

up to six times the normal amount of severance allowance.

If an employer believes that an employee is not working properly, but there is no serious misconduct, the employer must give the employee notice and may have to pay severance allowance and repatriation.

### **What if my work agreement provides for more than this?**

The entitlements described in this brochure are the minimum entitlements as set out by law. A work agreement may increase but not decrease an employee's entitlements.

### **What is a probation period?**

A probation period is a trial period during which both the employer and the employee can cancel the work agreement without having to give notice. The normal probation period is fifteen days but it can be extended by agreement up to a maximum of six months.

### **What about payments to the Vanuatu National Provident Fund (the VNPF)?**

If an employee earns more than 3,000 vatu per month, the employee and the employer must pay contributions to the VNPF. The VNPF is responsible for managing and investing these contributions. VNPF funds can only be withdrawn when employees turn 55, have died, are unable to work due to illness or injury, or are about to leave Vanuatu with no intention of returning.

### **What do I do if I think that my rights have been broken?**

You should make a claim in relation to your outstanding entitlements as soon as possible. A delay of even six months may mean that you can no longer make a claim.

You should initially make a claim to your employer. If you are not happy with the outcome, you should speak to your union or the Labour Department, who can try to negotiate an agreement on your behalf. You may also seek help from the Public Solicitor's Office, the USP Community Legal Centre or a private solicitor.

### **For more information contact:**

#### **Labour Department:**

Central Office – PMB 9022, Port Vila

Ph: 22610

Fax: 26544

District Labour Office/Employment Services: 23233

#### **Public Solicitor's Office**

PO Box 794, Port Vila

Tel: 23450

Fax: 23451

#### **USP Community Legal Centre**

PMB 9072

Port Vila

Phone: 27026

Fax: 25543

Produced with the generous assistance of



Australian Agency for International Development

The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

The information in this brochure is current as at 30 June 2006

University of the South Pacific Community Legal Centre  
PMB 9072 Port Vila VANUATU Ph: 27026 Fax: 25543  
<http://legalcentre.vanuatu.usp.ac.fj/>

UNIVERSITY OF THE  
SOUTH PACIFIC



# Termination of Employment



**A USP COMMUNITY LEGAL  
CENTRE PRODUCTION**

## What is this brochure about?

This brochure is about the entitlements of workers when they leave their job.

This brochure covers workers who are employed in Vanuatu, but does not cover workers who are employed in the public service.

In the law relating to work, the worker is often called the 'employee', and the boss is often called the 'employer'.

## What types of payments are available?

There are five different types of payments that employees may receive when they leave their job. Whether an employee is entitled to these will depend on the circumstances in which they leave.

*a) Outstanding wages* – These are wages that are owed to employees and includes payment for overtime and any other allowances (such as a travel allowance). An employer must pay employees all of their outstanding wages when they leave work.

*b) Annual leave* – This is also called holiday pay. Employees who work for 12 continuous months are entitled to at least 1 day annual leave for each month of work. This may increase where the employee has worked for the same employer for more than 20 years. An employer must always pay employees all of their outstanding annual leave when they leave work. You may be entitled to payment of an allowance equivalent to annual leave even if you have not worked for an employer for 12 continuous months.

*c) Severance allowance* – Severance allowance may be available to employees who have been in continuous employment (more than 4 days per week) for more than one year. Severance allowance is around half of a month's pay for each full year of employment (part of a year is calculated proportionally). There are certain deductions which the employer may be able to take out from the severance allowance, such as an end of year bonus.

*d) Notice period* - If a work agreement (also called a 'contract of employment') does not have a specific date for the work to finish, either party can end the contract by giving the other party 'notice'. Notice is a reasonable period of warning.

If the employee has been working for more than three years, the minimum notice period is three months, though it may be longer. If the employee has been working for less than three years, the minimum notice period is at least 14 days or one pay period. This period may be extended by agreement of the parties in the work agreement but it cannot be made shorter.

Some work agreements for a fixed period do not include a notice period and cannot be ended by one party giving the other notice.

If an employer does not give proper notice, they must (unless there has been serious misconduct by the employee) pay to the employee wages for the appropriate period of notice.

During the notice period, the employee is entitled to a reasonable period of time off work without a reduction in their wage in order to seek other employment.

*e) Repatriation* - Employees who have been working more than 50 kilometres away from their usual home and who have been brought to the place of employment by his or her employer or their agent may also be entitled to payment of their 'repatriation' expenses, or payment for the expense of returning home to his or her family. However, it is important to note that some exceptions may apply.

## What am I entitled to?

If you leave your work you are entitled to payment of outstanding wages and annual leave. You must claim annual leave within six months of leaving.

If you leave your work because the contract was for a fixed term and it has ended, you may also be entitled to repatriation.

If your employer asks you to leave work, you are enti-

led to notice or payment for the notice period, and may be entitled to severance allowance and repatriation.

If you are forced to leave work because your employer ill treats you or commits a serious breach of the terms of the work agreement, you **may** be entitled to stop work without giving notice and demand payment for the notice period (or for the remainder of the contract if it is a fixed term contract with no notice period), severance allowance and repatriation. If this applies to you, you should speak to a lawyer or the Labour Department. You may also be entitled to claim damages for breach of contract.

If you choose to leave work, you must give your employer notice. If you have worked continuously for more than one year, you may be entitled to repatriation.

If you are told to leave your work because you have committed serious misconduct (see below), then the employer does not have to give you notice and does not have to pay severance allowance. You may still be entitled to some repatriation costs.

If you retire due to age (you must be at least 55 years old) or illness (which must be certified by a doctor), you may be entitled to severance allowance and repatriation. If your employer tells you to retire due to age, you are still entitled to receive notice.

## What is serious misconduct by an employee?

Serious misconduct could include things like stealing from the work place, constantly disobeying or missing work or behaving in a manner that is dangerous and puts other people at risk. An employer can only dismiss an employee for serious misconduct when there is no other real option.

Where an employer intends to sack an employee due to serious misconduct, the employer must first tell the employee why and give the employee a chance to explain. If the employer does not give the employee a chance to explain, this will be an 'unjustified dismissal', and the employee may be entitled to receive