

What happens when an employee resigns?

What is resignation?

Resignation is when an 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 resignation is a unilateral act by the employee which ends the employment relationship.

Resignation and notice period

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 as amended (“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.

The employee and employer may agree to a notice period which is longer than the notice period prescribed in the BCEA, however the employee may not be required to give a period of notice that is longer than that required of the employer.

If an employer decides that the employee need not work all or part of the notice period the employer must pay the employee for the notice period.

At times employees resign but do not work all or some of their notice period. Employers may apply for the court to issue an urgent order of “specific performance”, in other words, order the employee to work the required notice period. The employer could sue for damages, namely the loss the employer suffered as a result of the employee not working his/ her notice period. Pursuing these options may be difficult and costly and therefore employers seldom opt for them.

Voluntary resignation and UIF

A voluntary resignation is where the employee terminates the employment relationship of his/her free will. An employee who resigns voluntarily may not claim UIF benefits.

Withdrawal of notice

Because resignation is a unilateral act, the employer does not need to ‘accept’ or agree to an employee’s resignation. Should an employee decide to resign, perhaps in a moment of anger, and subsequently wish to withdraw the resignation, the employer is not obligated to grant such a request and can enforce the original resignation.

