

Contractor Doctor: Can my client have a different termination period to me?

Dear Contractor Doctor,

I am an IT contractor and have been working on a contract direct with my client for nearly six months.

The contract is due for renewal and my client wants me to renew, but would like to make some minor changes to the contract. In particular, the client wants me to change the termination notice clause so that they can give me two weeks notice, yet I have to give them four weeks notice.

Shouldn't the termination clauses be the same?

Thanks

Mark

Contractor Doctor says:

The short answer to your question is no, the termination clauses do not need to be the same; they can be whatever is agreed upon by both sides during the [contract negotiation](#) or [renewal negotiation process](#).

As ever with [contract negotiations](#), there are many issues to consider. Technically, the client can suggest any number of changes to the contract when it is due for renewal, but that does not necessarily mean a contractor is obliged to accept them.

At renewal stage, it is possible for a contract to be completely renegotiated from the ground up, if that is what both parties (the contractor and the client), want to see happen. But this can cause unnecessary delays and expense, and should be avoided if possible.

Contract notice periods

Where a client is proposing a shorter notice period for termination that applies to them, this usually means they may want to be able to stop the project as soon as possible with minimum risk and the lowest possible project cancellation costs. They might need to do so if, for example, the budget is cut or the project is no longer necessary.

But having a clause that says the contractor has to give a longer notice period if the contractor chooses to terminate means the contractor is tied in for longer. Therefore, they are less likely to 'jump ship' and leave the client without a contractor to complete the project.

It is important to include a termination clause with reasonable terms, because there are circumstances where either the contractor or the client might need to stop working on the project but not be in [breach of contract](#) and liable for legal action.

How strong is the negotiating position?

The decision to accept different notice periods for termination depends on the contractor's strength of bargaining position. Accepting that the client can give only two weeks might leave the contractor without work for a period between contracts if the client exercises this right.

However, the client might be insisting on the two-week clause as a deal breaker. If the contractor is not likely to win a new contract quickly, then it might be best to accept the renewal, for perhaps a shorter period, on these terms.

Alternatively, if the contractor is confident of getting a new contract quickly and not concerned if the current contract is not renewed, they can simply respond to the client that they will not renew unless the termination clauses are the same. Or they might wish to propose a compromise, e.g. both sides have to give notice of three weeks.

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Termination through breach of contract

Another reason for including a termination clause is to ensure that clients don't apply any number of potential 'dirty tricks' which can put the contractor in breach of contract through a largely fabricated or petty charge and in that way relieve the client of having to pay the contractor.

Just some of the reasons for breach of contract used by clients and agencies include:

- o Insisting on a [rate reduction](#) and claiming the contractor is in breach for not accepting
- o Claiming the [original contract was never signed](#)
- o Demanding that contractors relocate to new client sites a significant distance away from the original contract location
- o Insisting contractors [provide additional services outside the original contract specification](#), and claiming breach when they don't
- o Claiming contractors have [not returned items or equipment](#) on loan to the contractor.

Often these approaches are designed to put the contractor in a position where they have to challenge the client with professional legal assistance and possibly through the courts. Many contractors choose not to fight and the client wins through default.

However, contractors who are organised and have genuinely not been in breach of their contracts should stick to their guns and get a solicitor on board, as often the first salvo from the lawyers ends the dispute, because the client or agency knows the contractor won't back down.

Good luck with your contracting!

Contractor Doctor

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