

## **5 INFORMATION FOR EMPLOYEES CONCERNING DISMISSAL**

Can an employer dismiss me for no reason? How long is the period of notice? What can I do if I don't agree with my dismissal?

This document will try to answer these and other questions of employees about dismissal.

### **1. Employment protection**

The dismissal law is stipulated in the Civil code and the Dismissal ordinance. It is called 'lei di retiro'.

The dismissal law protects the employee from unreasonable and arbitrary dismissal, but it does not prevent an employee from ever being dismissed.

Sometimes an employer is forced to dismiss an employee because of a decrease in business activities or due to the closure of the company. It may also be a case of being incapable of performing the job tasks or serious misbehaviour of the employee. In those cases too, an employer should be able to dismiss the employee.

Besides, an employee might want to resign to accept a better job elsewhere.

However, the laws governing dismissal also stipulate a few cases in which an employee cannot be dismissed. We will return to these cases later.

### **2. Who is protected by the law?**

The law (Civil code and Dismissal ordinance) protects basically all employees from dismissal based on unreasonable grounds. The Dismissal ordinance, however, is not applicable to:

- employees in a public corporation (civil servants but also labourers and employees working for the government on a labour contract);
- educational personnel and teachers;
- clergymen (for example priests and ministers);
- employees that perform domestic labour in the household of private persons (domestic servants).
- a director's labour contract;

- a labour contract for a fixed term; with the exception of a contract for a fixed-term which was directly or indirectly preceded by a contract for an indefinite period of time in which the same worker has successively worked for different employers, who can reasonably be considered to be each other's successor with regard to the work performed.
- cases of bankruptcy.

### **3. If your employer wants to dismiss you**

If your employer wants to dismiss you an approval from the Secretary General of the Ministry of Labour is generally required. The Dismissal ordinance namely provides that if an employer wants to dismiss an employee by giving notice, an examination by the Government on the grounds of rationality is required before dismissal can take place.

For this the employer has to apply for approval at the Labour Affairs Agency.

In the application the employer has to state a reason for the intended dismissal and will have to substantiate this reason. The reason could be for instance:

- closure or reorganization of the company, as a result of declining business performance (business-economic reasons);
- unfitness of the employee for the job;
- a disturbed work relationship between employer and employee.

A civil servant of the Department will ask you to comment upon the intended dismissal. If you don't have any comments, the following will suffice "I will wait for the decision by the Secretary General of the Ministry of Labour".

The dismissal file will then be submitted to the dismissal commission. This commission, consisting of at least two employer representatives, two employee representatives and an impartial chairperson, advises the Secretary General. Ultimately, the latter is the one who decides on granting or refusing the request for dismissal. You will be notified of the decision in writing. The maximum period for the administrative processing of an application for permission to dismiss employees is six weeks. In special cases this period can be extended by six weeks with the consent of the Minister of Labour Affairs.

### **4. Date and period of notice**

Only after the dismissal permission has been granted, can the employer give notice to the employee. In doing so, the employer has to observe the effective date of termination and the period of notice. The date of termination means the actual day of termination of labour relations. The period of notice, which the employer has to consider, depends on the duration of the employee's contract and is as follows:

- one month if the employment lasted less than five years;
- two months if the employment lasted 5 years or longer but less than 10 years;
- three months if the employment lasted 10 years or longer but less than 15 years;
- four months if the employment lasted 15 years or longer.

The term for the Secretary General's assessment of the request or the redundancy plan can be deducted from the period of notice, if the remaining period of notice is at least one month. The period of notice for the employer can only be shortened in a collective labour agreement. The period can be expanded by written agreement.

If the employee wants to resign, other rules apply. In this case the employee must give the employer one month notice.

Mind you: an exception to the above rule can be stated in a written labour agreement. For example, a longer period of notice can be agreed upon (up to six months).

The duration of the period of notice is often stated in the labour agreement. This period of notice can also be stated in the collective labour agreement or in a regulation filed with the clerk of the court's office.

An employee can terminate his/her employment orally or in writing. The latter option is preferred.

During the entire period, from the request for a dismissal permit to the actual date of dismissal, you must receive your full salary as usual. You must of course continue to work in this period unless the employer does not find it necessary.

## **5. Cases in which no dismissal permission is required.**

In the following cases the Secretary General's approval is not required:

- a. dismissal "on the spot";
- b. dismissal by mutual consent;
- c. the expiring of a fixed-term labour contract;
- d. dismissal within the trial period;
- e. dissolution of the labour contract by court.

These cases will be dealt with below.

#### **a. DISMISSAL "ON THE SPOT".**

Dismissal "on the spot" terminates the employment with immediate effect. No permission for dismissal is required.

Dismissal "on the spot" must be based on an urgent reason which the employee must be notified of immediately.

A few examples of possible urgent reasons are:

- theft by the employee;
- drunkenness or debauchery by the employee during work;
- unwillingness to work on the part of the employee;
- gross neglect of duties by the employee.

If this is not the case, the employee can request the judge in first instance to annul the dismissal. The employee can also file a claim for damages incurred.

Mind you: as an employee, you can also resign "on the spot", for instance if you are not paid on time.

#### **b. BY MUTUAL CONSENT.**

In this case both you and your employer agree to terminate the labour agreement.

#### **c. A FIXED-TERM LABOUR CONTRACT.**

If you work on a fixed-term labour contract this contract ends when the period of time agreed upon lapses. It is possible that a certain event is mentioned in the agreement instead of a date, for example, the termination of a project. The labour agreement also ends in this case.

As of 1 August 2000 no notice needs to be given for the termination of a continued, temporary labour contract and so the continued temporary labour contract will terminate automatically. On the other hand, after a chain of four continued temporary labour contracts whereby a period of less than three months lapses between each contract, the fourth contract automatically becomes an agreement for an indefinite period (a permanent contract). The same rule applies if less than four contracts for a certain period of time have succeeded each other with intervals of three months or less and together these contracts have exceeded a period of 36 months (including the intervals). In both cases the employment will become permanent. Notice must be given to terminate this employment.

An exception to the chain rules applies to a labour contract for more than three years, which is continued only once for less than three months. In this case the employment will not become permanent.

#### **d. TERMINATION OF THE LABOUR CONTRACT DURING THE PROBATIONARY PERIOD.**

If a trial period has been agreed upon in a labour agreement or a collective labour agreement, the labour agreement can be terminated with immediate effect during the probation period by both the employer and the employee, without giving notice.

Mind you: the probation period has a maximum of two months and has to be agreed upon in writing.

#### **e. DISSOLUTION OF THE LABOUR CONTRACT BY COURT.**

The court of first instance can dissolve a labour agreement at the request of employer or employee because of grave reasons. The judge then stipulates if, under what conditions and when the labour contract is to be terminated.

### **6. When dismissal is prohibited.**

An employer cannot dismiss an employee (by giving notice) during the employee's illness or unfitness to work due to an accident, unless the illness or unfitness to work lasted for at least one year.

An employer is not allowed to terminate an employee's contract during the employee's maternity leave or during the period in which an adult worker (or a minor worker whose contract has lasted at least six months) cannot perform his work because of military service.

In addition, an employer is not allowed to terminate an employee's contract because the employee is a member of a trade union or the employee takes part in trade union activities. Unless these activities are performed during work hours and the employer has for legitimate reasons, not given the employee permission to do so.

As of 1 August 2000 every clause by virtue of which employment terminates because the employee marries or due to the employee's maternity leave, is null and void.

### **7. If you don't agree with your dismissal.**

If you think that your dismissal is unreasonable or is not being executed according to the rules, it is best to turn to your labour union or the Labour Affairs Agency (complaints section) as soon as possible.

They can advise you on the possibilities of defence.

If you don't agree with your dismissal "on the spot", you should in any case oppose it immediately and clearly. Preferably do so in writing.

### **8. More information**

Is there anything not clear to you or you want to know more about the Dismissal Law? For this you can contact the Labour Affairs Agency.