

# Leaving and retirement

## How to prepare for the end of employment

---

A nanny might leave your employment for a number of reasons. They may resign or retire, or you may dismiss them because of redundancy, or their poor performance or misconduct. This Factsheet explains how to prepare for ending a person's employment and how to make the process as smooth as possible

### When an employee resigns

When an employee wants to resign, you can try to persuade them to change their mind but you can't refuse to accept their resignation.

If they later withdraw their resignation, generally you don't have to agree to them continuing to work for you. You should act carefully though if the employee has handed in their notice in controversial circumstances, e.g. after an argument.

### Checklist: what to do when an employee resigns:

If you accept your nanny's resignation, there are several things you need to do to make the departure as smooth as possible – further details are given in this Factsheet below. Make sure you:

- Get written confirmation of the resignation, and the date of resignation. This will help you avoid disputes over the exact date of the resignation and the start of any notice period.
- Decide whether you wish the nanny to work out their full notice period. You may find it more appropriate to pay the nanny in lieu of all or part of the notice period if your contract provides for it or the nanny agrees. However, if you do so, be sure that you have another nanny who is able to immediately take on the job.
- Confirm the nanny's notice period, usually part of their contract of employment. If it is not, statutory notice will apply.
- Organise a handover period. This allows for a smooth handover to the nanny's replacement of key tasks and responsibilities
- Arrange an exit interview - see below.
- Retrieve all family property your nanny may be in possession of e.g. computers, toys etc.
- Organise their final payment including all money owing, e.g. pay in lieu of working a notice period, money for unused holidays etc.
- Part on good terms - a disgruntled ex-employee can damage your reputation as an employer if they leave on poor terms, e.g. by writing about their experiences as your nanny on a social networking website or blog.
- Organise a farewell gift or party, if appropriate.
- Make a point of saying goodbye on the actual day the nanny leaves and thank them again for all their hard work.
- Be careful about references - see below.

### Finding out why an employee wants to resign

First, find out why your nanny wants to resign, especially if the resignation is unexpected. Is there anything you can do to make them change their mind?

Sometimes a nanny will resign because they fall out with someone, or the resignation may be due to family commitments that mean the nanny is unable to continue working the same hours for you. Are there changes you can make to working arrangements to accommodate this? If your nanny is resigning to work for another family consider whether it would be worth improving their remuneration/benefits package or working environment.

When employees leave, it is a good idea to arrange an exit interview. You can then use their response to determine whether there are any underlying issues to be addressed. However, getting employees to reveal the real reason they're leaving can be difficult.

Some useful questions include:

- What have you **enjoyed** the **most/least** about working for the family/the role?
- What sorts of **problems** have you found?
- How well did you **understand** your role?
- How effective is the communication?
- How easy was it to get on with the family?
- To what extent do you feel your work was valued?
- Were your skills and talents used effectively?
- To what extent did you feel your role was secure?
- How satisfied were you with **money, terms and conditions, facilities, equipment**?
- How does your current role compare to your new job?
- When did you begin looking for another job?

You should also look out for reasons that might lead to employees claiming constructive dismissal or discrimination. These wrongs could be corrected before the nanny leaves but beware not to suggest any reasons or say anything that could later be used against you.

### **Notice periods**

It is important that you refer to the employment contract to check what period of notice period your nanny is required to give. The required notice period is the statutory amount or the amount agreed in the contract of employment, whichever is longer.

If there is no written agreement, the statutory notice period will apply which, for employees with at least one month's service, is a minimum of one week.

### **Resignations in the heat of the moment**

Sometimes an employee may say that they are resigning after an argument with their employer. In such situations they might not really have meant to resign.

If this is the case, it is dangerous to act as though the contract has ended because the employee could later claim unfair dismissal. See Factsheet on Dismissal.

If your nanny seems to have resigned or has walked out after an argument:

- Don't immediately assume they have resigned.
- Give your nanny a 'cooling off' period – usually 24 hours.
- Take action to find out whether they really meant to resign.
- If you can't contact them, wait a reasonable time before starting termination procedures.
- Investigate further if you receive additional information relating to the situation.

You should also be careful not to say things in the heat of the moment that could be misinterpreted as a dismissal.

### **Resignations where the employee may claim constructive dismissal**

An employee may be entitled to resign if you breach a fundamental term of their employment contract. This is known as constructive dismissal. Breaches of contract that may give rise to unfair constructive dismissal claims might include anything which makes it impossible or intolerable for the employee to continue doing the job. Examples include:

- unilaterally cutting - or trying to cut - an employee's wages or salary or other contractual benefits
- transferring an employee to a different job or location in the absence of any stated or implied contractual right to do so
- failing to provide a safe place of work
- breach of your obligation of mutual trust and confidence, a term that is implied in every employment contract

For this reason you should always seek your nanny's prior written agreement when you propose to change their employment contract. For more details see Factsheet Written Terms/Contract. If you don't get the nanny's agreement, they could raise a grievance with you. When dealing with such a grievance, you should follow a fair and reasonable procedure. Ideally your procedure should follow the good practice principles set out in the ACAS code of practice on disciplinary and grievance procedures. See Factsheet Dealing with a Grievance.

### **Working out final payments**

You will need to work out how much pay is due, including pay for any untaken holiday and what, if anything should be deducted from their final pay.

#### ***Pay during notice***

Employees who work the hours set out in their contract during the notice period should receive their usual rate of pay. Employees are also generally entitled by law to receive a minimum rate of pay during the notice period even if they do not work, for instance because they are ill or because they are willing to work but you do not give them any.

#### ***Pay in lieu of notice***

If you want employment to end immediately, you can make a payment instead of allowing the employee to continue working - a payment in lieu of notice (PILON). However, you can only make a PILON if the contract allows for this or your employee agrees to it. A PILON should cover salary until the end of the notice period together with the cash equivalent of benefits in kind, unless their contract says otherwise.

#### ***Pay for untaken outstanding holiday***

Pay owed to the employee for any accrued untaken holiday should be treated differently from a PILON and should be paid together with the final salary payment.

For more information on making final payments speak to PayMyNanny

### **Providing references**

Except for certain employers in the financial services sector, an employer does not generally have to give a departing employee a reference unless this is a requirement of the employment contract. However, sometimes employers routinely provide their employees with a reference when they leave. And it is good practice to ask whether they want one.

If you refuse to provide a reference for an employee who has brought an unlawful discrimination claim against you, the employee could also bring a victimisation claim against you. You should consider carefully the legal implications of providing a reference:

- make sure that what you say is true, accurate and a fair representation of the person
- an ex-employee could bring an action against you for libel, discrimination or defamation of character through a court or tribunal, if they consider the reference to be inaccurate

Employees may be able to gain access to a reference if they take legal action, eg a sex discrimination claim. See our guide on how to prevent discrimination and value diversity. They can also gain access to a reference once they start work for a new employer. On the other hand, you should avoid giving an unsatisfactory employee a good reference, because:

- a good reference could weaken your case in any claim for unfair dismissal by the ex-employee
- any new employer could claim damages if the employee proves to be unsatisfactory and material information was omitted from the reference

### **When an employee retires**

The default retirement age (formerly 65) has been phased out - most people can now work for as long as they want to. However, some employers can set a compulsory retirement age if they can clearly justify it.

It is an employee's responsibility to discuss with their employer, when and how to retire. This could include phasing retirement by working flexibly.

Members of occupational pension schemes need to discuss with their pension scheme managers what impact a change in working hours or income might have on the pension, whether the scheme supports phased retirement and working beyond the scheme's normal pension age.

Employers may or may not be able to agree requests. If an employee is unhappy with their employer's decision, they can appeal it and potentially challenge it at an employment tribunal.