

MYTHBUSTERS GUIDE TO:

Termination of Employment

MYTH #1

An employee is only entitled to their contractual notice

Actually, employees are statutorily entitled to one week's notice for each complete year of service, up to a maximum of 12 weeks even if their contract states one month's notice. The employee will always have the benefit of the longest period of notice due under their contract or by statute.

MYTH #2

Notice (by employer or employee) has to be accepted

No, the notice is valid and binding provided it is given in accordance with any statutory or contractual requirements. Notice only needs to be accepted where it is given in breach of statutory or contractual requirements. Notice can only be withdrawn if the other party agrees to it.



MYTH #3

Any employer can automatically put an employee on garden leave

If there is a contractual right to be provided with work (e.g. an employee's pay is heavily dependent on the employer giving opportunities to earn bonuses or commission), placing the employee on garden leave without a contractual right to do so is a breach of contract, even where the employee continues to receive their pay and contractual benefits. This can result in the employee resigning without notice and can mean they are not bound by any restrictions when they leave, such as not working for competitors.

MYTH #4

Garden leave and a payment in lieu of notice are the same thing

No, they are quite different. If an employee is placed upon garden leave during their notice period, they will remain an employee for the notice period, but may be asked not to come to work, or only to undertake limited duties. However, if an employee receives a payment in lieu of notice, their employment ends immediately and they receive the pay that they would have received for the notice period.

MYTH #5

A payment in lieu of notice is for basic salary only

Not necessarily. If a payment in lieu of notice is made without a contractual right to do so, the employee is entitled to be compensated not only for the net salary that they would have received during the notice period, but any other contractual benefits that they would have been entitled to, such as pension contributions, holiday, company vehicles and insurance rights.

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For more information and advice on this topic or any Employment Law matter, please contact Carla Gowing our Employment Solicitor on 01603 660 811 or carlagowing@hatchbrenner.co.uk

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