

# Can Employers Require Workers to Give Notice Before They Quit?



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September 14, 2018

Businesses face myriad disruptions when valued employees resign, such as decreased productivity and morale. Since it can take a few weeks to get the search for a replacement going, employers might be tempted to require workers to give notice before leaving. But employers should be aware of the associated risks.

Most states follow the employment-at-will doctrine, meaning that either the business or the worker can terminate the employment relationship at any time and for any lawful reason, either with or without notice. However, having an employment contract in place for a certain duration creates an exception to at-will employment.

Whether an employment relationship is at will or contractual, an employer can request advance notice of an employee's intention to resign, said Jennifer Stocker, an attorney with Barnes & Thornburg in Grand Rapids, Mich. It makes sense for some employers to ask for advance notice so they can hire and train a replacement and have time to reassign projects to others before the employee departs.

Two weeks is the standard notice period. But employers commonly ask executives and employees with unique skills to let them know four weeks in advance, because they may need more time to prepare for the transition, noted Deepa Subramanian, an attorney with Ogletree Deakins in Atlanta.

Employers should be careful, however, about referring to advance notice as a requirement, which could be interpreted to mean the employee has a guaranteed right to remain employed during the advance-notice period, Stocker said.

## Offer Incentive

Instead of requiring notice, employers should consider offering an incentive. For instance, businesses may offer a discretionary bonus or severance package to employees who provide notice. In some states, employers may condition the payout of accrued but unused vacation time on providing notice. Stocker recalled a policy that based rehire eligibility on providing advance notice.

But employers should be aware of laws that may limit their incentive options. "A lot of times these issues are state-specific," Subramanian said. For example, under some state laws, vacation accruals are considered earned wages and must be paid out to all departing employees. In other states, the employer's policy dictates how vacation time is paid out.

In states where private employers can place conditions on the receipt of vacation-time payouts, businesses must have "crystal clear" policies, said LaToi Mayo, an attorney with Littler in Lexington, Ky. The policy should state that employment is at will and that workers are free to resign with or without notice, but if they do give two weeks of notice, they will receive their accrued but unused vacation time (or other incentive). The policy should also state that if employees do not give such notice, they will not be entitled to the vacation payout.

Make sure to go over this policy with employees—perhaps in new-hire orientation or another training program—so that they are aware of it, Mayo said. She noted that different rules may apply to public employers when it comes to paid-time-off accruals and payouts.

Employers should note that it is never acceptable to dock employees' pay if they don't give notice, because employers are required to pay workers all the wages they earned.

If employers offer a bonus to workers who give notice, they must ensure it is discretionary and that the employee isn't already entitled to the bonus through another employment policy. For example, an employee may have already earned a performance-based bonus.

## Employment Contracts

Executives generally will sign an employment contract that contains confidentiality, nonsolicitation and other provisions. Employers may find it helpful to also use employment contracts to outline the steps that executives have to take at [the time of resignation](#), Mayo said.

It's important to understand that even if an employee signed a contract requiring a certain amount of notice, the employee can still quit and leave immediately, explained Sandy Rappaport, an attorney with Hanson Bridgett in San Francisco. "This is because courts generally will not enforce a provision that requires individuals to work somewhere against their will."

The employer could sue the employee for breach of the contract, but any damages would be limited to those caused to the employer due to the lack of notice, she said.

## Two-Way Street

If an employer requests advance notice, it should be prepared to either provide the same notice to employees who are let go or pay them for that period if they are immediately discharged, Subramanian said, noting that sometimes it doesn't make sense to keep someone on board who has performance issues or [access to confidential information](#).

Employers should keep in mind that if they want the employee to sign a release of claims, they will have to provide an additional incentive beyond what was promised for providing notice, she added.

Stocker noted some other points for employers to keep in mind if they request and receive advance notice but discharge employees before the notice period ends:

- Employees are still entitled to whatever incentive the employer tied to the notice period.
- Employees may have a basis for claiming unemployment benefits or a severance payment under an employer's other policies, since the employer has arguably converted a voluntary termination into an involuntary termination.
- Other employees may observe this and be less inclined to give advance notice of their own resignation.