

## Employment

### What is payment in lieu of notice (PILON)?

#### What is it and why is it useful?

A payment in lieu of notice (PILON) provision is a clause in an employment contract that is designed to allow the employer to be able to terminate the contract immediately, thus allowing the employee to leave the company without serving out the notice period (whether this be the statutory minimum notice or a longer contractual notice period).

An employer will therefore often include in the contract an express right to make a PILON as an alternative to giving notice, to ensure they have the option of terminating the employee's employment and removing the employee from the workplace at any time. PILON clauses are commonly exercised by employers in circumstances where there are concerns about competition by former employees.

The price to pay for triggering such an option is that the employer must pay the employee their salary for the notice period, whatever length the notice period may be. If the notice period happens to be more than 1 month, the employer can have the option of paying the notice period in instalments but such a provision must be stipulated in the contract.

#### Beware of drafting a PILON clause

If drafting a PILON clause, we urge all employers to ensure that this clause does not include the following:

- Any bonus or commission payments that might otherwise have been due during the notice period;
- Any payment in respect of benefits which the employee would have been entitled to receive during the notice period; and
- Any payment in respect of any holiday entitlement that would have accrued during the notice period.

In other words, the clause should be drafted so that the only payment the employer is obliged to make is the employee's basic salary, and nothing else.

#### What if you are entitled to terminate the contract for gross misconduct?

If the employer is entitled to dismiss the employee due to gross misconduct, then we recommend that you insert a clause into the contract of employment that stipulates that the employee would have no right to receive a payment in lieu of notice in such an event. This protects the employer from being liable to pay PILON when the employee is liable to be dismissed for gross misconduct.

Please note that whether the employer acted reasonably in dismissing the employee is to be decided by the Tribunal on a case by case basis. Employers can reduce the risk of unfair dismissal claims by seeking legal advice prior to considering termination of employment.

**If you have any queries about payment in lieu of notice, please contact our employment team.**

**David Rushmere**  
Solicitor Advocate  
E: david.rushmere@3hrsc.com



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The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3hrsc.com