

> Industrial Relations Fair Work Information Sheet

This information sheet is relevant to all employers in Queensland.

What is Abandonment of Employment?

Abandonment of employment occurs when an employee fails to attend for work for a period of time without receiving authorisation for the absence or providing a satisfactory explanation for their non-attendance. In this situation, the employee will be deemed to have abandoned their contract of employment and resigned without notice. It is important to note that an employee on approved leave, either paid or unpaid, has **not** abandoned their employment.

Abandonment of Employment Regulations

Abandonment of employment provisions can be found in some awards and enterprise agreements and these set out clear guidelines as to what constitutes abandonment of employment for those organisations. Other than these few Awards, there are no state or federal legislative provisions that pertain to abandonment.

It is recommended that if using common law contracts or if you are thinking of making an Enterprise Agreement, that employers consider including a provision for 'abandonment of employment'.

When terminating an employee, including for abandonment of employment, all employers should afford an employee procedural fairness. There are stages that can be followed to establish abandonment of employment in order to avoid wage, unfair or unlawful dismissal claims.

Steps to Establish Abandonment of Employment

Where the employer believes that abandonment may have occurred, they must then establish that the employee no longer intends to be bound by their contract of employment. The following are steps to take in order to establish that procedural fairness has been afforded to an employee who appears to have abandoned their employment.

1. The employer should attempt to contact the employee by telephone enquiring as to why the employee has not given notice of their absence.
2. If unable to make telephone contact, the employer should forward a letter by registered mail to the employee at their last known address and retain proof of delivery for documentation purposes. This letter should state:
 - That the employee's absence is unauthorised and unacceptable
 - Attempts to contact the employee by telephone have been unsuccessful and details of attempted contact (specifically the most recent attempt)
 - Request to contact a nominated person to discuss their employment within a specified timeframe (which should be no less than 5 business days from the date of the letter)
 - Request an explanation for the absence
 - If they fail to make contact or return to work by the specified date it will be determined that they have abandoned their employment
3. If the employee fails to return to work, advise the employer of their resignation, or give a reasonable explanation for their absence within the specified timeframe, the employer should forward an additional letter to the employee at their last known address. This letter should include:

- That no response has been received from the previous letter
- As a result it has been determined the employee has abandoned their employment
- The date on which the employment was terminated by the employee without notice (which is the first day after the employee failed to attend work)
- Any termination payment that will be made and the date on which it will be made
- Any property that must be returned to the employer
- Arrangements that may be made for the employee to collect any personal belongings

Important Note: It should always be stated that the employee is taken to have terminated their employment by way of abandonment, rather than that the employee has been terminated for abandoning their employment. This ensures it is clear that it is the employee who has terminated the employment relationship, not the employer.

Employee Returning to Work After Unauthorised Absence

If the employee responds to the employer's attempts to contact them within the time frame given, or returns to work, the employer should consider the reason for their absence and ascertain whether performance counselling is required.

If there is not a satisfactory explanation as to why the employee did not give the employer notification of their absence, the employer may have justification to ask the employee to show cause as to why their employment should not be terminated. It is advisable to seek further situation-specific advice before proceeding in these instances. For more information on performance counselling, please see CCIQ's Employee Counselling information sheet.

For further information contact the Chamber of Commerce and Industry Queensland's Employer Assistance Line on 1300 135 822 or lodge a query at our Online Portal found on the CCIQ website under Employer Assistance Line.

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