraw the resignation, the employer does not have to accept such request, and can hold the employee to the resignation.

