**TERMINATION OF EMPLOYMENT RELATIONSHIPS: THE LEGAL SITUATION IN CYPRUS**

## 1. Summary.

The Law governing the termination of employment is, perhaps the most important area of Labour Law, as it affects the lives of everyone.

Cyprus Labour Law is an amalgam of common law principles and statute law. Primarily the employment relationship is governed by ordinary contract law principles supplemented by statutory rights and obligations where appropriate.

Statute Law has acquired significant importance in recent years and is the primary source of law in relation to dismissals. Case law or judge made law cannot be understated as the Cyprus legal system is based precedent and English common law is binding if there is no contrary domestic statutory provision. The role of custom is very limited.

The right to dismiss can be exercised by employers only in specific circumstances outlined in the Law. Only then is a dismissal justified. Of course there is nothing the stops from dismissing an employee for any reason, but if the dismissal is unfair then the employer is liable to damages to the employee. Cyprus Labour Law does not provide different remedies for employees dismissed due to misconduct or for other reasons.

An important aspect of Cyprus Labour Law is the fact that the burden of proof is on the employer. The employer must satisfy the court that the dismissal was fair on the balance of probabilities. If he fails to do so then the dismissal is automatically unfair.

The only exception to the above rule is in cases of constructive dismissal, i.e. in cases where the employee is forced to resign due to a fundamental breach of the employment agreement by the employer. In those cases the employee must first prove that he resigned in circumstances that give rise to constructive dismissal and then the balance shifts on the employer to justify it.

If an employee is dismissed he is entitled to minimum compensation which must be equal to the compensation he would if he was made redundant. Redundancy compensation and unfair dismissal compensation are calculated in the same way and are based on the number of years of employment. For redundancy compensation there is a ceiling of 75.5 weeks. For unfair dismissal compensation the maximum is 2 years of

salaries.

Overall it can be stated that Cyprus has in place all the necessary laws to protect adequately the rights of employers and employees in case of termination of employment. Where the system fails is on the full and satisfactory implementation of the different legal provisions.

Areas that need reform are:

1. Setting up of an Employment Appeal Tribunal to act as an appeal court to the decisions of the Industrial Disputes Court.
2. Increase the amounts of unfair dismissal compensation.
3. Set up a consultation - information machinery where employers and employees will have access to information relating to the new rights and obligations arising under harmonization laws with specific reference to the transfer of undertakings, collective dismissals, discrimination etc.

## 2. Introduction.

### *2.1. The Framework.*

Industrial relations in Cyprus are regulated by a number of statutes the 2 principal of which are the Termination of Employment Law (Law 24of 1967) as amended and the Annual Holiday with Payment Law (Law 8 of 1967) as amended. The former covers redundancy and arbitrary dismissal of all employees excluding public employees. It was enacted following the recommendations of the International Labour Organisation (ILO).

The process of harmonization of Cyprus Law with the acquis communataire brought substantial changes in many areas of Labour Law and did not leave unaffected the Law governing the termination of the employment contract. The 2 major pieces of legislation that were introduced and affected drastically domestic law are:

1. The Preserving and Securing the Rights of Employees during the Transfer of Businesses, Undertakings or Parts of Business Law, Law 104(I)/2000 , referred to as The Transfer of Undertakings Law, Law 104(I)/2000. This Law harmonized Cyprus law with the provisions of the Transfer of Undertakings Directive 77/187EC.
2. The Collective Dismissals Law (Law 28(I)/2001) which harmonized domestic law with the Collective Dismissals Directive 98/59/EC.
3. The Protection of the Rights of Employees in the event of Insolvency of the Employer, Law 25(I)/2001, which harmonized domestic law with Directive 80/987/EC

The effect of the above pieces of legislation will be examined below.

### *2.2. The Industrial Disputes Court.*

The principal forum for adjudicating industrial disputes is the Industrial Disputes Court.

The Industrial Disputes Court was established by the Annual Holiday with Payment Law 5/73 (Under the Annual Holiday with Payment Law 8 of 1967 an Arbitration Court was established which was, however, declared unconstitutional by the Supreme Court of Cyprus in 1975 in Case Stated 145 and 150. The

Supreme Court further held that all the decisions of the Arbitration Court were invalid and of no effect up to that point). The Court consists of a President who is appointed by the Supreme Court from a list of lawyers of not less than 5 years' practice and two members representing employers and workers respectively who are appointed by the President of the Court from a list of names submitted to the Minister of Labour.

According to section 12 of the Annual Holiday with Payment Law 5/73 (as amended) the Industrial Disputes Court has exclusive jurisdiction in all cases that arise out of industrial conflict including all the cases where exclusive jurisdiction is granted to the Court by any Law or regulation. Thus the Court is the appropriate tribunal to hear cases regarding unfair dismissal, annual holiday claims, claims concerning wages and pregnancy related issues.

The Court is not bound by rules of evidence. The procedure rules before the Court have been recently amended the major change being that now a decision of the Industrial Disputes can now be appealed to the Supreme Court without leave from the Industrial Disputes Court. Any appeal to the Supreme Court lies on a point of law only.

The Industrial Disputes Court is responsible for the vast jurisprudence that evolved from the late 1970's till today as it was the primary judicial body that interpreted the provisions of the Termination of Employment Law. The Court has always taken a practical approach is solving disputes and for this reason one will notice that even though there are well established legal principles, there is no in depth discussion of legal questions or judicial creativity as in other countries for example England.

One reason for this is the fact that Cyprus has a two tier system: the Industrial Disputes Court and the Supreme Court. The latter only heard appeals on points of law (and very recently only after leave was given from the Industrial Disputes Court itself). As a result there are very few cases decided by the Supreme Court - the decisions of which are binding - compared to the thousand decisions delivered by the Industrial Disputes Court. One can even sense a reluctance by the Supreme Court to intervene in judgments of the Industrial Disputes Court, discuss in depth and lay down wider legal principles. In addition, the absence of a law school in the University of Cyprus and the resulting nonexistence of academic work (articles, research, discussion and criticism of judicial decisions) slowed the growth of Cyprus Labour Law compared to other European countries.

It should also be noted that certain aspects of Labour Law that were amended as a result of harmonization, like dismissals because of a transfer of an undertaking or collective dismissals have not yet been examined by the Industrial Disputes Court after harmonization.

This is attributed to 2 factors: Firstly the industrial partners, trade unions and employer's associations are not familiar with the rights and liabilities that arise under the new laws and secondly Cyprus almost always enjoyed a reconciliatory climate between the industrial partners. There were big fights in the form of strikes but at the end of the day a solution was always found.

In any case it is suggested that it is necessary to create an Employment Appeal Court which will hear appeals from the Industrial Disputes Court. In other words have a 3 tier system. In this way an Employment Appeal Court would be able to fill the gap noted above and assist in the development and strengthening of legal principles.

## 3. Sources of law.

Cyprus was a British colony from 1878 until 1960. As a result the marks of the English legal system and especially the doctrines of common law and equity, are deeply routed in the Cyprus' legal tradition. The Contract Law, the Criminal Law, the Civil Wrongs Law are based exclusively on their English counterparts. By virtue of the provisions of s. 29(I)(b) of the Courts of Justice Law (14/60) all the Courts in the Republic of Cyprus apply:

1. The Constitution of the Republic,
2. The laws which have been retained by virtue of Article 188 of the Constitution,
3. The principles of Common Law and Equity, and
4. The English Laws which were applicable in Cyprus before 1960.

### *3.1. Constitutional status of the rules on the right to work.*

The Constitution is the supreme law of Cyprus. Article 25 of the Constitution of Cyprus safeguards the right to work. It provides that:

> « 1. Every person has the right to practice any profession or to carry on any occupation, trade or business. 2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually

> required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:
>
> Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality condition or restriction is contrary to the interests of either Community.

### *3.2. International agreements and conventions*

International treaties have superior force to domestic law passed by the House of Representatives. As a result courts must enforce the provisions of an international treaty in the absence of or even if it contradicts domestic law.

On July 1985 Cyprus ratified the Termination of Employment Convention, 1982 (No. 158). This is a key ILO Convention that played significant role in shaping domestic law. This Convention obliges ratifying States to establish, in conformity with the instrument, the grounds upon which a worker can be terminated from employment. Employment may not be terminated by the employer unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking. Union membership, filing a complaint against the employer, acting as a worker representative, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin, absence from work during maternity leave, or temporary absence for illness shall not be valid reasons for termination. The Convention establishes procedural requirements as well. The Convention is supplemented by Recommendation No. 166.

The ILO Convention 158 has affected decisions of the Industrial Disputes Court in many cases particularly in cases relating to the right of the trade unions to be informed of the reasons of collective dismissals or the right of the employee to be heard before dismissal.

In addition, the Supreme Court of Cyprus held that the provisions of the Termination of Employment Law in relation to the termination of employment without notice were compatible with the provisions of the Convention despite the fact there are certain differences in the phraseology use.

Cyprus also ratified the ILO Convention No. 135 on Workers' Representatives in January 1996 as well as the Labour Relations

(Public Service) Convention, 1978 (No. 151) in July 1981.

The European Social Charter was ratified by the Republic of Cyprus on March 1968. Cyprus accepted 34 of the 72 paragraphs of the Charter at the time of its ratification in 1968 and has gradually extended this to 43 paragraphs. It has also ratified Protocol No. 2 reforming the supervisory mechanism on 01/06/1993 and Protocol No. 3 on "collective complaints" on 06/08/1996. It has not yet made a declaration enabling national NGOs to submit collective complaints. The Revised Charter was ratified in September 2000. Cyprus has accepted 63 of the 98 paragraphs of the Revised Charter, having first denounced two of the provisions of the 1961 Charter.

### *3.3. Sources of law and their hierarchy*

Termination of employment is primarily regulated by the Termination of Employment Law (Law 24/67 as amended). This law is the bible of all Labour Law lawyers. It provides a statutory right not to be unfairly dismissed.

Besides the Termination of Employment Law the following laws are also relevant when discussing termination of employment:

1. The Transfer of Undertakings Law, Law 104(I)/2000
2. Collective Dismissals Law (Law 28(I)/2001)
3. The Protection of the Rights of Employees in the event of Insolvency of the Employer, Law 25(I)/2001, which harmonized domestic law with Directive 80/987/EC
4. The Protection of Maternity Law 1997 , Law 100(1) of 1997
5. The Equal Pay Law 1989, Law 158 of 1989
6. The Fixed Term Contracts Workers Law (Prohibition of Discriminatory Treatment) Law 98(I)/2003
7. The Part Time Employees Law (Prohibition of Discriminatory Treatment) Law 76(I)/2002
8. The Equal Treatment in Employment and Work Law, Law 58(I)/2004
9. The Organization of Time at Work Law, Law 63(I)/2002

In addition to these statutory rights, there is a remedy against wrongful dismissal under the common law and ordinary contractual principles. This aspect of Cyprus Labour Law which has caused in the past some controversy will not be discussed here as nearly all the cases that concern termination of employment are dealt with by the Industrial Disputes Court. However for many years there was a substantive procedural unfairness because of a provision in the Termination of Employment Law which stated that any plaintiff that filed a law

suit at the District Court for termination of employment on the basis of contract and common law was barred from filing a law suit at the Industrial Disputes Court if for any reason he lost at the District Court. The end result was that may law suits were dismissed by District Courts because the cause of action was based on the Termination of Employment Law and thus the District Court had no jurisdiction. So plaintiffs were left without a remedy. This paradox was amended recently by repealing the relevant provision.

### *3.4. The Termination Of Employment Law.*

As noted above the principal law is the Termination of Employment Law. It is composed of six parts and four schedules. The First and Fourth Schedules set the basis of compensation for arbitrary dismissal and redundancy, respectively; the Second Schedule sets rules for "Computation of Period of Employment", and the Third Schedule deals with "Continuity of Employment".

Part I of the Law , defines an employee as any person who works under a contract of service. Irrespective of this definition the Court may consider a person to be an employee without a contract if it believes that a relation of employer and employee exists.

In relation to the definition of the "employer" the law states that an, "employer" means any person with whom the employee has entered into a contract or who is deemed by the Court to have the status of an employer and includes the Government of Cyprus.

Finally, the Law defines "wages" as remuneration paid to an employee in money as a result of his employment and include any allowance paid by the employer that is directly or indirectly related to the cost of living. This excludes commissions and *ex-gratia* payments. Payment made *in lieu* of notice in the event of dismissal is included. Overtime is excluded unless the overtime is worked on a fixed regular basis.

Part II of the Law deals with the unfair dismissal situations. The basic rule is that a dismissal is unfair if the employer terminates the employment for any reason other than the exceptions included in section 5 of the Law.

Before any employee can qualify for unfair dismissal compensation he must be less than 65 years of age and must have been continuously employed by the employer for not less

than 26 weeks, unless there is a written agreement that may extend the qualifying period of continuous employment up to 104 weeks.

In cases where a dismissal is declared unfair, the employer must compensate the employee. The compensation is calculated in accordance with the First Schedule of the law. This provides compensation of not less than what the employee would have received under the Fourth Schedule (dealing with redundancy payments) up to a maximum of two years' wages. Factors to be considered in the award are wages, length of service, loss of career prospects, circumstances of the dismissal, and the employee's age.

Section 5 of Part II, as we noted above states the cases where termination of employment does not give rise to compensation. These are:

- if the employee fails to carry out his work in a reasonably efficient manner.
- if the employee becomes redundant within the meaning of Part IV of the Law.
- The termination is due to an act of God or force majeuvre.
- The contract is for a fixed term and has expired.
- The employee renders himself liable to dismissal without notice.
- The contact of the employee is such that it is clear that the employer - employee relationship cannot reasonably be expected to continue. The employer-employee relationship cannot reasonably be expected to continue when the employee is guilty of gross misconduct; he commits a criminal offence in the course of his duties without the agreement of his employer; he is guilty of immoral behaviour in the course of his duties; he repeatedly disregards works and other rules.

It should also be noted that a lawful termination by the employee, as a result of the conduct of the employer, may be considered as a constructive dismissal or termination by the employer within the meaning of the law.

The Law is in such a way framed that it imposes the burden of proof on the employer. Thus the onus of proof is on the employer to show that an employee was discharged for one of the reasons that permit summary dismissal. In the case of constructive dismissal there is a reputable presumption that the employee has not lawfully terminated his employment.

Part III of the Law that should be read together with the Second

and Third Schedules, provides for the notice to which an employee will be entitled to be given by his employer, except where summary dismissal is allowed, and is based on the length of continuous service.

Notice provisions apply to redundancy cases as well. Notice time is paid by the employer who may also require the employee to accept payment *in lieu* of notice. An employee who gets his pay *in lieu* of notice and finds another job keeps the pay, but if he leaves for another job while serving out his notice time with the old employer, the employee loses the rest of this pay for the period of notice.

The employee who has been continuously employed for 26 weeks or more is required to give to his employer a minimum notice of one week. However, on notice from his employer, an employee who wishes to seek other employment may have time off up to 5 hours a week during usual working hours without loss of pay.

### *3.5. Role of judge-made law and custom*

Judge made law has been very important in the development of Cyprus Labour Law since Cyprus, being an ex colony, did not have any legal tradition in this field. Consequently the decisions of the Industrial Disputes Court and the Supreme Court of Cyprus helped to establish many legal principles and interpret statutory provisions. It should also be noted that Courts in Cyprus follow the common law of England and there has been influence by decisions of English courts on several issues.

## 4. Scope of the rules governing the termination of an employment relationship, special arrangements

### *4.1. Ways of terminating an employment relationship*

The termination of the employment relationship may be categorized under 2 broad categories:

First, when it is terminated for reasons relating to the person of the employee or the employer and second when terminated for reasons independent of the employer's or employee's will.

Thus an employee may resign, or be dismissed or be forced to resign (constructive dismissal). This would be the first category of cases.

The second category would be where the contract of employment

is terminated by operation of the law i.e. redundancy or frustration (war, political riots, physical destructions).

### *4.2. Exceptions or specific requirements for certain employers or sectors .*

In Cyprus the ordinary unfair dismissal rules do not apply to:

1. Civil servants and employees of public corporations,
2. Members of the armed forces and the police.

For the above categories of employees there are special provisions in the relevant laws e.g. The Public Service Law, Law 1/90 as amended or the Municipal Corporations Law, Law 111/85 as amended. The status of civil servants, military personnel and police personnel is different since their terms and conditions of employment are contained in the relevant laws and the schemes of service and can only be dismissed if they commit and convicted for a disciplinary offence as stipulated in the relevant disciplinary code of each body. For example section 73 of the Public Service Law provides for 10 disciplinary penalties that may be imposed to a public employee by the Public Service Commission the last of which is dismissal.

In case of dismissal the decision of the disciplinary body is liable to review by the Supreme Court of Cyprus in its revisional jurisdiction and Administrative Law principles are applicable. In other words the Supreme Court will examine if the disciplinary body followed the principles of Administrative Law as enunciated by the Supreme Court of Cyprus in previous decisions and codified in the General Principles of Administrative Law, Law 158(I)/99 and will not substitute the decision of the administrative organ with its own.

Examination of relevant case law reveals that public employees, military personnel and police personnel are rarely dismissed. The reason is that they enjoy what is called "guaranteed employment" in contrast with all other employees that do not have guaranteed employment.

The ordinary redundancy provisions do not apply to:

1. employees over the normal retirement age;
2. apprentices who have reached the end of their
3. apprenticeship contract;
4. domestic servants who are members of the employer's immediate family.

### *4.3. Exceptions or specific requirements for certain types of contract*

The most usual exception are fixed term contracts. Employees employed under fixed term contracts can not claim unfair dismissal on the expiry of the term. However the normal rules on unfair dismissal apply to employees dismissed before the expiry of a fixed term contract or a fixed task contract. There is no dismissal at the expiry of a fixed task contract. The ordinary unfair dismissal rules apply to part-time employees.

### *4.4. Exceptions or specific requirements for certain categories of employer*

There are no exceptions.

### *4.5. Exceptions or specific requirements for certain categories of employee*

The ordinary rules apply to managers and directors if they are employed under a contract. But if they are office holders, i.e. members of the Board of Directors, they can be removed from office by a simple majority of votes cast at a general meeting of the company.

In addition employees having reached 65 years or the normal retirement age cannot in general claim unfair dismissal.

Law 52(I)/94 amended the Termination of Employment Law by inserting a new provision concerning the shareholders of private limited companies. The Law states that shareholders of private limited companies may be considered as "employees" if they work under a contract of employment or under circumstances where the employer - employee relationship may be deduced.

The problem was that persons that owned the vast majority of shares of private companies and in essence run them as one man business claimed redundancy payment from the Redundancy Fund if the company went bankrupt on the basis, that the company was a separate legal personality and employer.

This created a floodgate of claims and let to reappraisal by the Redundancy Fund of the definition of "employee". Currently a person who owns shares in a private company and is also an

employee of the company is, prima facie, considered as "employee" but this presumption may be rebutted by the Redundancy Fund if circumstances show in essence he owns and runs the business without any control or supervision by anyone.

### *4.6. Mutual agreement*

An employment relationship may come to an end by mutual agreement between the interested parties.

#### 4.6.1. Substantive conditions

The general contractual principles are applicable. Thus an employment relationship may come to end if employer and employee freely agree to this. There are no specific substantive conditions or clauses which are prohibited.

#### 4.6.2. Procedural requirements

There are no specific procedural requirements.

#### 4.6.3. Effects of the agreement

It depends on what the parties agreed. If any sum due (by law or as fixed in the agreement) is not paid by the employer, this has no effect on the validity of the agreement. The employee will resort to legal measures and the employer will be ordered to pay by the court.

#### 4.6.4. Remedies

There is not any remedy unless the employee was forced to signing a mutual agreement. In such a case there will be constructive dismissal which means that ordinary unfair dismissal principles will be applicable.

#### 4.6.5. Vitiating factors

General contractual principles are applicable.

#### 4.6.6. Penalties

Not applicable.

#### 4.6.7. Collective agreements

Do not play any role.

#### 4.6.8. Relations to other forms of termination

A contract cannot be terminated by mutual agreement if it has been terminated in a different way unless the employee explicitly abandons his statutory rights to unfair dismissal compensation.

## 5. Termination otherwise than at the wish of the parties.

Redundancy is the most common reason of termination otherwise than at the wish of the parties. The other reason is frustration.

### *5.1. Grounds for a contract to come to an end by operation of law*

A redundancy dismissal is justified only if:

The employer has ceased on intends to cease to operate the business where the employee was employed or the employer has ceased on intends to cease to operate the business at the place where the employee was employed. In addition a redundancy dismissal is justified for the following reasons that are related to the operation of the business:

1. modernization or any other change in the method of production or organization that necessitates reduction in the number of employees
2. change in the products or the method of production or the expertise required by the employees
3. abolition of a specific department
4. credit difficulties
5. lack of orders or raw materials
6. contraction in the volume of work or the business.

As the burden of proof in cases of termination of employment is on the employer, it is the employer's responsibility to prove any one or more of the above reasons.

If a redundancy is proved then the Court will order the Redundancy Fund to pay the employee. Alternatively the dismissal will be unfair and the employer liable to pay damages. The amount of damages depends on the number of years employed and it is the same for unfair dismissal.

### *5.2. Procedural requirements*

The steps that have to be taken by an employer before

dismissing employees because of redundancy are the following:

The employee will only be allowed to get compensation from the Redundancy Fund if he worked for the employer for at least 104 weeks.

If the employee reached retirement age before the date of termination then he is not entitled to any payment

The employer must notify the Minister of Labour and Social Security about the proposed redundancies at least 1 month before they occur. The notification should include:

1. The number of employees affected,
2. The specific department or departments of the business that the affected employees work,
3. The specialization and if possible the names of the employees affected as well as their financial obligations,
4. The reasons for the redundancy.

Once the above letter is sent, the Ministry may contact the employer to see if there is any other solution than laying off personnel. If no solution is found then the employer may go ahead with the redundancies.

When an employee is dismissed because of redundancy the following procedure is followed:

The employee files an application to the Redundancy Fund for compensation. The application is filled by the employer and the reasons leading to the termination of the contract of employment are stated. If the Fund accepts the reasons and pays the employee then that is the end of the matter.

If the Fund rejects the application then the employee will file an action at the Industrial Disputes Court against the employer and the Redundancy Fund. Against the Redundancy Fund he will be claiming compensation for redundancy and alternatively damages for unfair dismissal against the employer. This is because under Cyprus Law, as we saw above, any dismissal is considered to be prima facie unfair. So in the case of redundancy, if the Court decides that there was no redundancy situation then this necessarily means that the dismissal was unfair. Consequently in these cases the burden of proof is on the employer. The employer will have to prove that the dismissal was by reason of redundancy.

*5.3. Remedies* The only remedy is

that of compensation.

Schedule 4 of the Termination of Employment Law determines the level of compensation according to the years of employment which are codified in the table below.

| YEARS OF EMPLOYMENT | MAXIMUM COMPENSATION IN CASE THE DISMISSAL IS UNFAIR |
|---|---|
| 1-4 | 2 weeks for every year |
| 5 up to and including 10 | 2.5 weeks for every year |
| 11- up to and including 15 | 3 weeks for every year |
| 16- up to and including 20 | 3.5 weeks for every year |
| 21- up to and including 25 | 4 weeks for every year |

It should be born in mind that the maximum compensation an employee is entitled to because of redundancy is payment of 75.5 weeks.

## 6. Dismissals in Cyprus: Overview

See section 2.4 above.

### *6.1. Dismissal contrary to certain specified rights or civil liberties*

There is no general prohibition on dismissal in Cyprus. However, as seen above, some dismissals are regarded as automatically unfair:

1. for membership, activities or non-membership of a trade union;
2. for taking part to a strike;
3. on grounds of pregnancy or of a woman availing herself of maternity leave;
4. for having sought, in good faith, to assert a statutory employment protection right;
5. for taking, or proposing to take, certain specified types of action on health and safety grounds;
6. being a person involved in consultation as an employees' representative;
7. Dismissals which are unlawful under the legislation dealing with sex, race and disability discrimination will invariably also

be unfair dismissals where the employee concerned is entitled to make a complaint of unfair dismissal.

A dismissal which is regarded as automatically unfair cannot be justified by the employer in court. In other words once it is proven in court that the reason of dismissal is one of those mentioned above there is no defence to the employer.

The compensation is the same as in ordinary cases of unfair dismissal.

### 6.2. *Dismissal on 'disciplinary' grounds*

#### 6.2.1. Substantive conditions.

As indicated above, a justified reason of dismissal is when the contact of the employee is such that it is clear that the employer - employee relationship cannot reasonably be expected to continue.

The employer-employee relationship cannot reasonably be expected to continue when the employee is guilty of gross misconduct; he commits a criminal offence in the course of his duties without the agreement of his employer; he is guilty of immoral behaviour in the course of his duties; he repeatedly disregards works and other rules.

Another justifiable reason for dismissal is when the employee fails to carry out his work in a reasonably efficient manner. Performance of the duties in a "reasonable manner" has been deemed to include dismissals on 'disciplinary grounds".

The general principle is that when the employee behaves in such a way that his behaviour is considered as a serious breach of work rules or when he repeatedly performs acts or omissions that show that he violates the duty of faith and trust , then he is liable to dismissal

#### 6.2.2. Procedural requirements

There are no statutory procedural requirements. However courts have held that principles of natural justice are applicable. This means that a complaint or a charge against an employee should be carefully investigated and the employee should be given the right to be informed of the charges and have adequate time to present his case.

### 6.2.3. Effects of the dismissal

The employee is entitled to notice payment and compensation unless the dismissal is summary dismissal i.e. without notice.

An employer may dismiss without notice if the behaviour of the employee is such that it shows that the relationship between employer and employee can not continue, for example the employee has lied to the employer. Other examples are:

I. the commission of a serious offence by the employee in the execution of his duties.
2. the commission of a criminal offence.
3. inappropriate behaviour like cursing.
4. serious and repeated violation of the rules and regulations regarding employment.

The period of notice and the statutory compensation in the event of unfair dismissal are specified in Schedules 2 and 4 of the Termination of Employment Law and are codified in Tables 1 and 2 below.

TABLE 1 - PERIOD OF NOTICE

| WEEKS OF EMPLOYMENT | MINIMUM NOTICE |
|---|---|
| 1- less than 52 | 1 |
| 52- less than 104 | 2 |
| 104- less than 156 | 4 |
| 156- less than 208 | 5 |
| 208- less than 259 | 6 |
| 260- less than 311 | 7 |
| 312 and more | 8 |

TABLE 2 - STATUTORY COMPENSATION

| YEARS OF EMPLOYMENT | MAXIMUM COMPENSATION IN CASE THE DISMISSAL IS UNFAIR |
|---|---|
| 1-4 | 2 weeks for every year |
| 5 up to and including 10 | 2.5 weeks for every year |
| 11- up to and including 15 | 3 weeks for every year |
| 16- up to and including 20 | 3.5 weeks for every year |
| 21- up to and including 25 | 4 weeks for every year |

The Industrial Disputes Court may take into account additional factors when awarding damages for example loss of career. In

any event, however, compensation cannot exceed 2 years of salaries in total. For purposes of calculation of the compensation salary means the last gross salary.

Even though the compensation for unfair dismissal awarded by the Industrial Disputes Court may exceed 1 year of salaries, the liability of the employer is up to 1 year. The rest is paid by the Redundancy Fund.

It should be noted that compensation is very low and need to be revised especially for employees with not many years in employment. For example an employee that worked for 4 years is entitled to 2 months compensation if the dismissal is unfair. Two months is not a heavy burden for an employer to bear. The rules governing compensation were passed 2 decades ago and must change to take into account current conditions.

#### 6.2.4. Remedies

An employee that has been unfairly dismissed may bring an action for unfair dismissal before the Industrial Dispute Court. The action must be brought within 1 year from the date of dismissal.

The employee may also/alternatively bring an action for breach of the employment contract before the civil courts within 6 years ("wrongful dismissal").

There is no legal aid for proceedings before the Industrial Disputes Court or civil courts.

The burden of proof is on the employer unless the cause of action is constructive dismissal case in which the employee must prove the reason for the dismissal.

#### 6.2.5. Suspension of the effects of the dismissal

In Cyprus there is no general suspension procedure.

#### 6.2.6. Restoration of employment

The Industrial Dispute Court may order an unfairly dismissed employee to be "reinstated" in his original job or "reengaged[1]". This power , however, is theoretical and there is no reported case so far that reinstatement was ordered.

#### 6.2.7. Penalties

If an employer fails to reinstate an employee if ordered to do so by the court may face contempt of court order proceedings which may lead to imprisonment or fine or both.

#### 6.2.8. Collective agreements

There are collective agreements that deal with the compensation paid to the employee in case of dismissal giving more favourable rights than the statutory rights.

### *6.3. Dismissal at the initiative of the employer for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct*

#### 6.3.1. Substantive conditions

As indicated above, a justified reason of dismissal is when the employee does not perform his duties in a reasonable manner, excluding the cases where the inability to perform the duties reasonably is attributed to illness, accident or because of pregnancy.

Performance of the duties in a "reasonable manner" has been deemed to include dismissals on grounds relating to the capacities on the personal attributes of the employee. In either case the rules of dismissal are the same.

There is a general prohibition on discrimination of any kind.

#### 6.3.2. Procedural requirements

No special formalities required.

#### 6.3.3. Effects of the dismissal

The employment relationship is terminated and the employee , if the dismissal is declared unfair, is entitled to compensation.

#### 6.3.4. Remedies

See above.

#### 6.3.5. Suspension of the effects of the dismissal

See above.

#### 6.3.6. Restoration of employment

See above.

#### 6.3.7. Penalties

See above.

#### 6.3.8. Collective agreements

See above.

### *6.4. Dismissal for economic reasons*

#### 6.4.1. Substantive conditions

Redundancy was examined above.

#### 6.4.2. Procedural requirements

The procedural requirements for redundancy were examined above.

#### 6.4.3. Specific requirements for collective dismissals

The Collective Redundancies Law contains specific requirements in relation to collective dismissals which are in line with the provisions of Directive 98/59/EC.

The employer has a duty to consult the workers' representatives in good time with a view to reaching an agreement where he is is contemplating collective redundancies. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

1. supply them with all relevant information and
2. in any event notify them in writing of:
   2.1. the reasons for the projected redundancies;
   2.2. the number of categories of workers to be made

redundant;

2.3. the number and categories of workers normally employed;

2.4. the period over which the projected redundancies are to be effected;

2.5. the criteria proposed for the selection of the workers to be made redundant;

2.6. the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

They must also forward to the Ministry of Labour a copy of, at least, the elements of the written communication which are given to the workers' representatives.

6.4.4. Effects of the dismissal

The employment relationship is terminated as a consequence of the dismissal.

6.4.5. Remedies

An employee is entitled to compensation by the Redundancy Fund which is calculated as unfair dismissal compensation.

6.4.6. Suspension of the effects of the dismissal

There is no suspension procedure.

6.4.7. Restoration of employment

See above.

6.4.8. Administrative or criminal penalties

The Collective Dismissals Law creates a criminal offence if an employer fails to send the required 30 day notice to the Ministry of Labour punishable with CYPE2000 fine.

6.4.9. Collective agreements

Collective agreements may establish criteria for redundancy selection even though at this stage there are only general provisions based on the old regime, i.e. pre - harmonization with EU Law.

6.4.10. Special arrangements

#### 6.4.10.1. Insolvency

In cases of insolvency of the employer, the employees that worked for at least 26 weeks, have a right to statutory redundancy payment of 13 weeks by a special fund. This amount is very little compared to the loss of job and must be increased. The employee is also entitled to salary payment, proportion of annual leave and 13th salary.

#### 6.4.10.2. Transferor the firm

In the event of a transfer of an undertaking, the employer has specific obligations under the Transfer of Undertakings Law which transposes into Cyprus law the provisions of the Council Directive 2001/23/EC.

A transfer occurs within the meaning of the law where there is a transfer of an economic entity which retains its identity, meaning an organized grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

The law aims at safeguarding of employees' rights by providing that in the event of a transfer of business or part of a business the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee.

The transfer of the undertaking, business or part of the undertaking or business does not in itself constitute grounds for dismissal by the transferor or the transferee. This provision is without prejudice to the redundancy provisions examined above.

If the contract of employment or the employment relationship is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.

The transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of the following: the date or proposed date of the transfer, the reasons for the transfer, the legal, economic and social implications of the transfer for the employees, any measures envisaged in relation to the employees.

The transferor must give such information to the representatives of his employees in good time, before the transfer is carried out.

The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

Where the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of these employees in good time on such measures with a view to reaching an agreement.

#### 6.4.10.3. Closure of the business

No specific requirements. It comes under the general redundancy provisions.

### *6.5. Resignation by the employee*

#### 6.5.1. Substantive conditions

An employee may terminate the contract by giving the written notice required by section 10 of the Termination of Employment. Notice depends on the period of employment and is codified below.

| WEEKS OF EMPLOYMENT | MINIMUM NOTICE |
|---|---|
| More than 26 but less than 52 | 1 |
| More than 52 but less than 260 | 2 |
| 260 or more | 3 |

Failure to give the proper notice may give the right to the employer to sue for breach of contract.

It should be noted that in certain cases resignation by the employee may constitute constructive dismissal. Constructive dismissal is in essence unfair dismissal.

The law governing constructive dismissal touches upon the highly technical area of repudiatory breach in contract. That is to say that where a repudiatory breach of contract occurs, the "innocent" party (in constructive dismissal cases, the employee) is entitled to either terminate or to affirm the contract.

In order for there to be a repudiatory breach by the employer,

justifying the employee's claim to have been constructively dismissed, there must have been an immediate threat to the express contract terms. This means that it may not be enough for the employer merely to voice a difference of opinion about the contract terms, even if it should turn out that the employee was right; for an assertion to amount to repudiation, the guilty party must "[evince] an intention not to be bound by the contract" .

Examples of such conduct include:

1. subjecting the employee to abusive and insulting language;
2. refusing to investigate a justified complaint relating to health and safety;
3. making an unsubstantiated allegation of theft against an employee;
4. insisting without good cause that the employee should undergo psychiatric evaluation;
5. "arbitrarily, capriciously and inequitably" singly out an employee for an inferior pay rise to that received by other employees;
6. unjustifiably demoting the employee for a minor disciplinary offence;
7. denying the employee access to the company's premises by changing the locks and telling customers that the employee no longer works for the company;
8. failing to support the employee, who was a supervisor, in his relations with shop-floor workers; and
9. allowing an employee to be subjected to sexual harassment.

#### 6.5.2. Desertion of the post

If an employee behaves in such a way that his employer may reasonably deduce that the employee has terminated the contract, the contract is then terminated.

### *6.6. Procedural requirements*

There are not procedural requirements besides the category of government and public sector employees where there is a formal requirement that the resignation must be in writing. We indicated however that civil servants, military personnel and police personnel are excluded from the provisions of the Termination of Employment Law.

### *6.7. Effects of the resignation*

The employee is entitled to statutory benefits, i.e salary, 13$^{th}$

salary proportion, annual leave proportion.

### *6.8. Remedies*

In cases of constructive dismissal the employee would be entitled to unfair dismissal compensation.

### *6.9. Compensation to the employer*

An employer is entitled to the statutory notice or higher notice if that is stipulated in the contract.

### *6.10. "Contrived" resignations .*

See constructive dismissal above.

### *6.11. Resignation for proper cause*

An employee may resign for any reason as long as he gives the necessary notice.

If the employee resigns because of a repudiatory breach of contract by the employer, then this is a constructive dismissal.

### *6.12. Collective agreements*

There are no collective agreements on this matter.

## 7. General questions relating to all forms of termination of employment relationships

### *7.1. Non-competition agreements*

Generally speaking restraint of trade agreements are construed restrictively by the courts. Any non-competition terms must be reasonable and take into account the circumstances of each case. There are no specific rules concerning duration and scope but it is unlikely that a non-competition clause of more than one year will be upheld.

### *7.2. Agreements to the effect that the employee will not terminate the contract during a certain period*

Violation by the employee of a contractual obligation that he will not terminate the contract during a certain period gives right to an employer to sue in civil courts for breach of contract.

### *7.3. The issuing of a reference*

The employer is obliged on request to issue a reference in respect of the type of work done by the employee and the duration of the contract irrespective of the reason of dismissal. The reference must not include anything negative for the employee.

### *7.4. Full and final settlement*

An employee can not, in general waive, statutory rights unless there is a clear and unequivocal intention to this effect. That said, an employee that receives money in full and final settlement of unfair compensation or other statutory rights is barred from pursuing any other legal remedy.

## 8. Appendix: Probationary & Qualifying periods.

Section 9 of the Termination of Employment Law provides that no notice is necessary if the employment is terminated before the lapse of 26 weeks from the date the employment started. Thus the probationary period set by the Law is 6 months.

Further, the contracting parties have the option to extend the probationary period of 6 months for up to 104 weeks provided that this is done in writing. During the probationary period an employee can be dismissed without notice and does not have any right to compensation for unfair dismissal.

In order to qualify for unfair dismissal compensation an employee must complete at least 26 weeks of continuous employment.

Cyprus law makes no reference to trial periods other than those noted above even though an employer and employee are free to agree that special contractual terms will apply to the employment during a probationary or trial period provided that those terms do not contravene statutory rights. Terms in a contract which seek to reduce or remove statutory rights are ineffective because the employee can still rely on them.

Employers and employees are also free to agree contractual terms that are more favourable to employees compared to statutory rights.

Certain statutory employment rights have qualifying periods. These have the effect that the employee, whether on probation or not, does not qualify for the rights in question until he or she has been employed continuously for the length of the period which applies to the right. For example, there is a 26 weeks qualifying period for the general right to complain of unfair dismissal to the Industrial Disputes Court or for 2 years in order to claim redundancy compensation.