There are different ways in which the employment relationship between a domestic worker and an employer can come to an end. The employment relationship could come to an end when: a domestic worker resigns; when an employer retrenches his or her domestic worker; or when an employer dismisses his or her domestic worker.

This factsheet explains what the law says about how the employment relationship between a domestic worker and an employer can come to an end (including the cases where a domestic worker resigns, is retrenched or is dismissed), when domestic workers are entitled to severance pay and when domestic workers are entitled to a certificate of service. The information in this factsheet comes from the Socio-Economic Rights Institute of South Africa (SERI)’s Domestic Workers’ Rights: A Legal and Practical Guide, which can be downloaded here.

**DEFINITIONS**

A **notice period** is the time period between the day a domestic worker resigns or an employer dismisses the worker and the end of the worker’s last working day.

**Retrenchment** is when an employer dismisses a worker due to no fault of theirs but because of operational reasons.

**What should happen when a domestic worker resigns?**

Domestic workers may resign from their jobs for a number of different reasons. For example, a domestic worker may find more favourable employment somewhere else, may relocate with his or her family, or may resign due to personal circumstances.

When resigning, a domestic worker needs to give his or her employer **notice** of at least 1 week (if he or she has been employed for 6 months or less), and notice of at least 4 weeks (if he or she has been employed for more than 6 months).
What should happen if a domestic worker gets retrenched?

The employment relationship could come to an end when an employer retrenches a domestic worker. This means that the employer terminates the employment relationship because of operational reasons. Operational reasons include:

- If the employer moves to another city or country,
- If the employer can no longer afford to pay for a domestic worker, or if a child no longer needs a child minder, or
- If the employer moves to a smaller house and, as a result, no longer needs a domestic worker.

If an employer retrenches their worker for operational reasons, he or she should give the domestic worker severance pay equal to at least one week’s full pay for each completed year of continuous service with that employer. Severance pay must be paid over and above any other money owed, such as leave pay and outstanding wages. Severance pay is calculated using the most recent wage rate.

What should happen if a domestic worker gets dismissed?

There are other ways that employers dismiss domestic workers. The Department of Labour considers the following as “dismissal”:

- When an employer does not renew the job contract as agreed, or offers to renew it on less favourable terms.
- When an employer does not allow the domestic worker to return to work when they return from maternity leave or after they have been absent up to 4 weeks before and up to 8 weeks after the birth.
- When a domestic worker resigns with or without notice because the employer made working circumstances difficult. This is called a constructive dismissal.

Examples of constructive dismissals include an employer creating a hostile working environment for their domestic worker by being unfriendly and antagonistic, or making dramatic changes to their workload or even delaying pay all with the purpose of forcing the domestic worker to resign.

When is a dismissal unfair?

A fair dismissal is when a domestic worker reaches retirement age (what age a domestic worker should retire at should be agreed to by both the domestic worker and the employer) or when a domestic worker is unable to meet the specific obligations of his or her employment. For example, a domestic worker would not be meeting his or her employment obligations if the domestic worker fails to show up for work on a regular basis or if the domestic worker fails to fulfill reasonable tasks that are part of his or her job description when given the time and equipment.
An **unfair dismissal** is when an employer did not follow the proper procedure to dismiss a domestic worker or the employer cannot prove any wrongdoing or inability to work by the domestic worker. Some examples of unfair dismissals include if a domestic worker is dismissed because:

- He or she planned to or took part in or supported a strike or protest,
- He or she refused to do the work of a striking or locked out co-worker (unless his or her refusal endangered her life or health),
- He or she refused to accept a demand on matters concerned with the terms of employment (e.g. if an employee is dismissed because the employer demanded - and the employee refused - a wage cut or for the employee to work on Christmas day, and the purpose of the dismissal is to **force the employee to accept the demand**),
- He or she planned to or took action against the employer by exercising a right, such as embarking on mediation, conciliation or arbitration proceedings or representing a fellow employee in a disciplinary enquiry,
- She is pregnant or intends on getting pregnant,
- Of his or her race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility,
- The employer doesn’t like him or her or there is a difficult relationship between employer and domestic worker.

**When should a domestic worker receive a certificate of service?**

A domestic worker must be provided with a **certificate of service** when he or she leaves their employment. The certificate of service should include:

- Domestic workers full name;
- Name and address of the employer;
- The date of commencement and date of termination of employment;
- The title of the job or brief job description;
- Any relevant training received by the domestic worker;
- The pay at date of termination and;
- Only if the domestic worker requests it, the reason for termination of employment, however the employer may not say on the certificate that the domestic worker was dismissed for misconduct or provide an unfavourable reference.

**Useful contact details:**

- Contact the CCMA National Office (Johannesburg) by going to the CCMA’s website ([https://www.ccma.org.za/](https://www.ccma.org.za/)) or by calling 011 377 6650 or emailing ho@ccma.org.za.

**Definitions**

- **Severance pay** is the compensation an employer provides to an employee who has been retrenched. It is equal to at least one week's full pay for every year of completed continuous employment with the same employer.
- A **certificate of service** is given by an employer to an employee after the end of employment. It provides proof of the employee’s experience and can be used as a reference.