

## **16 DECREE ON DISMISSAL AND FREE LEGAL AID**

### **I.**

As from August 1st 2000 the National Ordinance on the Termination of Labour Agreements has been changed. (see National Ordinance on making labour legislation more flexible, P.B. 2000, no. 68).

Next to already existing exceptions (employees of public institutions, teachers and university lecturers, clergymen, domestic aids of private persons) the National Ordinance on the Termination of Labour Agreements will also not be applicable to the labour contract of the director of a company.

Nor will there be the need to obtain prior permission to dismiss (next to cases of a compelling reason, mutual consent, trial period) in case of bankruptcy and in case of a continued/not continued labour contract of fixed duration when termination takes place at the time agreed upon. (There are two exceptions to this rule: an indefinite labour contract that has been followed up by a fixed term contract and the labour contract of the same employee who has been in the service of several employers who, in all fairness, can be seen as each other's successors).

### **II.**

When ending a labour contract the following needs to be considered:

#### **o Invalid resolute conditions:**

- Each stipulation that ends by right an employment relationship for reasons of marriage, pregnancy or delivery of the employee is null and void.

#### **o Invalid notice of termination of the employment relationship:**

The employer may not give notice - this will be null and void - in the following situations :

#### **A.**

- during the first year of illness;
- during pregnancy/maternity leave of the employee
- during the period that an adult employee (a minor employee whose employment relationship has lasted at least six months) was unable to perform the agreed labour due to compulsory military service

With regard to the above mentioned situations different arrangements may be made by way of collective labour agreement.

B.

- In case of marriage of the employee;
- In case of membership of a trade union or trade union activities unless these activities are performed during working hours of the employee and the employer has not agreed to this on reasonable grounds.

#### o **Period of notice:**

In principle the period of notice that the employer has to take into account nowadays is dependent on the duration of the employment relationship:

- a. shorter than five years: one month
- b. five years or more, but shorter than ten years: two months
- c. ten years or more, but shorter than fifteen years: three months
- d. fifteen years or longer: four months

By means of collective labour agreement or written agreement this period may be shortened.

#### o **Day of notice**

Notice can be given on any day, in other words the labour contract can be ended on any given day (this does not necessarily have to be the end of the month, of the quinsena or of the week) unless another day has been assigned by written agreement or regulation.

o Furthermore when giving notice the employer has to take into account a.o.:

- the rules of seniority in case of gradual dismissal;
- that in case of dismissal due to behaviour of the employee this has to be reproachable in principle

**III.**

#### **Free Legal Aid**

An employee with a yearly gross income from labour of not more than NAFL 22.500,- (NAFL 1.875,- per month) can apply for legal aid in case of a labour dispute, provided he/she pays to the country tax collector (landsontvanger) a personal contribution according to this schedule:

**Gross yearly income**

not more than  
NAFL. 12.000,-

more than  
NAFL. 12.000,- but not more than  
NAFL. 15.000,-

more than  
NAFL. 15.000,-  
but not more than  
NAFL. 17.500,-

more than  
NAFL. 17.500,-  
but not more than  
NAFL.20.000,-

more than  
NAFL. 20.000,-  
but not more than  
NAFL. 22.500,-

**Payable personal contribution**

Nil

NAFL. 50,-

NAFL. 125,-

NAFL. 225,-

NAFL. 350,-