

TERMINATION OF EMPLOYMENT

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This publication provides an overview of the rights and obligations set out in the Termination of Employment Law of 1967 regarding the termination of employment in Cyprus.

Note: A more comprehensive version of this publication is published on Epsilaw (www.epsilaw.com).

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UNFAIR DISMISSAL

Pursuant to the Termination of Employment Law 1967 (hereinafter the “**the Law**”), when an Employer dismisses an Employee who worked for the Employer for a period of at least 26 weeks, the Employee has a right to compensation. The 26-week period may be extended in writing in the employment contract to a maximum period of 104 weeks.

The Law, however provides, a list of five potential reasons under which a dismissal is considered to be fair. If any of them applies, the Employee has no right to compensation by virtue of the Law.

Section 5 of the Law lists the followings reasons:

- i. When the employee fails to carry out the work in a reasonably efficient manner;
- ii. For Redundancy reasons;
- iii. Force majeure, act of war, civil insurrection, act of God or destruction of the plant by fire not caused by deliberate or negligent act of the Employer;
- iv. Termination at the end of fixed term contract or due to the employee reaching the retirement age under any custom, law, collective agreement or other work arrangements; or
- v. When the Employee behaves in a manner that gives the Employer the right to terminate the employment without notice (see below “Notice”).

According to the Law, it is presumed that a dismissal was not made for any of the reasons listed above. The Employer has the burden to prove that they dismissed the Employee for any of those reasons in order to avoid paying compensation to the Employee.

REMEDIES FOR UNFAIR DISMISSAL (COMPENSATION & REINSTATEMENT)

If the Employer fails to prove that the dismissal of an Employee was made for any of the reasons found in section 5 of the Law, an Employee will be entitled to compensation for unfair dismissal. The Court may also order re-employment of the Employee (but they rarely do so).

The Law sets both the minimum and the maximum level of compensation that a Court may award to an Employee in cases of unfair dismissal.

In exercising its discretion regarding the amount of compensation it will award to an Employee for unfair dismissal, the Court will take into account various factors, such as:

- i. Duration of employment;
- ii. Loss of career prospects;
- iii. The conditions and circumstances under which the Employee was dismissed;
- iv. Age of the Employee;
- v. Marital status of the Employee and whether it has children or not.

For example, where a 50-year-old Employee who worked for more than 20 years for the Employer is dismissed, and the prospects of finding another job are minimal, the compensation is more likely to be closer to the maximum rather than the minimum statutory level.

The **minimum** level of compensation for unfair dismissal would be the same as if the Employee was dismissed for Redundancy. This means that the compensation an Employee will receive depends on how long he was employed for and his remuneration.

The **maximum** compensation an Employee would be entitled for unfair dismissal should not exceed the salary of a two-year period.

Under the Law, any compensation exceeding the salary of a one-year period is paid by the Redundancy fund (government).

UNSATISFACTORY PERFORMANCE

If an Employee is unable to carry out his job in a reasonably efficient manner, the Employer may fairly dismiss him.

When an Employer dismisses an Employee by invoking this ground, he must be aware that the standard expected by the Law is one of “reasonable efficiency” and not one of an “utmost efficiency”. The standard of “reasonable efficiency” will depend on the relevant circumstances of each particular case.

An Employer who decides to dismiss an Employee for unsatisfactory performance, shall first warn the Employee in writing of the fact that his performance is unsatisfactory and give him reasonable opportunity to improve. If the Employee does not improve following the warning, the Employer might then proceed with dismissal. If the Employer fails to provide the Employee with a written warning about his poor performance, according to case law, the Employer will most likely fail to prove that the dismissal of the Employee was made due to the fact he did not carry out his work in a reasonably efficient manner.

SUMMARY DISMISSAL

Summary dismissal is the dismissal of an Employee without notice. An Employer may dismiss an Employee without compensation when the latter acts in a way which would render himself liable to dismissal without notice. Without prejudice to the above general rule, the Law also provides a non-exhaustive list of circumstances where dismissal without notice would probably be appropriate, having regard to all the circumstances of the case.

Committing a disciplinary offence or conducting one's self in a way which would put the relationship of trust and confidence at risk, could constitute a valid reason for an Employer to summarily dismiss an Employee. In *L. P. & Co v Dimitras Louka* (Civil Appeal 59/2010) the Employee, a secretary of the appellant law firm, secretly copied a document she had found in a lawyer's drawer. The Appeal Court found that this constituted a valid reason to summarily dismiss her, as the Employee's action was leaving the Employer with no choice but to dismiss her, because the relationship of trust and confidence between them could not continue.

Other Examples:

- i. Absence from work without reasonable excuse or (prior) leave given, may give the Employer the right to summarily dismiss an Employee without compensation.
- ii. Wilfully refusing to obey the Employer's (or his agents') lawful and reasonable orders/instructions could also constitute a valid ground to summarily dismiss an Employee; a refusal to obey would put the relationship of trust and confidence at risk.

A notice of dismissal shall be given to the Employee within a reasonable period following the event that gave rise to this right. A dismissal made a month after the incident which gave rise to the dismissal, may be considered unreasonable period and such dismissal may be unfair.

NOTICE OF DISMISSAL

Statutory Notice

The time when the dismissal notice should be given depends on the period of employment. The Employer, subject to any contrary provision in the employment contract (which cannot provide a shorter notice period), has to give a dismissal written notice to the Employee as follows:

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|---|--------------------------|
| • Employment of up to 6 months (26 weeks) | No notice is required |
| • Employment between 6 months to 1 year | at least 1 week's notice |
| • Employment between 1 year to 2 years | at least 2 weeks' notice |
| • Employment between 2 years to 3 years | at least 4 weeks' notice |
| • Employment between 3 years to 4 years | at least 5 weeks' notice |
| • Employment between 4 years to 5 years | at least 6 weeks' notice |
| • Employment between 5 years – 6 years | at least 7 weeks' notice |
| • Employment for 6 years + | at least 8 weeks' notice |

The Employer, however, is not required to give notice of dismissal to an Employee in the following cases:

- The Employee has worked for less than 26 weeks;
- The behaviour of the Employee makes it clear that the relationship between Employer and Employee cannot continue;
- The Employee has committed a serious offence while performing his duties;
- The Employee has committed a criminal offence in carrying out his duties without the consent of the Employer;
- Inappropriate behaviour of the Employee; and
- Serious or repeated violation or disregard of work rules or other regulations with respect to employment.

Longer Notice

The statutory notice period may be extended by agreement between the Employer and the Employee in the Employment Contract (s. 9(3) of the Law).

Shorter Notice

A clause in an Employment Contract providing for a shorter than the statutory notice is void (s. 9(4) of the Law).

Probation Period

During probation period, an Employer may dismiss the Employee without notice in advance. Probation period under the Law is 26 weeks. However, the parties may, at the time the Employee is employed, agree in writing to extend this period to a maximum period of 104 weeks.

EMPLOYMENT AGREEMENT

Contractual rights exist alongside, and in addition to, any rights conferred on by the Law. An Employment agreement may provide for additional rights than those provided by the Law. However, a term diluting or restricting rights conferred on an Employee by virtue of the Law will be void and of no effect.

If the Employer acts in breach of any of the terms of the employment agreement, the Employee might be entitled to compensation for breach of contract in addition to the rights conferred on him by virtue of the Law. Hence, in addition to the duties the Employer has under the Law, an Employer shall also comply with the terms of the Employment agreement.



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