



# Understanding resignations in Employment Law

## 1 What is a resignation?

A resignation refers to method/ process of terminating an employment contract at the instance of an employee, through a written notice. It is an effective and acceptable manner for terminating an employment relationship and discharges both parties from their respective contractual and statutory obligations.

## 2 Is resignation voluntary?

Resignation is normally voluntary and exercised pursuant to the inherent freedom of an employee to contract. However, resignation may in some circumstances be deemed to constitute constructive dismissal. This is when the contract of service is ended by the employee, with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee as provided for in section 65(c) of the Employment Act, 2006. In this case, the employee resigns not as a result of free will but because of some form of coercion or influence.

## 3 Does an employee have to give notice upon resignation?

An employee resigning from his/ her employment contract is required to give a minimum notice period of between two weeks to 3 months in accordance with section 58 (3) of the Employment Act, 2006. The above mentioned notice periods are the minimum statutory notice periods but the applicable contracts of employment could provide for longer notice periods. The above notice periods will generally not apply in cases of constructive dismissal.

## 4 Can an employee resign with “immediate effect” during disciplinary proceedings?

Sometimes, employees against whom disciplinary proceedings have been commenced against, may opt to resign with “immediate effect” in a bid to avoid an adverse finding of guilt and therefore the imposition of a potential career derailing sanction of a dismissal/ summary dismissal. However, submitting a resignation letter does not immediately terminate an employment relationship. The employee will have to provide the employer with notice of their intention to resign. This means that the employee remains an employee of the employer until the notice period expires and disciplinary action can still be pursued against such an employee during their notice period. The parties can however decide to have a negotiated exit in such a case in the best interest of both parties.



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