

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 4

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Legal Aspects and Consequences of Notice Periods

AUSAFUR RAHMAN¹

ABSTRACT

This paper examines the legal landscape of notice periods in India, focusing on the rights and obligations of both employers and employees. While employers are legally mandated to provide a notice period before termination, there is no such requirement for employees upon resignation. However, employment contracts typically include notice period clauses, which can lead to legal and practical consequences for employees who fail to comply. The paper highlights the potential for employer abuse during the notice period, such as harassment and workload manipulation. It also discusses the challenges faced by employees in asserting their rights due to the imbalance of power between individuals and corporations. The paper concludes by advocating for more employee-friendly policies, including flexible notice periods and protection against harassment, to create a fairer employment environment.

Keywords: Notice period, employee rights, employer obligations, harassment.

I. INTRODUCTION

The Notice Period is the time an employee must serve after submitting their resignation. The duration of the Notice Period is specified as a clause in the employment contract, which is agreed upon between the employee and the employer before the commencement of employment. The term "Notice Period" also refers to the time given by the employer to the employee after terminating their employment contract, in other words, the time allowed after an employee is dismissed from the company. The duration of the Notice Period typically ranges from 15 days to 3 months, as stipulated in the employee's specific employment contract.

In India, the Notice Period is an essential part of the employment contract. Companies impose it to ensure that employees complete their assigned work before leaving and to prevent the leak of sensitive information. However, at times, the company, employer, manager, or HR may use the Notice Period to harass the outgoing employee. The departing employee often has no choice but to tolerate such misbehaviour from their superiors because leaving the job without serving the Notice Period could result in legal or career-damaging consequences.

¹ Author is a LL.M. student at O.P Jindal Global University, India.

Engaging in a legal battle with a large company would be akin to a rat trying to defeat an elephant. It would be extremely challenging for an employee with limited resources and family responsibilities to prevail against a company in court. Legal proceedings are time-consuming, and sustaining oneself during this period would be very difficult for the employee, who might have to bear substantial legal fees. Additionally, if the court rules in favor of the employer, the employee might have to pay damages, which could be substantial depending on the terms of the contract and the perceived loss to the company.

II. LEGAL CONSEQUENCES

In India, there is no legal provision regarding the serving of a Notice Period for employees after submitting their resignation. The only law concerning Notice Periods applies to employers, who are required to provide a Notice Period to employees before terminating their employment contract. This is mentioned under Section 25F of The Industrial Disputes Act, 1947. The section is as follows -:

“Conditions precedent to retrenchment of workmen.

- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] [Substituted by Act 36 of 1964, Section 14, for " for every completed year of service" (w.e.f. 19.12.1964).] or any part thereof in excess of six months; and
- c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

And Section 27 of the Indian Contract Act, 1872 says that “Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”

Yet, the employee may face legal consequences, as the Notice Period after resignation is typically mentioned as a clause in the employment contract. Not serving the Notice Period can be considered a breach of contract, and the employer may take legal action against the employee

for this breach. While specific performance cannot be enforced against the employee, the court may award substantial compensation to the employer.

There are other consequences also beside legal consequences for not serving the Notice Period which can be detriment for the career of the employee-:

1. **Final Payment Delay:** Employers may postpone disbursing the last pay check, which typically includes outstanding wages, performance-based incentives, and other compensations, until the employee fulfils the notice period requirements. This delay might also account for expenses incurred in hiring temporary staff to cover the gap.
2. **Risk of Missing Exit Documentation:** Upon leaving a company, employees usually receive an official document confirming their departure. Failure to complete the notice period might result in the withholding of this crucial paperwork, potentially hindering future job prospects or verification of prior employment.
3. **Industry Backlisting:** In some sectors, HR professionals maintain unofficial communication channels to discuss employees who depart abruptly without proper notice. This practice can lead to the individual being informally blacklisted, creating obstacles in securing positions at similar firms or within the same industry.
4. **Professional Image Concerns:** Departing a job without adhering to the agreed notice period can negatively impact an individual's professional standing. Prospective employers might interpret this behaviour as unprofessional, potentially limiting career advancement opportunities.

III. HARASSMENT FACED BY THE EMPLOYEE

The outgoing employee faces harassment from the hands of the employer or manager or HR-:

1. **Hostile Work Environment:** Some employers may create an unpleasant atmosphere for resigning employees. This could involve assigning undesirable tasks, excluding them from meetings, or subjecting them to unnecessary criticism.
2. **Excessive Workload:** Managers might overburden the departing employee with an unreasonable amount of work, making it difficult to complete tasks before leaving.
3. **Withholding Resources:** Access to necessary tools, information, or support may be restricted, hindering the employee's ability to perform their duties effectively.
4. **Threats or Intimidation:** In extreme cases, there may be threats regarding future references or attempts to pressure the employee into extending their notice period.

5. **Exclusion and Isolation:** The resigning employee might be deliberately isolated from team activities or important communications.
6. **Denial of Benefits:** Some employers may unjustly withhold rightful benefits or perks during the notice period.
7. **Spreading Misinformation:** False rumours about the employee's reasons for leaving or future plans might be circulated within the company.
8. **Not allowing the offer to Pay in Lieu of Notice:** Even if it is mention in the employment contract, still the HR says that it is not mention in the contract because most time the employee does not cross check the employment agreement and believes the words if the HR.

IV. ACTIONS CAN BE TAKEN BY THE EMPLOYEE

1. **Read the Employment Contract thoroughly:** The employee should be well-versed in the employment contract so that HR cannot deny any possibility of allowing the option to pay in lieu of notice.
2. **Complain to the Higher Authority of the Company:** Report any kind of harassment to higher authorities in the company against the manager, HR, or team lead.
3. **File a written complaint:** Submit a formal written complaint to the company's Internal Complaints Committee (ICC) or management.
4. **Issue Legal Notice:** Issue legal notice against the person who is harassing him/her.
5. **Take legal assistance from any Lawyer:** Consult a lawyer who can guide them in taking appropriate actions.
6. **File a police complaint:** In cases of severe harassment, the employee can file a complaint with the local police.

V. CONCLUSION

Notice Periods after resignation are necessary, but the exploitation or harassment of outgoing employees should be prevented. Legal provisions are needed to protect the rights of departing employees. If a company is proactive, it can replace most employees within 15 days. India has a vast pool of talented individuals who can fill almost any required position at short notice.

Human Resources departments are primarily established to hire capable employees. However, some companies disregard the position of outgoing employees and choose to harass them rather than using that time to find suitable replacements. Section 27 of the Indian Contract Act, 1872

states, "Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void." Despite this, Notice Period clauses are allowed because they serve a necessary function.

Companies should adopt a more lenient approach towards departing employees, encouraging them in their future endeavours rather than discouraging or disrespecting them. If it's genuinely challenging to find a suitable replacement for an outgoing employee, the company could engage that employee to work with HR during their Notice Period to find a fitting replacement. This approach would spare the employee from potential insult and harassment while allowing the company to benefit from the departing employee's intimate knowledge of the job profile, thereby facilitating the selection of the best-suited candidate for the position.

In India, with its growing literacy rate and expanding skilled workforce, it should never be an insurmountable challenge for any company to replace an employee. However, the process should be conducted with respect and professionalism, recognizing the contributions of the departing employee while smoothly transitioning to their replacement.

Companies should also consider implementing policies that balance their needs with those of their employees, such as offering the option to pay in lieu of notice or allowing for a flexible Notice Period based on the employee's circumstances and the company's ability to find a replacement. This approach could foster a more positive work culture and enhance the company's reputation as an employer, potentially attracting and retaining top talent in the long run.
