

# #74 HR Newsletter

## December 2015:

### PILON

#### **Pay In lieu of notice during dismissal (PILON)**

An employer can dismiss an employee, pay him or her for the period of notice and require that the employee cease work immediately and not work out the notice period. This is known as a payment in lieu of notice.

Unless there is an express term in the contract permitting it, this technically represents a breach of the contract of employment and payments during the notice period are treated not as wages but as damages for breach of contract.

Such a breach of contract will not permit the employee to recover damages for breach of contract provided that the payment in lieu compensates the employee fully for the wages and benefits that he or she would have received in the notice period.

However, the employer will not be able to enforce post-employment restrictions, such as non-competition and non-solicitation clauses, if it has breached the contract by terminating it without notice.

The normal way around this is to put the employee on "Garden Leave" where the employer issues notice but makes the employee work out the notice in full – but does not require them to attend work, hence they have more time to spend in the garden.

This also has the benefit of removing the employee from any access to suppliers and key contacts during this notice period and allows you to manage your relationship with these key contacts before the employee reappears in the arena and tries to solicit them away from you.