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# Difference Between Termination of Employment & Summary Dismissal Under The Nigerian Legal System

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## Introduction

Employment is a relationship between two parties, usually based on a contract for work where one party is the employer and the other is the employee.

A contract of employment can be brought to an end by Termination or Summary Dismissal.

Most employers provide the terms which govern either of these consequences in its staff manual or handbook.



## Termination of Employment Notice

Termination of employment may occur where either party to the employment contract finds no further need to continue the employment relationship.

The employment contract in many cases will specify the procedure for termination; however where this is not expressly provided for the provisions of the Labour Act will be referred to.

Under the Labour Act, **Section 11** provides for the compulsory issuance of notice or payment in lieu of notice by either party before the contract of employment is terminated. Under the common law, either an employer or its employee may terminate a contract of employment, subject to the terms of the written contract.

A party need not provide any reason for terminating the contract. This is based on the legal principle that a willing employee cannot be forced on an unwilling employer. This practice is however discouraged in light of international best practices which provide that termination of employment must be with cause.



The most prevalent method of terminating a contract of employment is by the delivery of a written notice of termination from one party to the other. Where the employee terminates the contract of employment, it is referred to as **resignation**.

Where a notice of termination is served, the contract automatically terminates at the expiration of the period in the notice. Either party could equally elect to pay compensation in lieu of the notice. Most contracts of employment stipulate the required Notice period.

Sample of a termination clause:

**a. Employment maybe terminated by either party giving the other one (1) month's notice or one (1) month's basic salary in lieu of notice.**

**b. An employee wishing to leave the service of the employer must give due notice or make payment in lieu. The employer reserves the right to refuse such notice or payment where:**



- i. the employee is suspected to be involved in an incident within the Organization which is the subject of police investigation; or**
- ii. the employee is on suspension; or**
- iii. the employee has a case pending before any committee responsible for disciplinary matters within the Organisation.**

The requisite length of notice usually depends on the position held by the employee i.e. junior, senior or management level staff.



## **OBJECTIVE OF ISSUING A NOTICE OF TERMINATION**

The objective of issuing a notice of termination is to give the employee/employer sufficient time to source for an alternative means of survival/ replacement.

The motive of the party that terminates the employment contract is irrelevant provided that the provisions of the employment contract or other guidelines are followed by the terminating party.

Upon termination, an employee may have rights to some benefits such as back pay, vacation pay, retirement, and other benefits depending on the circumstance of each case particularly where there is no indebtedness by such employee to the organisation.

Notice of termination must be clear and unambiguous. The Court has held that an employer cannot effectively dismiss his employee saying “I intend to dispense with your service at some time in the coming months.” See **HONICA SAMWILL (NIG) LTD V. HOFF. (1992) 4 NWLR 238, 673.**



## **SUMMARY DISMISSAL**

Summary dismissal is the common law right of an employer to terminate the contract of service of an employee with neither notice nor payment in lieu of notice on account of gross misconduct on the part of the employee which strikes at the root of the contract. The act of justifying summary dismissal must be one that offends the essential provisions of the employment contract, conduct which shows that the employee no longer regards or treats the contract of employment as subsisting.

An employer is entitled to opt for the dismissal of its employee, instead of the termination of a contract of employment with notice, where the conduct of its employee is of grave and weighty character, such that it undermines the relationship of confidence which exist between the parties.



Grounds on which an employer may dismiss an employee summarily include gross misconduct, gross neglect, disobedience of lawful order and dishonesty among others. See **YUSUF V. UNION BANK OF NIGERIA, (1996) 6 NWLR (Pt 457) 632 SC.**

It must however be noted that the practice is that where the employment contract clearly provides for acts that amount to gross misconduct for which summary dismissal will apply this is done instantly. In other cases where the acts amounting to misconduct are not clearly spelt out by the employer then the disciplinary procedure provided by the employer will be complied with prior to dismissing the employee.



The legal requirement for compulsory issuance of notice or salary in lieu of notice is without prejudice to the common law rights of an employer to dismiss its employee without notice for certain gross offences. What amounts to gross misconduct has been well established by the Courts.

In **UBN LTD V. OGBOH (1995) 2 NWLR 380, 647, at 653**, the Supreme Court defined gross misconduct as “conduct of grave and weighty character as to undermine the confidence which should exist between the employee and his employer or working against the deep interest of the employer. In **AJAYI V. TEXACO NIGERIA LTD (1987) 3 NWLR 62**, the Supreme Court held:

“There is no fixed rule of law defining the degree of misconduct which would justify dismissal. It is enough that the conduct of the servant is of grave and weighty character as to undermine the confidence which would exist between him and the master.”



Therefore, what will amount to misconduct is what an employer defines as misconduct. In **OYEDELE V. UNIVERSITY OF IFE TEACHING HOSPITAL (1990) 6 NWLR part 155 at 194**, the Courts identified the following acts:

- Malicious mischief, including defacing, destroying or damaging any property of the office;
- Any act of insubordination;
- Reporting for work under the influence of dangerous drugs or intoxicating liquors or being in possession of same while on the office premises;
- Habitual tardiness in arriving at the assigned place of work;
- Absenteeism without reasonable cause; and,
- Involvement in any act unbecoming of an employee or that puts the office to disrepute.

## **STEPS TO TAKE BEFORE SUMMARILY DISMISSING AN EMPLOYEE**

1. Identify the serious misconduct and seek legal advice.
2. Discuss the misconduct with the employee: Speak directly



with the employee or with the employee and his representative about his conduct and the effect on the business. An employer must keep records of this meeting.

3. Consider other options: Depending on the severity of the misconduct, you may choose any of the following in the alternative-

- Issue a letter of warning or
- Dismiss the person with notice or pay in lieu of notice.

It is advisable to avoid summarily dismissing an employee except the offence is so serious that it requires the swift removal of such employee from the workplace. This is because in many instances summary dismissal can be termed unfair dismissal by the courts and will attract payment of compensation.

## **LETTER OF SUMMARY DISMISSAL**

A letter summarily dismissing an employee must contain the following:

- Date of the dismissal hearing and its outcome.
- Facts relied upon which establish gross misconduct.



- Effective date of dismissal.
- Statement that warning and notice are not required.
- Arrangement of payment of final salary.

## **DISTINCTION BETWEEN TERMINATION AND SUMMARY DISMISSAL**

1. Termination of employment is a right enjoyed by both employer and employee while Summary Dismissal is the sole right of an employer.
2. Termination of employment is done within the period specified in the employment contract while summary dismissal is done instantly or in compliance with laid down disciplinary procedure of the employer.
3. Upon termination certain benefits may accrue to an employee such as gratuity while summary dismissal terminates the employment and may leave no room for entitlement to benefits.



In **UNION BANK OF NIGERIA PLC V. SOARES (2012) LPELR-8018 (CA)**, the court held that: “There is a clear distinction between termination of a contract of employment and a dismissal. Termination gives the parties the right to determine the contract at any time by giving the prescribed period of notice. Dismissal on the other hand, is a disciplinary measure which carries no benefits.”

4. Where termination is without notice the employee is entitled to his salary in lieu of such notice while if summarily dismissed, there is no requirement for such notice or salary in lieu.

In **EKUNOLA V. CBN & ANOR (2013) LPELR - 20391 (SC)**, the court in deciding on whether an employee dismissed on grounds of allegation of gross misconduct is entitled to notice or salary in lieu of notice held:-



“ ..... that where his dismissal is founded on misconduct the appellant is not entitled to any notice or salary in lieu of notice..... and that it would be wrong in law to make any awards to him in that regard.”

## **CONCLUSION**

Generally, understanding the differences between summary dismissal and termination is important in determining the steps to be followed in disengaging an employee from employment particularly as specified in contract of employment, the staff manual, employee handbook or any other guidelines used within the organisation.



Parties to an employment contract should always ensure that the proper steps are followed at all times and legal counsel is sought before steps are taken to avoid incurring liability for breach of contract when such termination is held to be unfair and therefore entitles the employee to compensation.

Employers must ensure proper wording of letters of disengagement in order to distinguish when an employee is summarily dismissed or his employment terminated. In the past, Employers could terminate an employee without reason or cause as provided under the common law. However the National Industrial Court of Nigeria has in recent times frowned against such practice following the need to adhere to international best practices.



The reasoning behind the above position rests on the premise that the court may construe a termination without cause as unfair especially where the employee alleges a cause. In such instances, the court will likely award damages against such an employer.

Employers must also note that the National Industrial Court of Nigeria which is the court charged with the exclusive jurisdiction of resolving labour disputes is empowered by Section 254C of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to adopt international best practices and ratified Labour Conventions in determining labour disputes. This therefore connotes that employment contracts should, as practicable as possible, reflect an acceptable global standard.



## **SOURCES OF LAWS GOVERNING EMPLOYMENT IN NIGERIA**

1. Constitution of the Federal Republic of Nigeria, (1999) as amended.
2. The Labour Act .
3. Federal enactments by the National Assembly such as:
  - i. Employees Compensation Act 2010.
  - ii. Factories Act.
  - iii. Industrial Training Fund.
  - iv. Pension Reform Act 2014.
  - v. Trade Dispute Act.
  - vi. Trade Union Act.
4. Decisions of Nigerian Courts – Case Laws.
5. ILO Treaties, Conventions, Recommendations,



Protocols relating to labour, employment, workplace, industrial relations or matters connected therewith that have been ratified by Nigeria.