Termination of Employment Relationships: Legal Situation in Estonia

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Summary

The main legal act regulating termination of employment contracts in Estonia is the 1992 Republic of Estonia Employment Contracts Act (TLS), which applies to all employees. The specific provisions concerning the termination of seafarers' employment contracts are laid down in the Seafarers Act. Collective agreements do usually not regulate the conditions and procedure for termination of employment contracts, because, one the one hand, the TLS contains detailed regulation and further agreements are not considered necessary, and on the other hand, collective agreements are not highly relevant to regulating any of the other aspects of employment relationships.

The TLS complies with the requirements of international treaties concerning the termination of employment contracts: the Charter of Fundamental Rights of the European Union (2000), Community Charter of the Fundamental Social Rights of Workers (1989), European Social Charter (revised version, 1996), and ILO C135 Workers' Representatives Convention (1971), thus safeguarding employees against unjustified dismissal, representatives of employees against dismissal due to their activities as representatives, women against dismissal due to pregnancy and childbirth, as well as the entitlement of representatives of employees to information and consultation in the event of collective dismissal. The TLS is also in general accordance with the provisions of ILO C158 Termination of Employment Convention (1982) and R166 Termination of Employment Recommendation (1982). Although the TLS contains no essential differences compared to the ILO rules, the TLS needs further elaboration in some aspects related to the ILO standards.

While the TLS has been amended several times after its passing and entry into force in 1992, the overall concept of the law has remained the same. The following amendments of the TLS should be pointed out in the context of termination of employment contracts:

- enhanced protection of representatives of employees (2000);
- extension to men of the safeguards earlier applicable only to women who are raising a child under three years of age (2002);
- transposition of the principles of the collective dismissal directive 98/59/EC in the text of the TLS (2003);
- abolishment of the possibility of dismissal due to an employee's age (2006).

All these amendments resulted to a greater or lesser degree from the European Union law, ensuring the equal treatment of employees regardless of their sex or age, enhancing the protection of employees' representatives against discrimination, and entitling employees to information and consultation in the event of collective dismissal. The removal of the possibility to dismiss employees due to their age has had the greatest practical effect among these amendments, as it enables older people to remain active on the labour market for longer, this being justified and necessary considering the rapid aging of the population.

The TLS regulates the grounds and procedure for termination of employment contracts in great detail. The law provides detailed listing and descriptions of the grounds for termination. The formal requirements of termination are also strict. Employers are required to formulate every termination in writing in the text of the employment contract; the formal requirements are especially specific when the termination is due to an employee's conduct. This kind of rigid regulation on termination cannot be considered purposeful. The TLS should focus more on balancing the interests of the parties to employment contracts, as well as the peculiarities of

employers and employment relationships, which is why the regulation on termination should be made much more flexible.

The need to update the termination provisions is recognised by both trade unions and employers, as well as the government. Several new draft employment contracts acts have been prepared since 1996, but none of them have been passed for various political reasons. Since the current TLS does not meet the expectations and needs of the labour market, it is vital to draft and enforce new regulation.

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List of abbreviations

AÜS – Trade Unions Act
ITVS – Individual Labour Dispute Resolution Act
MTS – Seafarers Act
RaKS – Health Insurance Act
RT – *Riigi Teataja* (the State Gazette)
TDVS – Employees Disciplinary Punishments Act
TKindlS – Unemployment Insurance Act
TLS – Employment Contracts Act
TsÜS – General Part of the Civil Code Act

1. Sources of law

(1) Constitutional status of the rules on the right to work

According to § 29 (1) of the Republic of Estonia Constitution[1], an Estonian citizen has the right to freely choose his or her area of activity, profession and place of work. Conditions and procedure for the exercise of this right may be provided by law. The Estonian Constitution thus does not expressly guarantee the right to work, but establishes the principles of free choice of profession, on the exercise of which limitations may be imposed in the cases provided by law (e.g. to protect consumers, children, motherhood)[2].

Subsection 29 (3) of the Constitution sets forth the state's obligation to organise vocational training and assist persons who seek employment in finding work. According to the Constitution, working conditions are under state supervision and the procedure for resolution of labour disputes is provided by law (§ 29 (4) and (6)).

(2) International agreements and conventions

Of international treaties regulating the protection of employees in the case of termination of employment contracts, the European Social Charter (revised version, 1996) and ILO C135 Workers' Representatives Convention (1971) are binding on Estonia. Estonia has not ratified ILO C158 Termination of Employment Convention (1982).

(3) Sources of law and their hierarchy

The bases and procedure for termination of employment contracts are regulated by the Republic of Estonia Employment Contracts Act[3] (hereinafter TLS). The procedure for dismissal on the ground of the employee's conduct, as a form of disciplinary punishment, is set forth in the Employees Disciplinary Punishments Act[4] (hereinafter TDVS). When an employment contract is terminated due to the employer's bankruptcy, and upon collective termination of employment contracts, the employees are paid compensation from the Estonian Unemployment Insurance Fund in accordance with the Unemployment Insurance Act[5] (hereinafter TKindlS). The procedure for settling labour disputes, including disputes arising from the termination of employment contracts, is set forth in the Individual Labour Dispute Resolution Act[6] (hereinafter ITVS)[7].

The main law regulating the termination of employment contracts, the TLS, was passed in 1992. It was clear already at the time of drafting that it would be a

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[1] Eesti Vabariigi põhiseadus (Republic of Estonia Constitution). Passed on 28 June 1992 – RT 1992, 26, 349; I 2003, 64, 429.
[2] Eesti Vabariigi põhiseadus: kommenteeritud väljaanne (Republic of Estonia Constitution: Commented issue). Tallinn: Juura, 2002, pp. 261–263.
[3] Eesti Vabariigi töölepingu seadus (Republic of Estonia Employment Contracts Act). Passed on 15 April 1992 – RT 1992, 15/16; 2006, 10, 64.
[4] Töötajate distsiplinaarvastutuse seadus (Employees Disciplinary Punishments Act). Passed on 5 May 1993 – RT I 1993, 26, 441; 2000, 102, 674.
[5] Töötuskindlustuse seadus (Unemployment Insurance Act). Passed on 13 June 2001 – RT I 2001, 59, 359; 2005, 57, 451.
[6] Individuaalse töövaidluse lahendamise seadus (Individual Labour Dispute Resolution Act). Passed on 20 December 1995 – RT I 1996, 3, 57; 2005, 39, 308.
[7] English versions of the Estonian legislation are available at the website http://www.legaltext.ee/.

'transitional law', aimed at adapting to the changed economic environment and the introduction of private property since the former law, the Labour Code of the Estonian Soviet Socialist Republic. It was planned at the beginning of the 1990s to create a labour code based on the TLS, but this has not been done due to various political reasons.

Since 1996, the Ministries of Social Affairs and Justice have prepared several new draft employment contracts acts to substantially change the current regulation on employment contracts. At the end of 2003, the Government submitted to the legislative proceeding of the Parliament (Riigikogu) a draft employment contracts act that underwent one reading in the Riigikogu. In May 2005, the new Government withdrew the draft from the Riigikogu. Since it has been decided by now not to proceed with the development of that draft, but instead to start preparing a new employment contracts act, this paper does not discuss the 2003 draft.

It is not common practice to regulate the issues of termination in the provisions of employment contracts and/or collective agreements. One the one hand, collective agreements are not highly relevant to shaping any of the other aspects of employment relationships[8], and on the other hand, the procedure for termination of employment contracts is regulated in detail by law and it is usually not considered necessary to elaborate on these issues in employment contracts or collective agreements. Sometimes an employment contract and/or collective agreement (as well as internal work procedure rules[9]) list the employees' fundamental breaches, in which case summary dismissal is possible. Sometimes employment contracts and/or collective agreements specify the notice periods to be observed by the employer, as well as the amounts of compensation to be paid upon termination, the priorities of continued employment upon a lay-off, etc., if different from those provided by law.

The terms of employment contracts and collective agreements which are less favourable to employees than those prescribed by law or other legislation are invalid. The laws regulating employment relationships are thus imperative, and employment contracts and collective agreements only may stipulate more favourable terms (such as larger compensations for termination, a prohibition on terminating the contracts of certain groups of employees if the employer initiates termination, etc.). Neither may employment contracts stipulate terms less favourable to employees than those prescribed by a collective agreement. Such terms are also invalid, and the provisions of the collective agreement apply (see TLS §§ 14 and 15).

(4) Role of judge-made law and custom

Judge-made law and custom have no great relevance to employment relationships. This is because the employment legislation is rather detailed. Although the decisions of the Supreme Court as the highest instance are not binding on courts of lower instances, the latter still follow the Supreme Court's views in making their judgments.

[8] The low relevance of collective agreements in regulating employment relationships is largely owing to the fact that only 11% of employees belong to trade unions. About the role of workers' organisations in shaping employment relationships see: Muda, M. Estonia. Handbook on Employee Involvement in Europe, edited by Manfred Weiss and Michał Seweryński. Kluwer Law International, 2004.

[9] According to TLS § 40 (1), internal procedures are regulated by internal work procedure rules for employers with at least five employees. The employer approves the internal work procedure rules in agreement with the labour inspectorate.

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

(1) Ways of terminating an employment relationship

The bases and procedure for terminating employment contracts are very precisely regulated in Estonia. According to TLS § 71, an employment contract terminates:

1) by mutual agreement;
2) upon expiry of the term;
3) on the initiative of the employee (resignation);
4) on the initiative of the employer (dismissal);
5) at the request of third parties;
6) in circumstances which are independent of the parties.

While termination at the request of third parties or in circumstances which are independent of the parties is not related to an expression of will by the employee or the employer, termination upon expiry of the term requires that both the employee and employer give each other prior notice of the termination. The main reason for this is that if neither party demands termination of a fixed-term employment contract, or if a new employment contract is not entered into and the employment relationship continues after expiry of the term, the fixed-term employment contract becomes an open-ended employment contract (TLS § 78)[10].

In practice, employment contracts are usually terminated by mutual agreement or upon expiry of the term, or on the employee's or employer's initiative. Termination at the request of third parties or in circumstances with are independent of the parties is rare.

(2) Exceptions or specific requirements for certain employers or sectors

TLS's regulation on termination of employment contracts applies to all employees who work under an employment contract. According to TLS § 7, the TLS does not extend to:

1) service as a member of the Riigikogu, the President of the Republic or an official appointed to office by the President of the Republic or the Riigikogu;
2) state officials and local government officials whose service relationships are regulated by the Public Service Act;
3) active service in the armed forces;
4) work as a member of a farm family for family enterprise in a family farm enterprise or family enterprise;
5) household work by parents, spouses or children for one another and care by such persons for one another;
6) work by family members in a shared household and care for family members[11];
7) work on the basis of a contract of service;
8) work in a religious organisation as a person conducting religious services if the fundamental document of such organisation does not require entry into an employment contract with such person[12];

[10] See paragraph 4(1) for greater detail.

[11] In the cases mentioned in clauses 4–6, employment contracts may be concluded between the family members if the employer is a sole proprietor.

[12] In practice, these persons do usually not work under an employment contract.

9) performance of a transaction on the basis of an authorisation if the person performing such transaction receives income from the transaction and bears proprietary risk for the success of the transaction;
10) relationships of directors of bodies of legal persons or Estonian branches of foreign companies, and members of administrative boards of state enterprises with legal persons, Estonian branches of foreign companies or state enterprises;
11) activities based on contracts for services or other civil law contracts;
12) work performed during imprisonment;
13) other activities directly prescribed by law and persons directly referred to by law.

Since the above listed cases are not employment relationships, the TLS regulation on termination of employment contracts does not extend to these relationships.

According to § 16 of the Employment Service and Employment Subsidies Act[13], public work performed as an employment service does not constitute an employment relationship. No other law prescribes any further exceptions to the scope of application of the TLS.

The differences in the termination of employment contracts of crew members, including the extension of employment contracts if the ship is at sea at the time of termination, arrangements for the repatriation of crew members, etc. are regulated by the Seafarers Act (hereinafter MTS)[14] (§ 56 ff). The TLS regulation on termination of employment contract extends to crew members insofar as the MTS does not provide otherwise.

(3) Exceptions or specific requirements for certain types of contract

The TLS does not provide for any exceptions or specific requirements as regards termination depending on the contract type. Even a fixed-term contract can be terminated by the employee or the employer pursuant to the procedure provided by law, similarly to open-ended contracts. As the only exception, TLS § 80 (5) provides that if a fixed-term employment contract is entered into because the contract provides for a special benefit for the employee (TLS § 27 (2) 5))[15], the employee may resign prematurely only if he or she is prevented from continuing the work by an illness, incapacity for work or the need to care for an incapacitated family member. The employer may terminate such a contract as an ordinary employment contract.

(4) Exceptions or specific requirements for certain categories of employer

The TLS regulation on termination of employment contracts extends to all employers regardless of the number of employees they employ.

Pursuant to Directive 98/59/EC, the rules for the collective dismissals apply only to dismissal for economic reasons within 30 days, if:
1) an employer who employs up to 19 employees terminates the employment contracts of at least 5 employees;

[13] Tööturuteenuste ja -toetuste seadus (Employment Service and Employment Subsidies Act). Passed on 28 September 2005 – RT I 2005, 54, 430.
[14] Mereteenistuse seadus (Seafarers Act). Passed on 8 February 2001 – RT I 2001, 21, 114; 2005, 57, 453.
[15] A special benefit is understood as training at the employer's expense or other material benefit given by the employer to the employee. In practice, employment contracts are rarely made for a fixed term for the reason that they provide for a special benefit. More frequently, open-ended employment contracts provide for the employee's obligation to work for the employer for a certain period after receiving the special benefit.

2) an employer who employs 20 to 99 employees terminates the employment contracts of at least 10 employees;
3) an employer who employs 100 to 299 employees terminates the employment contracts of at least 10 per cent of the employees;
4) an employer who employs at least 300 employees terminates the employment contracts of at least 30 employees (TLS § 89[1])[16].

(5) Exceptions or specific requirements for certain categories of employee

The TLS provides for exceptions as regards the termination of employment contracts of certain employees only if the contracts are terminated on the employer's initiative.

According to TLS § 86, dismissal is possible only on the following grounds:
1) upon liquidation of the enterprise, agency or other organisation;
2) upon the declaration of bankruptcy of the employer;
3) upon lay-off of employees;
4) upon unsuitability of an employee for his or her office or the work to be performed due to professional skills or for reasons of health;
5) due to unsatisfactory results of a probationary period;
6) due to the long-term incapacity for work of an employee;
7) upon breach of duties by an employee;
8) upon loss of trust in an employee;
9) due to an indecent act by an employee;
10) due to an act of corruption of an employee[17].

In cases 1–3, the employer terminates the employment contract for economic reasons, in cases 4–6 for reasons pertaining to the employee's capacities or personal attributes, and in cases 7–10 for reasons pertaining to the employee's conduct.

If the dismissal is due to a lay-off[18], the notice period depends on the employee's length of employment for the employer. According to TLS § 87 (1) 3), an employer is required to notify an employee of termination of the employment contract:
- not less than two months in advance if the employee has been continuously employed by the employer for less than 5 years;
- not less than three months in advance if the employee has been continuously employed by the employer for 5 to 10 years;
- not less than four months in advance if the employee has been continuously employed by the employer for more than 10 years;

According to TLS § 90 (1) 1), the amount of compensation paid by employers to employees dismissed for economic reasons also depends on the length of time worked for the employer. Employers are required to pay the following dismissal compensations:
- compensation in the amount of two months' average wages to employees who have been continuously employed by the employer for up to 5 years;
- compensation in the amount of three months' average wages to employees who have been continuously employed by the employer for 5 to 10 years;
- compensation in the amount of four months' average wages to employees who have been continuously employed by the employer for more than 10 years;

[16] See paragraph 5.4(3) for greater detail.
[17] The procedure for termination on these grounds is discussed in Chapter 5.
[18] According to TLS § 98 (1), an employer may terminate an employee's employment contract due to a lay-off if the work volume decreases, if production or work is reorganised, if an employee is reinstated in a previous position, and in other cases which require termination of the work.

Additionally, the TLS provides for restrictions on dismissal for the following groups of employees:

1) pregnant women or persons raising a child under three years of age[19].

According to TLS § 92 (1), dismissal of these employees on the following grounds is prohibited: lay-off, unsuitability, and long-term incapacity for work.

Before dismissal, an employer is required to obtain a labour inspector's consent if the reason for termination is: liquidation of the legal person, bankruptcy of the employer, unsatisfactory results of a probationary period, breach of duties, loss of trust, or an indecent act (TLS § 92 (2)).

There have been problems with the practical application of this restriction because at the time of termination, the employer might not be aware of the employee's pregnancy and might terminate her employment contract without the labour inspector's consent. Such termination is unlawful; however, under ITVS § 28 (3), the labour dispute resolution body will grant the employee's claim of compensation for unlawful termination only in part or will refuse the claim. It would be reasonable to amend this aspect of the regulation and oblige employees to inform the employer of their pregnancy as soon as the employer has expressed a wish to terminate the employee's employment contract.

2) minors

According to TLS § 2^1 (2) employment contracts may be concluded with minors of 13–17 years of age in exceptional cases[20]. As according to TLS § 33 (5) 1), a probationary period is not applied to minors, minors cannot be dismissed on the ground of unsatisfactory results of a probationary period. Before dismissing a minor, the employer has to obtain a labour inspector's consent if the employer wishes to terminate the contract by reason of a lay-off or unsuitability of the employee.

3) representatives of employees

Representatives of employees who are subject to the restrictions on dismissal are: shop stewards, elected representatives of trade unions, working environment representatives, and members of the working environment council.

Under TLS § 91 (1) 4), dismissal is prohibited at the time when the employee represents the employees in accordance with the procedure provided by law or a collective agreement. According to § 7 (3) of the Employees' Representatives Act[21], at the request of a shop steward, an employer is required to allow the shop steward to perform his or her duties during working time:

- if the shop steward represents 5 to 100 employees – minimum 4 hours per week;
- if the shop steward represents 101 to 300 employees – minimum 8 hours per week;
- if the shop steward represents 301 to 300 employees – minimum 16 hours per week;
- if the shop steward represents more than 500 employees – throughout the working week.

[19] Until 1 January 2002, this restriction applied to pregnant women and women raising a child under three years of age. The law was amended with a view to ensuring the equal treatment of female and male employees, and now the restriction applies to all employees who raise a child under three years of age.

[20] According to § 8 (2) of the General Part of the Civil Code Act (hereinafter TsÜS), persons who have attained 18 years of age are adults (Tsiviilseadustiku üldosa seadus (General Part of the Civil Code Act). Passed on 27 March 2002 – RT I 2002, 35, 216; 2005, 39, 308).

[21] Töötajate usaldusisiku seadus (Employees' Representatives Act). Passed on 16 June 1993 – RT I 1993, 40, 595; 2002, 111, 663.

Thus, an employer cannot dismiss an employees' representative during the period when he or she is released from duties and is only carrying out the functions of an employees' representative. This restriction does not apply to dismissal due to the liquidation of the legal person or the bankruptcy of the employer.

According to TLS § 94 (1), an employer may dismiss an employees' representative during and within one year after the end of the term of authority of the employee only with the consent of a labour inspector[22]. This safeguard does not apply to dismissal due to the liquidation of the legal person or the long-term incapacity for work of the employee.

The TLS also provides for the following rules governing the dismissal of employees' representatives:

- upon lay-offs, employees' representatives have a preferential right to remain at work (§ 99 (1))[23];
- when a representative of employees is dismissed due to unsuitability or lay-off, the employer is required to give advance notice to the representative in writing one month earlier than to other employees (§ 87 (5))[24];
- if an employer has dismissed an employees' representative unlawfully and the latter waives reinstatement in his or her position, the employer is required to pay compensation to the representative in the amount of his or her six months' average wages (§ 117 (3))[25].

3. Mutual agreement

(1) Substantive conditions

According to TLS § 76, an employment contract may be terminated at any time by mutual agreement if one party presents a corresponding written request and the other party gives his or her written consent to termination of the contract. Thus, employees and employers have complete freedom under the law to terminate employment contracts if they come to an agreement. The agreement is subject to the TsÜS regulation on transactions (§ 67 ff).

(2) Procedural requirements

According to TLS § 76, an employee and employer must enter into a written agreement on the termination of an employment contract.

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[22] The labour inspector must justify to the employer in writing the reasons for granting or refusing to grant consent to the dismissal of the representative of employees. Before making the corresponding decision, the labour inspector is required to submit a written request to an organisation representing employees in order to obtain an opinion concerning the dismissal of the representative of employees, if such representative has been elected by the organisation representing employees (TLS § 94 (2)).

[23] See paragraph 5.4(1) for greater detail.

[24] Thus, the employer has to inform an employees' representative two months before termination on the ground of unsuitability, and three to five months, depending on the employee's length of employment, upon lay-off. See also 5.3(1) and 5.4(1).

[25] According to TLS § 117, upon unlawful dismissal, the employee has the right to demand reinstatement in his or her position and payment of his or her average wages for the time of compelled absence from work. If an employee waives reinstatement in his or her position, the employer is required to pay compensation to the employee *up to* the amount of his or her six months' average wages (subsections 1 and 2).

According to TLS § 73 (1), an employer must formalise the termination of an employment in writing in the contract[26]. Thus, an employment contract is not terminated by making a written agreement, but by the formalisation of the termination in the contract.

If no written agreement has been made concerning termination, but the employer has formalised termination in the contract on the basis of such agreement, the termination on the ground of mutual agreement is unlawful according to the practice of labour dispute resolution bodies.

Upon terminations by mutual agreement, proving the employee's intention to make a written agreement has caused the largest number of disputes.

As mentioned above, the employer formalises the termination in the employment contract, i.e. writes 'The employment contract has been terminated by mutual agreement' in the written text of the termination part of the contract, or makes a relevant annex. This termination statement is signed by both parties. The Estonian labour dispute resolution bodies have taken the view that if an employer has stated a mutual agreement in the employment contract as the grounds for termination, the employee's signature on the termination entry does not imply the employee's consent to termination by mutual agreement, since TLS § 76 requires that the written agreement on termination be made separately from the termination entry. Above all, the written agreement between the parties must clearly indicate both parties' will to terminate the contract.

Another subject of dispute upon termination by mutual agreement is that although a written agreement has been made, the employee may claim having signed the agreement under pressure, not being aware of his or her rights and obligations. In such case, the employee has to prove that the agreement is void under the TsÜS as it was made under threat, gross disparity, etc. (TsÜS §§ 96, 97, etc.).

(3) Effects of the agreement

Upon termination of an employment contract by mutual agreement, the employer does not have to pay the employee compensation for termination, unless this is agreed on in the employment contract or collective agreement. Non-payment of the agreed compensation does not render the termination of an employment contract unlawful.

The practice of labour dispute resolution bodies shows that employees are not compensated if the parties made an oral agreement on compensation and if the amount of the agreed compensation cannot be proved by written documents.

According to § 6 (3) 3) of the TKindlS, an insured person is not entitled to unemployment insurance benefit if the employment contract was terminated by mutual agreement. Termination by mutual agreement does not affect a person's entitlement to pension insurance benefits. According to § 6 (3) of the Health Insurance Act[27] (hereinafter RaKS), the health insurance cover of employees terminates two months after termination of the employment relationship.

(4) Remedies

Disputes arising from the termination of employment contracts by mutual agreement are settled according to the general rules for settling individual labour disputes.

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[26] For the details of written formalisation of termination, see paragraph 7(3).

[27] Ravikindlustuse seadus (Health Insurance Act). Passed on 19 June 2002 – RT I 2002, 62, 377; 2005, 71, 546.

According to ITVS § 4 (1), individual labour disputes[28] are settled by labour dispute committees[29] and by the courts. Thus, to settle a dispute arising from the termination of an employment contract, both the employee and employer can refer to a labour dispute committee or a court[30].

A trade union has the right to represent and defend its members before labour dispute resolution bodies (§ 17 (7) of the Trade Unions Act[31] (hereinafter AÜS)).

According to the State Legal Aid Act[32], state legal aid is available[33] to employees who are unable to pay for competent legal services due to their financial situation or who are able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for legal services (§ 6 (1)).

According to ITVS § 6 (2), the limitation period for filing a claim to contest the justification for a termination is one month. Hence, if one party files a claim for declaring the termination unlawful later than one month after the termination, the court will, at the other party's request, declare the claim to have been filed too late.

An application filed with a labour dispute committee shall be heard not later than one month after the date following the date of receipt of the application (ITVS § 16 (1).

Labour disputes are settled subject to the evidence rules of the Code of Civil Procedure[34], according to which, as a rule, each party has to prove the facts on which the party's claims and objections are based (§ 230 (1))[35].

If an employee believes that his or her employment contract was terminated unlawfully, he or she may demand from a labour dispute resolution body under TLS § 117:

1) that the termination be declared unlawful, that he or she be reinstated in his or her position, and paid his or her average wages for the time of compelled absence from work; or
2) that the termination be declared unlawful, that the employment contract be terminated on his or her initiative, and that he or she be paid a compensation in the amount of his or her six months' average wages[36].

A labour dispute resolution body declares a termination unlawful if the circumstances which constitute a lawful basis for termination are absent or if a basis for

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[28] Pursuant to ITVS § 2, an individual labour dispute is a disagreement between one or several employees and an employer which arises in the application of a law, administrative legislation or rules established by an employer regulating employment relations, or in the performance of a collective agreement or employment contract, and which the parties are not able to resolve by agreement.

[29] Labour dispute committees are extra-judicial independent individual labour dispute resolution bodies which consist of a chairman, one representative of the employees and one representative of the employers (ITVS § 10).

[30] According to ITVS § 4 (1^1), labour dispute committees do not settle disputes over financial claims exceeding 50 000 kroons (~3200 euros).

[31] Ametiühingute seadus (Trade Unions Act). Passed on 14 June 2000 – RT I 2000, 57, 372; 2002, 63, 387.

[32] Riigi õigusabi seadus (State Legal Aid Act). Passed on 28 June 2004 – RT I 2004, 56, 403; 2005, 39, 308.

[33] Types of state legal aid also include the preparation of legal documents and representing a person in pre-trial proceedings in a civil matter and in court (§ 4 (3) of the State Legal Aid Act).

[34] Tsiviilkohtumenetluse seadustik (Code of Civil Procedure). Passed on 20 April 2005 – RT I 2005, 26, 197; 2006, 7, 42.

[35] The burden of proof lies with the employer if the dispute over the termination of an employment contract is related to the discrimination of the employee (see TLS § 144^1 (1)).

[36] If an employer has unlawfully dismissed an employees' representative and the latter waives reinstatement in his or her position, the employer is required to pay compensation to the representative in the amount of his or her six months' average wages (TLS § 117 (3)).

termination is applied in a material violation of the established rules of procedure (ITVS § 28 (1)).

A labour dispute resolution body must always reinstate an employee if the employee so wishes. This regulation cannot be considered successful, because by the time of reinstatement, the employee's job has often been laid off, which is why the employer dismisses the reinstated employee immediately after the employee has returned to work; the relations between the parties will also have deteriorated and they are not likely to succeed in working together. This is why reinstatement should be an option only if the employer consents to it.

If an employee demands that a termination be declared unlawful, the contract be terminated on his or her own initiative and he or she be paid a compensation of up to six months' average wages, the specific amount of compensation is determined by the labour dispute resolution body, taking into account the circumstances of the termination[37].

(5) Vitiating factors

If an agreement between the parties is declared invalid, the TsÜS provisions on the invalidity of transactions apply (§ 84 ff).

(6) Penalties

No liability under penal law can be applied to the employer and employee in the case of unlawful termination of an employment contract by mutual agreement.

(7) Collective agreements

The procedure for termination of employment contracts by mutual agreement is not regulated by collective agreements.

(8) Relations to other forms of termination

Termination of an employment contract by mutual agreement is an independent basis not related to other bases for termination. An employment contract may also be terminated by mutual agreement in a situation where the termination could be based on other lawful grounds (e.g. the employee's or employer's initiative), but the parties have agreed to terminate the contract by mutual agreement.

4. Termination otherwise than at the wish of the parties

(1) Grounds for a contract to come to an end by operation of law

According to the TLS, an employment contract terminates without an expression of will by the employee or employer in the following cases:

1) upon expiry of the term;

[37] In termination disputes, an employer can, as a rule, claim compensation from the employee in the amount of the employee's average daily wages for each working day short of the term for advance notice, if the employee has deserted his or her post prior to the expiry of the term for advance notice (TLS § 84 (2)). See paragraph 6(6) for greater detail.

2) at the request of third parties;
3) in circumstances which are independent of the parties.

The content of each of these grounds is explained below.

1. Termination of an employment contract upon expiry of the term

When an employment contract terminates upon expiry of the term, both the employee and employer have to give each other written notice of termination. The purpose of the notice is to remind the other party that the term is arriving[38], as well as to identify whether the other party wishes to continue the employment relationship. According to TLS § 77 (1), the employer notifies the employee of the termination of his or her contract:

1) at least two weeks prior to the expiry of the term, if the term of the contract exceeds one year;
2) at least five calendar days prior to expiry of the term, if the term of the contract does not exceed one year[39].

An employer who does not comply with the above terms for advance notice is required to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice (TLS § 77 (3)). Non-compliance with the notice period does not render a termination unlawful.

According to TLS § 77 (4), an employee informs the employer of the termination of his or her employment contract at least five calendar days prior to expiry of the term. As opposed to the employer, the employee is not required to pay compensation if he or she fails to provide advance notice of termination.

As notification of the termination of a fixed-term employment contract has proved to be an unreasonably burdening formality in practice, this regulation should be amended and the notification obligation should be abolished.

TLS § 78 provides that if neither party demands termination of a fixed-term employment contract, or if a new employment contract is not entered into and the employment relationship continues after expiry of the term of the contract, then the fixed-term employment contract becomes an open-ended employment contract. Thus, if an employee works even one day longer than agreed and the employer accepts this, a fixed-term employment contract becomes an open-ended contract, which cannot be terminated on the ground of the expiry of the term. This regulation has caused several disputes in cases where an employer formalises[40] the expiry of the term as the ground for termination even if the employment has lasted beyond the initially agreed term and the term of the contract has not been extended. In such cases, labour dispute resolution bodies always consider the termination unlawful, because an open-ended contract cannot be terminated on the ground of the expiry of the term. To avoid such consequences, the TLS regulation should be amended and replaced by the principle that an employment contract terminates automatically upon the expiry of the term.

According to the practice of labour dispute resolution bodies, termination of an employment contract on the ground of the expiry of the term is unlawful also in cases where the law does not provide for a basis for the entry into a fixed-term contract. According to TLS § 27 (2), an employment contract may be entered into for a fixed term only: for completion of a specific task; for replacement of an employee who is

[38] According to TLS § 27 (1) 2), a fixed-term employment contract may be made for up to five years.
[39] These periods are not applied upon termination of an employment contract with an employee who was hired for replacement of an absent employee (TLS § 77 (2)).
[40] For the details of written formalisation of termination, see paragraph 7(3).

temporarily absent; for a temporary increase in work volume; for performance of seasonal work; if the employment contract prescribes special benefits for the employee; as well as in the cases prescribed by law or by regulations.

A fixed-term employment contract can also be terminated on any of the other grounds listed in the TLS similarly to open-ended employment contracts.

2. Termination of an employment contract at the request of third parties

The third parties who can request the termination of an employment contract are the legal representative of a minor and a labour inspector. These persons may require the termination of an employment contract entered into with a minor, if the requirements of law have not been observed in employment[41] (TLS § 110 (1)). In practice, employment contracts are very rarely terminated at the request of third parties and therefore this provision of the TLS is not very relevant.

3. Termination of an employment contract in circumstances which are independent of the parties

According to TLS §§ 112–116, the circumstances which are independent of the parties, in which employment contracts can be terminated, are as follows:

1) the entry into force of a conviction by a court which imposes a criminal punishment on an employee which makes it impossible for him or her to continue his or her current employment;
2) violation of the rules for hiring by the employer (i.e. the hiring is contrary to the restrictions on close relatives or relatives by marriage working together, or restrictions on the work of women);
3) employees who are closely related or are related by marriage work in positions which are directly subordinate to or have direct control over the other, if such work is prohibited by the legislation[42];
4) the death of the employee;
5) the death of the employer, if the employee was hired for the provision of personal services to the employer.

In practice, employment contracts are very rarely terminated in circumstances which are independent of the parties and therefore this provision of the TLS is not very relevant.

(2) Procedural requirements

Additional requirements for the termination of employment contracts apply only if the termination is in circumstances which are independent of the parties: upon violation of the rules for hiring by fault of the employer, or if employees who are closely related or are related by marriage work in positions which are directly subordinate to or have

[41] E.g. if a minor who is younger than 13 has been employed; if a minor performs work which he or she is not allowed to perform according to the legislation; if the minor does not have the permission of his or her legal representative to work, etc.

[42] According to TLS § 32, it is prohibited for persons who are close relatives (parents, brothers, sisters, children) or close relatives by marriage (a spouse, spouse's parents, brothers, sisters, children) to work in the same state or municipal enterprise, agency or other state or municipal organisation in positions which are directly subordinate to or have direct control over the other. The list of positions which are not subject to the restrictions is established by regulation.

direct control over the other, the employer has to offer the employee another position before the termination. (TLS § 113 (2) and § 114 (2)).

(3) Effects of the existence of a ground

The employer is not required to pay compensation to an employee if an employment contract is terminated on the ground of the expiry of the term, unless compensation is stipulated on in the contract or a collective agreement. Non-payment of an agreed compensation does not render the termination of an employment contract unlawful.

TLS § 110 (3) provides that if the employer terminates the employment contract of a minor at the request of the minor's legal representative or a labour inspector, because the restrictions of law have not been followed when employing the minor, the employer is required to pay compensation to the minor in the amount of his or her average monthly wages.

Upon termination of an employment contract entered into in violation of the rules for hiring by the fault of an employer, the employer is required to pay compensation to the employee in the amount of his or her average three months' wages[43] (TLS § 113 (3)).

Whether an employment contract is terminated on the ground of the expiry of the term, at the request of third parties, or in circumstances which are independent of the parties, the employee is entitled to unemployment benefit under the general procedure provided in the TKindlS. Termination on these grounds does not affect a person's entitlement to pension insurance benefits. According to RaKS § 6 (3), the health insurance cover of employees terminates two months after termination of the employment relationship.

(4) Remedies

Disputes arising from termination on the ground of the expiry of the term, at the request of third parties, or in circumstances which are independent of the parties are settled according to the general rules for the resolution of individual labour disputes[44].

(5) Penalties

No liability under penal law can be applied to the employee or employer upon unlawful termination of employment contracts on the ground of the expiry of the term, at the request of third parties, or in circumstances which are independent of the parties.

(6) Collective agreements

Collective agreements do not regulate the procedure for termination of employment contracts on the ground of the expiry of the term, at the request of third parties, or in circumstances which are independent of the parties.

[43] If an employment contract is entered into in violation of the rules for hiring as a result of knowingly incorrect information provided by the employee, the employee is required to pay compensation to the employer in the amount of the employee's one month's average wages (TLS § 113 (4)).
[44] See paragraph 3(4) for greater detail.

5. Dismissals in Estonia: Overview

As mentioned above[45], TLS § 86 sets forth the specific grounds on which employers dismiss employees. These grounds are:

1) liquidation of the enterprise, agency or other organisation;
2) bankruptcy of the employer;
3) lay-off of employees;
4) unsuitability of an employee for his or her office or the work to be performed due to professional skills or for reasons of health;
5) unsatisfactory results of a probationary period;
6) long-term incapacity for work of an employee;
7) breach of duties by an employee;
8) loss of trust in an employee;
9) indecent act by an employee;
10) an act of corruption of an employee.

In cases 1–3, the employer terminates the employment contract for economic reasons, in cases 4–6 for reasons pertaining to the employee's capacities or personal attributes, and in cases 7–10 for reasons pertaining to the employee's conduct.

For each of the grounds for dismissal, the employer must be able to prove that there is a ground provided by law for the dismissal; otherwise the dismissal is unlawful.

As opposed to Article 7 of ILO C158 Termination of Employment Convention (1982)[46], the TLS does not give an employee the opportunity to defend himself or herself before the termination against objections made to him or her by reason of the employee's performance or conduct. In practice, employees usually do have such an opportunity.

An employer has no obligation to provide advance notice of dismissal or to pay compensation if the dismissal is due to reasons arising from the employee's conduct.

Upon dismissal for economic reasons and for reasons pertaining to the employee's capacities or personal attributes, the notice of termination[47] and the payment of compensation depend on the basis for dismissal[48] (see TLS §§ 87 and 90). Employers are required to give employees advance written notice of dismissal, whereas the request to terminate an employment contract shall be expressed unconditionally (TLS § 72 (1)). In a written notice of dismissal, the employer is required to reason the need to terminate the contract. According to judicial practice, an employer may send the notice of termination by registered letter to the address supplied to the employer by the employee.

The failure to observe the notice period prescribed in the TLS or pay compensation for termination does not render the termination unlawful. The employer is required to pay compensation to the employee in the amount of the employee's average daily wages for each working day short of advance notice of termination (TLS § 87 (2)).

The precise provision in the law of the grounds for dismissal has not justified itself in practice. The regulation of the law is so detailed that employers often cannot exactly understand which ground is applicable or whether a dismissal is indeed lawful in a given case. Therefore, the regulation on dismissal should be less formal.

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[45] See 2(5).

[46] ILO C158 Termination of Employment Convention (1982). Available at: http://www.ilo.org/ilolex/cgi-lex/convde.pl?C158, 10.04.2006.

[47] As opposed to clause 16 of ILO R166 Termination of Employment Recommendation (1982) (available at: http://www.ilo.org/ilolex/cgi-lex/convde.pl?R166, 10.04.2006), the TLS does not give an employee the opportunity to have time off for seeking other employment during the period of notice.

[48] See paragraphs 5.3(1), 5.3(3), 5.4(1) and 5.4(4) for more detail.

5.1. Dismissal contrary to certain specified rights or liberties

As TLS § 86 sets forth the specific grounds for dismissal, dismissal on any other grounds not mentioned in the law is unlawful.

According to TLS § 10, when terminating employment contracts, employers must not discriminate against employees on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation the interests of employees or membership in workers' associations, political opinions or membership in a political party or religious or other beliefs (subsections 2 and 3). Under TLS § 94 (3), it is prohibited to dismiss a representative of employees[49] as a result of his or her lawful activities in representing the interests of the employees. Section 19 of the AÜS provides that employees must not be dismissed on grounds of their membership in trade unions, on being elected representatives of trade unions or on other legal activities related to trade unions (subsections 2 and 3). Upon disputing a dismissal, an employee can prove the lack of a lawful basis for dismissal by the fact that the dismissal was actually due to one of the above reasons and the dismissal was hence unlawful.

According to TLS § 91, dismissal is prohibited during the following periods:

1) during the temporary incapacity for work of the employee. The problem with the practical application of this restriction is that the employer might not know at the time of dismissal that the employee is incapacitated for work, because the employee presents the certificate of incapacity later. If an employee is dismissed during his or her incapacity for work, the courts will declare the dismissal unlawful. To avoid this situation, the TLS should oblige employees to inform employers of their incapacity for work at the earliest opportunity;
2) while the employee is on a holiday (including parental leave and holidays without pay);
3) during a legal strike if the employee participates in such strike pursuant to the procedure prescribed by law;
4) at a time when the employee is performing duties imposed on him or her by a state or local government authority, or is representing employees pursuant to the procedure provided by law or a collective agreement[50].

The above restrictions are not applied if the dismissal is due to the liquidation of the legal person or the bankruptcy of the employer.

Restrictions also apply to dismissals that concern contracts with minors or employees' representatives or pregnant women or persons who are raising a child under three years of age[51].

Dismissals effected contrary to the restrictions imposed by law are unlawful.

5.2. Dismissal on 'disciplinary' grounds

(1) Substantive conditions

[49] Representatives of employees who are subject to the restriction on dismissal are: shop stewards, elected representatives of trade unions, working environment representatives, and members of the working environment council.
[50] See also 2(5).
[51] See paragraph 2(5) for greater detail.

According to TLS § 86, an employer may dismiss an employee for reasons pertaining to the employee's conduct in the following cases:

1) upon breach of duties by an employee;
2) upon loss of trust in an employee;
3) due to an indecent act by an employee;
4) due to an act of corruption of an employee.

When terminating an employment contract on the above grounds, the employer is not required to give advance notice or pay compensation for termination. As dismissal on grounds of the employee's conduct implies the disciplinary punishment of the employee, the employer must follow the disciplinary punishment procedure provided in the TDVS[52].

Below is an explanation of the content of the grounds for dismissal arising from the employee's conduct.

1. Breach of duties

An employer may dismiss an employee on this ground if the employee fails to perform his or her duties or does not perform his or duties as required. An employee's duties may arise from the legislation, internal work procedure rules, employment contract or collective agreement, the employer's decisions or other documents. The premise of dismissal is that the employee is in breach of his or her lawful duties. An employer cannot ask the employee to perform duties that place the employee at a disadvantage compared to the provisions of legislation.

According to TLS § 103, an employer may dismiss an employee due to the breach of duties if:

a) a wrongful act by the employee impeded the work and the employee is subject to a disciplinary punishment[53] which has not expired[54].
b) the employee is in severe breach of duties.

In practice, employment contracts are more often terminated on the latter ground – severe breach of duties. The TLS does not define a severe breach of duties. According to labour dispute resolution bodies, a breach is severe if it has severe consequences or causes a threat of severe consequences, i.e. it is a fundamental breach of the contract. For example, being intoxicated at work or being absent without good reason are regarded as severe breaches of duties.

As opposed to the TLS, MTS § 54 (1) provides a list of severe breaches of duties due to which the contracts of crew members may be terminated. These breaches are:

1) intentional failure to arrive on the ship by the beginning of working time or by the time of departure of the ship;
2) leaving the ship during working time without permission;
3) being on board the ship under the influence of alcohol or narcotic or toxic substances;
4) bringing narcotic or dangerous substances on board the ship;
5) being engaged in illicit trafficking;
6) activities which actually endanger the ship or persons or cargo on board the ship.

[52] See paragraph 5.2(2) for greater detail.

[53] In addition to dismissal, TDVS § 3 provides for the following disciplinary punishments: a reprimand, a fine not exceeding ten times the average daily wages of the employee, and suspension from work without pay for a period not exceeding ten consecutive scheduled working days.

[54] A disciplinary punishment expires if no new disciplinary punishment is imposed on the employee within one year after the date that the punishment was imposed (TDVS § 13).

Employers often list severe breaches in the internal work procedure rules or collective agreements. Such lists have a discipline-imposing nature, i.e. an employee can dispute a dismissal if the dismissal is on the grounds thus listed.

2. Loss of trust in an employee

According to TLS § 104 (2), an employment contract may be terminated due to loss of trust if an employee has:

1) caused a deficit in, damage to, or destruction, loss or theft of the property of the employer, or if he or she has stolen the property of a co-worker at the workplace;
2) endangered the preservation of the property of the employer;
3) caused distrust of the employer by consumers, clients or business partners.

Loss of trust can serve as the ground for dismissal if it relates to causing property damage or a threat of damage to the employer. According to labour dispute resolution bodies, an employment contract may be terminated if the employee has caused the employer both direct property damage and loss of profit. The amount of the damage is irrelevant to the termination of the contract.

In addition to theft of or other damage to the employer's property, an employee may be dismissed if he or she goes against the employer's interests, agitates the employer's customer to use another company's services, works for a competitor of the employer or otherwise undermines the employer's business activities.

Also, if an employee has caused consumers, customers or business partners to lose trust in the employer, the dismissal must be related to causing damage or a threat of damage to the employer[55]. According to judicial practice, an employment contract may be terminated in case an employee's acts have resulted in a potential loss of trust, i.e. the employee has acted in a way that would cause a reasonable customer, consumer or business partner of the employer to lose trust in the employer.

Since pursuant to TLS § 48 (1) 3), employees must refrain from activities which endanger the property of the employer, loss of trust essentially implies a breach of duties by the employee. If in the event of a breach of any other duties, an employer can terminate an employment contract due to the breach, then in the event of a breach of the obligation to avoid causing damage, the contract has to be terminated due to loss of trust. The distinction is formal and has not justified itself in practice, especially because if an employee is in breach of his or her duties and the employer dismisses him or her due to loss of trust, but cannot prove to the labour dispute resolution body the damage or threat of damage caused by the employee, the dismissal is unlawful. It is not reasonable to list the grounds for dismissal pertaining to employees' conduct in such a high degree of detail in the law.

3. Indecent act by an employee

According to TLS § 105 (2), acts which are in contrary to generally recognised moral standards or which discredit an employee or employer are indecent.

As opposed to a breach of duties and loss of trust, not all employment contracts can be terminated on the ground of an indecent act by the employee. Employers have the right to terminate employment contracts on this basis with employees who are teachers, instructors of minors or others whose duties are to teach or educate youth, and support staff of local government administrative agencies (TLS § 105 (1)).

[55] E.g. a sales attendant cheats customers who, as a result, do not visit the shop again.

It is very rare practice to terminate an employment contract due to an indecent act. The usual reason behind such termination is a teacher's use of rude and humiliating expressions when communicating with pupils, hitting and taunting of pupils, being intoxicated in a public place, etc. An indecent act also constitutes the basis for dismissal if it is committed outside of the performance of duties (TLS § 105 (2)).

4. An act of corruption of an employee

According to § 5 (1) of the Anti-corruption Act[56], an act of corruption is the use of official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts, or fails to make lawful decisions or perform such acts.

Since pursuant to § 4 of the Anti-corruption Act, officials are usually public servants who do not work under employment contracts, there is no practical need for this ground for dismissal. An act of corruption is essentially equal to a breach of duties.

(2) Procedural requirements

Before dismissing a pregnant woman or a person who is raising a child under three years of age or a representative of employees for reasons arising from the employee's conduct, the employer is required to obtain a labour inspector's consent[57].

When terminating a contract for reasons of the employee's conduct, the employer must follow the disciplinary punishment procedure prescribed by the TDVS. The purpose of the law is to ensure that an employee is aware of what he or she is being punished for by dismissal, that no punishment is imposed for an act committed in the distant past, and that the punishment is fair. A dismissal in unlawful if an employer fails to follow the disciplinary punishment rules provided by law.

As the procedure for imposing disciplinary punishments on employees is regulated in great detail, employers often violate the TDVS rules. This inflexible regulation has not justified itself in practice and the disciplinary punishment procedure should be simplified. Following is an explanation of the details of the disciplinary punishment procedure.

Before imposing a disciplinary punishment, the employer has to establish the employee's guilt in the offence. To this end, the employer may demand a written explanation concerning the offence from the offender (TDVS § 7 (1)), but an employee's guilt may also be established by other evidence.

According to TDVS § 6 (1), a disciplinary punishment may be imposed within six months after the date of the offence[58], but not later than one month after the date that any person to whom the offender reports becomes aware of the offence.

According to TDVS § 8 (1), a disciplinary punishment must not be in apparent conflict with the gravity of the offence, the circumstances of its commission or the prior conduct of the employee. Thus, before the termination of an employment contract as the severest form of disciplinary punishment, the employer should consider whether the termination is justified in the circumstances or could another punishment, e.g.

[56] Korruptsioonivastane seadus (Anti-corruption Act). Passed on 27 January 1999 – RT I 1999, 16, 276; 2004, 71, 504.
[57] See paragraph 2(5) for greater detail.
[58] A disciplinary punishment for an offence proved by the findings of an inventory, review, audit, etc., may be imposed within one year after an offence is committed.

reprimand, be reasonable[59]. Only one disciplinary punishment may be imposed for each offence (TDVS § 9 (1)).

According to TDVS § 11 (1), a disciplinary punishment must be formalised in writing in two copies[60]. The document by which the employer formalises the disciplinary punishment must contain at least the following information: the name of the employee, the time of commission of the offence, a description of the offence and other circumstances taken into account upon punishment, the imposed punishment, the date that the document is prepared, and the name and signature of the person imposing the punishment (TDVS § 11 (2)).

The content of the document by which a disciplinary punishment is imposed is thus regulated to a great detail. Therefore, employees often refer to the courts to declare a dismissal unlawful, if the employer has failed to formulate the disciplinary punishment document expressly as the law requires. However, labour dispute resolution bodies have taken the view that if the disciplinary punishment document clearly indicates the nature and time of the employee's offence, then dismissal is not unlawful. Dismissal is considered unlawful if the employer has not formalised the termination of an employment contract as a form of disciplinary punishment in any written document.

A disciplinary punishment is imposed as of the date that the employee signs the document by which the employer has formalised the punishment (TDVS § 12 (1))[61].

In addition to the provisions of the TDVS, the specific provisions of the MTS apply to the disciplinary punishment of crew members. If a crew member is suspected of committing a disciplinary offence during a voyage, the offence shall be considered and a decision shall be made within 14 days by a committee consisting of three crew members (MTS § 52 (1))[62]. According to MTS § 53 (2), the final decision on the termination of a crew member's employment contract is made by the shipowner.

(3) Effects of the dismissal

When terminating an employment contract for reasons arising from the employee's conduct, the employer is not required to pay the employee compensation. Judicial practice has taken the view that compensation in such a case would be contrary to the purpose of the TLS.

According to TKindlS § 6 (3) 2), an insured person is not entitled to an unemployment insurance benefit if his or her employment contract was terminated due to a breach of duties, loss of trust, an indecent act or act of corruption. Termination on the above grounds does not affect a person's entitlement to pension insurance benefits. According to RaKS § 6 (3), the health insurance cover of employees terminates two months after termination of the employment relationship.

(4) Remedies

[59] According to TLS § 144, labour dispute resolution bodies have the right to assess the circumstances of the wrongful act of the employee and the purposefulness of dismissal, and to reinstate the employee in employment. Upon reinstatement, the employee does not have the right to compensation.

[60] One copy is retained by the employer and the other is given to the employee by the employer.

[61] If the employee refuses to sign, the employer may have witnesses sign the document to prove the employee's awareness of the punishment (TDVS § 12 (2)).

[62] MTS § 52 also provides for the membership and work procedure of the committee.

Disputes arising from dismissals due to breach of duties, loss of trust, or an indecent act or act of corruption are settled pursuant to the general rules for settling individual labour disputes[63].

(5) Suspension of the effects of the dismissal

It is not possible according to the legislation to suspend the effects of dismissal due to breach of duties, loss of trust, or an indecent act or act of corruption.

(6) Restoration of employment

If an employee believes that he or she has been dismissed unlawfully, the employee may refer to a labour dispute resolution body and demand that the dismissal be declared unlawful and he or she be reinstated in his or her position (TLS § 117 (1)). A labour dispute resolution body must always reinstate an employee if the employee so wishes. In the event of reinstatement, the labour dispute resolution body orders the employer to compensate the employee for the period of compelled absence from work from the termination till the reinstatement.

As mentioned above[64], reinstatement at the employee's wish has not justified itself in practice, and should be possible only if the employer accepts further cooperation between the parties.

(7) Penalties

No liability under penal law can be applied to employers for unlawful dismissal due to breach of duties, loss of trust, or an indecent act or act of corruption.

(8) Collective agreements

Collective agreements do not usually regulate the procedure for dismissal due to breach of duties, loss of trust, or an indecent act or act of corruption. Collective agreements sometimes list the severe breaches of duties by employees in which case a summary dismissal is allowed.

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

(1) Substantive conditions

According to TLS § 86, an employer may dismiss an employee for reasons pertaining to the employee's capacities or personal attributes in the following cases:

1) upon unsuitability of an employee for his or her office or the work to be performed due to professional skills or for reasons of health;
2) due to unsatisfactory results of a probationary period;
3) due to the long-term incapacity for work of an employee.

[63] See paragraph 3(4) for greater detail.
[64] See 3(4).

When a dismissal is due to reasons pertaining to an employee's capacities or personal attributes, the advance notice of termination and the payment of compensation depend on the ground for dismissal.

Below is an explanation of the content of the grounds for dismissal arising from an employee's capacities or personal attributes.

1. Unsuitability of an employee

An employer may dismiss an employee due to his or her unsuitability if the employee's abilities, skills, knowledge, etc. are inadequate for duly performing his or her duties. According to TLS § 101 (1), an employer may dismiss an employee due to his or her unsuitability on the following grounds:

1) insufficient working skills. A dismissal may be due to insufficient working skills if this prevents the employee from performing his or her duties;
2) insufficient language or communication skills. A dismissal may be due to insufficient language or communication skills if this prevents the employee from performing his or her duties;
3) deterioration of health. The deterioration of the health of an employee may be the reason for dismissal if it is of a continuous nature and hinders or precludes continuation in his or her current position. The conformity of the health of the employee is determined by the decision of a doctor (TLS § 101 (2) and (3));
4) the employee lacks a document which is a mandatory precondition for such work. This applies to documents proving the employee's preparation for the relevant work (driving licence, qualification certificate, etc.), the existence of which may be checked if necessary;
5) the employee fails to develop his or her professional knowledge if this is necessary for the performance of his or her work and if the employer has provided the employee with the opportunity therefor.

With a view to ensuring the equal treatment of employees, it is no longer possible from 4 March 2006 to terminate employment contracts due to an employee's age (earlier, employers could dismiss persons who attained 65 years of age and were entitled to state retirement pension). If an employee is not able to perform his or her duties due to his or her age, then the employee is essentially unsuitable and the employer can dismiss him or her on this ground.

An employer evaluates the conformity of the professional skills of the employee to the office to be held or the position to be filled (TLS § 101 (3)). Judicial practice has taken the view that an employer can decide which circumstances indicate that an employee's abilities, knowledge, skills and proficiency do not correspond to the position. In the case of a dispute, the employer must be able to prove the circumstances of the employee's unsuitability.

An employer is required to organise, at the expense of the employer, vocational training if the employer changes the requirements for professional skills necessary for performance of the work (TLS § 49 (5^1)). The termination of an employment contract due to an employee's unsuitability thus depends on whether the employer had organised training and on the results of the training.

According to TLS § 101 (4), an employer has to offer another position to the employee before dismissal due to unsuitability[65]. According to labour dispute resolution

[65] As opposed to clause 8 of ILO R166, the TLS does not oblige an employer to give the employee instructions and a written warning prior to dismissal.

bodies, an employer has to offer to an employee a position for which the employee is suitable. Another position is to be offered in any of the employer's enterprises.

The employer is required to give the employee at least one month's prior notice before dismissal due to the employee's unsuitability. The written notice of termination must reason the need for the dismissal (TLS § 87 (1) 4) and (1^1)). According to TLS § 87 (2), a failure to give advance notice of dismissal does not render the dismissal unlawful, but the employer is required to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice.

2. Unsatisfactory results of a probationary period

According to TLS § 33, an employment contract may prescribe a probationary period in order to confirm that the employee has the necessary health, abilities, suitable social skills and professional skills to perform the work agreed on in the employment contract. A probationary period must not exceed four months (subparagraphs 1 and 2).

According to TLS § 34 (1), the results of probationary periods are determined by employers. If an employer is not satisfied with the results of a probationary period, the employer has the right to terminate the employment contract.

The results of a probationary period may be unsatisfactory for the same reasons that constitute the grounds for dismissal due to an employee's unsuitability. The only difference is that in order to dismiss an employee due to the unsatisfactory results of a probationary period, the unsuitability of the employee must be established within the probationary period. An employee cannot be dismissed on this ground after the end of a probationary period. Then he or she can be dismissed due to unsuitability.

The practice of labour dispute resolution bodies shows that in the event of a dispute, an employer has to prove why the results of the probationary period were unsatisfactory.

An employer is not required to give an employee advance notice of dismissal due to the unsatisfactory results of a probationary period.

3. Long-term incapacity for work

TLS § 107 (1) provides that an employer may dismiss an employee if:

1) the employee has been absent from work due to incapacity for work for more than four consecutive months[66];
2) the employee has been absent from work due to incapacity for work for more than five months during a calendar year[67].

An employer must maintain the job of an employee who is temporarily incapacitated for work due to a work injury until his or her recovery or determination of his or her disability (TLS § 107 (2)).

An employer may dismiss an employee due to long-term incapacity for work only during the time of the incapacity. When an employee has healed and started working again, dismissal on this ground becomes impossible even though he or she was previously absent form work for a long time.

According to TLS § 87 (1) 5), an employer has to notify an employee not less than two weeks in advance of the dismissal in the case of long-term incapacity for work. In a written notice of dismissal, the employer is required to reason the need for the dismissal

[66] More than eight consecutive months in the case of tuberculosis.
[67] More than eight months during a calendar year in the case of tuberculosis.

(TLS § 87 (1^1)). According to TLS § 87 (2), a failure to give advance notice of a dismissal does not render the dismissal unlawful, but the employer is required to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice.

(2) Procedural requirements

1. Unsuitability of an employee

Dismissal due to an employee's unsuitability is prohibited if the employee is pregnant or raises a child under three years of age. Before dismissing a representative of employees or a minor, an employer has to obtain a labour inspector's consent[68].

According to TLS § 87 (3), an employer is required, at the same time when the employer notifies an employee of dismissal, to give advance notice thereof in writing to the organisation or person representing the employee and to present the reason for the dismissal and communicate the measures taken to provide work for the employee.

2. Unsatisfactory results of a probationary period

Before dismissing a pregnant woman or a person who is raising a child under three years of age or a representative of employees due to the unsatisfactory results of a probationary period, the employer is required to obtain a labour inspector's consent[69]. As according to TLS § 33 (5) 1), a probationary period is not applied to minors, it is not possible to dismiss minors on the ground of unsatisfactory results of a probationary period.

3. Long-term incapacity for work

An employee is not allowed to dismiss an employee due to the employee's long-term incapacity for work if the employee is pregnant or raises a child under three years of age[70].

According to TLS § 87 (3), an employer is required, at the same time when the employer notifies an employee of dismissal, to give advance notice thereof in writing to the organisation or person representing the employee and to present the reason for the dismissal and communicate the measures taken to provide work for the employee.

(3) Effects of the dismissal

In the event of dismissal due to an employee's unsuitability, the employer must pay compensation in the amount of at least the average monthly wages to the employee (TLS § 90 (1) 2)). Non-payment of the compensation does not render the dismissal unlawful.

When the ground for dismissal is the unsatisfactory results of a probationary period or the employee's long-term incapacity for work, the employer has no obligation to pay compensation.

Whether a dismissal is due to unsuitability, unsatisfactory results of a probationary period or long-term incapacity for work, the employee is entitled to unemployment

[68] See also 2(5).
[69] See also 2(5).
[70] See also 2(5).

insurance benefit according to the general procedure provided by the TKindlS. Dismissal on these grounds does not affect a person's entitlement to pension insurance benefits. According to RaKS § 6 (3), the health insurance cover of employees terminates two months after termination of the employment relationship.

(4) Remedies

Disputes arising from dismissals due to the unsuitability of an employee, unsatisfactory results of a probationary period or an employee's long-term incapacity for work are settled according to the general rules for settling individual labour disputes[71].

(5) Suspension of the effects of the dismissal

It is not possible according to the legislation to suspend the effects of dismissal due to an employee's unsuitability, unsatisfactory results of a probationary period or long-term incapacity for work.

(6) Restoration of employment

If an employee believes that he or she has been dismissed unlawfully, the employee may refer to a labour dispute resolution body and demand that the dismissal be declared unlawful and he or she be reinstated in his or her position (TLS § 117 (1))[72].

(7) Penalties

No liability under penal law can be applied to the employer for dismissal the grounds of an employee's unsuitability, unsatisfactory results of a probationary period or long-term incapacity for work.

(8) Collective agreements

Collective agreements do not regulate the procedure for dismissal on the ground of an employee's unsuitability, unsatisfactory results of a probationary period or long-term incapacity for work.

5.4. Dismissal for economic reasons

(1) Substantive conditions

According to TLS § 86, the following economic reasons can serve as the grounds for dismissal:
1) liquidation of the enterprise, agency or other organisation;
2) declaration of bankruptcy of the employer;
3) lay-off of employees.

When a dismissal is due to the liquidation of the enterprise, agency or other organisation and a lay-off of employees, the employer has to observe the notice period prescribed by law. Whatever the specific grounds for dismissal due to economic

[71] See paragraph 3(4) for greater detail.
[72] See paragraph 5.2(6) for greater detail.

reasons, employees are entitled to compensation; in the event of the employer's bankruptcy, the Estonian Unemployment Insurance Fund pays the compensation.

If an employer dismisses a large number of employees due to economic reasons, so that it constitutes collective dismissal within the meaning of TLS § 89[1], the employer must follow the procedural rules of collective dismissal[73].

Lay-off of employees is regulated in the greatest detail of all the grounds for dismissal due to economic reasons. As the rules are exact, it is easy for employers to err against the requirements of law upon a lay-off of employees. If an employer cannot prove that the lay-off is due to the reasons specified in the TLS or has not complied with the employees' selection criteria upon the lay-off, or has not offered the employees another position prior to dismissal, the lay-off is unlawful. That is why employers often try to avoid lay-offs and terminate employment contracts by mutual agreement in a lay-off situation, paying the employees a compensation for termination in an amount equal to a lay-off compensation. The regulation on lay-offs should be made more flexible.

Below is an explanation of the content of the grounds for dismissal arising from economic reasons.

1. Liquidation of the enterprise, agency or other organisation

Dismissal due to the liquidation of the enterprise, agency or other organisation essentially means dismissal due to the dissolution of the legal person[74]. Dismissal on this ground is possible in the event of the dissolution of legal persons in both private law and public law. It is important that the activity of the legal person is completely terminated and no new legal person is formed on its basis (TLS § 97 (1))[75].

The general procedure for dissolution of legal persons is set out in the TsÜS (§§ 39 ff), according to which a legal person is liquidated upon its dissolution. Dismissal is organised by the liquidators — usually the members of the management board of the legal persons or a substituting body. The detailed rules for dissolving legal persons are established by the laws regulating specific types of legal persons (companies, non-profit associations, etc.).

Employment contracts cannot be terminated on the ground of liquidation of an enterprise as an economic entity, because an enterprise is not an employer (a legal person). When an enterprise is wound up, the employees are laid off.

An employer is required to give at least two months' prior notice of dismissal due to the liquidation of the legal person. The written notice must reason the need for the dismissal (TLS § 87 (1) 1) and (1[1])). According to TLS § 87 (2), a failure to give advance notice does not render a dismissal unlawful, but the employer is required to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice.

2. Bankruptcy of the employer

According to TLS § 97 (2), upon the declaration of bankruptcy of an employer, the trustee in bankruptcy has the right to dismiss the employees after the bankruptcy order

[73] See paragraph 5.4(3) for greater detail.
[74] By analogy, dismissal is possible on this ground also if an employer who is a natural person terminates his or her work.
[75] Otherwise, it would constitute a transfer of the enterprise, which is not a lawful ground for dismissal (TLS § 6[1]).

is issued[76]. According to § 1 (1) of the Bankruptcy Act[77], bankruptcy means the insolvency of a debtor declared by a court judgment. A court declares bankruptcy usually on the basis of a creditor's petition if the debtor is permanently insolvent.

When declaring bankruptcy, the court appoints a trustee in bankruptcy, who will carry out the functions of the employer amongst other things. Depending on the creditors' interests, the trustee in bankruptcy may continue the employment relationships with the employees or dismiss them due to bankruptcy[78]. The trustee in bankruptcy is not required to give the employees prior notice of dismissal.

Judicial practice has taken the view that the later cancellation of a bankruptcy order does not render dismissals, because at the time of dismissal, there were grounds that allowed for the dismissal. However, it is found that in the event of cancellation of a bankruptcy order, dismissed employees may, within six months after the entry into force of the order refusing to grant the bankruptcy petition, request the employer to enter into a new employment contract if the employer has vacant positions[79].

3. Lay-off of employees

According to TLS § 98 (1), an employer may lay off an employee if:
- the work volume decreases (e.g. the number of orders is cut);
- the employee's position is made redundant due to reorganisation of production or work;
- two employees have the right to work on the same position (e.g. the employee who formerly worked in this position is reinstated in employment);
- in other cases which require termination of the work (e.g. the employer cannot supply the employee with work under the agreed conditions).

According to MTS § 55 (1), crew members can also be laid off if a ship ceases to be seaworthy or in the event of a shipwreck.

In the event of a dispute, the employer has to prove that the employee's lay-off was caused by the reasons stipulated by law.

When there is a reason for a lay-off as stipulated by law, the employer has to identify which employees can be laid off. According to TLS § 99, upon dismissal due to lay-offs, the representatives of employees (shop stewards, working environment representatives, members of the working environment council, elected representatives of trade unions) have a preferential right to remain at work. After that, the employer is required to prefer those who have demonstrated better work results, have been more successful in their work and have benefited the employer more by their work. In the event of a dispute, the employer has to be able to prove why an employee who remained at work is better than a laid-off employee.

If employees cannot be classified by work results, attention is paid to circumstances pertaining to their capacities or personal attributes. In the case of equal work results, preference is given to employees who:
- have contracted an occupational disease or received a work injury by the fault of the employer; or
- have worked for the employer longer; or
- have dependants; or

[76] By analogy, dismissal is possible on this ground also in the event of the abatement of an employer's bankruptcy proceeding.
[77] Pankrotiseadus (Bankruptcy Act). Passed on 22 January 2003 – RT I 2003, 17, 95; 2006, 7, 42.
[78] The trustee may also terminate employment contracts on other lawful grounds if this is justified.
[79] TLS gives employees such a right if their contracts are terminated due to lay-off (§ 98 (3)).

- are developing their professional skills and expertise in an educational institution which provides special education.

All these circumstances have equal weight when assessing the employees.

Once the persons to be laid off have been selected, the employer has to identify if another position can be offered to them (TLS § 98 (2)). According to judicial practice, offering another position is to be linked to the lay-off, i.e. an employee has to be informed upon making the offer for another position that if the employee refuses that position, he or she will be laid off. An employer has to offer to an employee any position for which the employee is suitable. Another position is to be offered in any of the employer's enterprises. Recently, labour dispute resolution bodies have paid more attention to assessing whether the offer of another position was reasonable, taking into account all the circumstances.

According to TLS § 87 (1) 3), an employer is required to notify an employee of a lay-off:

- not less than two months in advance if the employee has been continuously employed by the employer for less than 5 years;
- not less than three months in advance if the employee has been continuously employed by the employer for 5 to 10 years;
- not less than four months in advance if the employee has been continuously employed by the employer for more than 10 years.

In the event of a shipwreck, the shipowner has the right to terminate the seafarer's contract of employment without giving the crew member prior notice. If a ship ceases to be seaworthy as a result of an accident, the shipowner must notify a crew member of the dismissal five days in advance (MTS § 55 (2) and (3)).

In a written notice of dismissal, the employer is required to reason the need for the dismissal (TLS § 87 (1^1)).

According to TLS § 87 (2), a failure to give advance notice of dismissal does not render the dismissal unlawful, but the employer is required to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice.

(2) Procedural requirements

1. Liquidation of the enterprise, agency or other organisation

Before dismissing a pregnant woman or a person who is raising a child under three years of age due to the liquidation of the legal person, the employer is required to obtain a labour inspector's consent[80].

According to TLS § 87 (3), an employer is required, at the same time when the employer notifies an employee of his or her dismissal, to give advance notice thereof in writing to the organisation or person representing the employee and to present the reason for the dismissal and communicate the measures taken to provide work for the employee.

Upon dismissal due to the liquidation of the legal person, the employer is required to submit information regarding the released employees to the employment office of the residence of the employees not later than on the day after the employer notifies the employees of the dismissal (TLS § 88).

[80] See also 2(5).

2. Bankruptcy of the employer

Before dismissing a pregnant woman or a person who is raising a child under three years of age or a representative of employees due to the employer's bankruptcy, the employer is required to obtain a labour inspector's consent[81].

Upon dismissal due to the bankruptcy of the employer, the trustee in bankruptcy is required to submit information regarding the released employees to the employment office of the residence of the employees on the day after the termination of the employment contracts (TLS § 88)

3. Lay-off of employees

An employer is not allowed to terminate an employment contract due to lay-off if the employee is pregnant or raises a child under three years of age. Before dismissing an employees' representative[82] or a minor, the employer must obtain a labour inspector's consent[83].

According to TLS § 87 (3), an employer is required, at the same time when the employer notifies an employee of the dismissal, to give advance notice thereof in writing to the organisation or person representing the employee and to present the reason for the dismissal and communicate the measures taken to provide work for the employee.

Upon dismissal due to a lay-off, the employer is required to submit information regarding the released employees to the employment office of the residence of the employees not later than on the day after the employer notifies the employees of the dismissal (TLS § 88).

(3) Specific requirements for collective dismissal

Following Directive 98/59/EC, the TLS provides for additional procedural arrangements for collective dismissals due to economic reasons.

According to TLS § 89^1, collective dismissal is understood as termination of employment contracts on the initiative of the employer whereby the employment contracts are terminated due to the liquidation of a legal person, termination of work of an employer who is a natural person, declaration of bankruptcy of the employer or a lay-off of employees within thirty days, if:

1) an employer who employs up to 19 employees terminates the employment contracts of at least 5 employees;
2) an employer who employs 20 to 99 employees terminates the employment contracts of at least 10 employees;
3) an employer who employs 100 to 299 employees terminates the employment contracts of at least 10 per cent of the employees;
4) an employer who employs at least 300 employees terminates the employment contracts of at least 30 employees.

[81] See also 2(5).
[82] Although employees' representatives have a preferential right to remain at work in the event of a lay-off pursuant to TLS § 99 (1), he or she may be laid off if it is not possible to prefer him or her to anyone.
[83] See also 2(5).

In the event of collective dismissal, it should be kept in mind that at the same time, the individual employment contracts between the employer and each of the employees are terminated, and this is subject to specific procedural rules[84].

According to TLS § 89^2 (1), prior to collective dismissal, the employer must consult with the representatives of the employees with the aim to reach an agreement in the following issues: the possibility of avoiding the dismissal or reducing the number of dismissals, the measures to alleviate the consequences of the dismissal and ways to support the released employees in their search for work, re-training or in-service training.

The employer must supply, in a timely manner, the representatives of the employees, or in the absence thereof, the relevant employees with all necessary information concerning the intended collective dismissal. The employer is required to communicate, in writing, the following information: the reasons for collective dismissal, the employees the employer intends to dismiss, the number of employees in the enterprise, the period of time during which the intended dismissal will take place, and the bases for the calculation and payment of benefits to employees (TLS § 89^2 (2)).

According to TLS § 89^2 (3), during the consultations, the representatives of the employees have the right to meet with the representatives of the employer and submit, within the period of at least 15 days after the receipt of the written notice from the employer, their written proposals and opinions with regard to the dismissal.

For the intended collective dismissal, the employer must apply for the approval of the labour inspectorate by submitting an application indicating: the reasons for collective dismissal, the employees the employer intends to dismiss, the number of employees in the enterprise, the period of time during which the intended dismissal will take place, and the results of consultations with the representatives of employees. The labour inspectorate approves the collective dismissal if the employer has complied with the requirements provided in the TLS (TLS § 89^3 (1) and (4)).

According to TLS § 89^3 (5), upon collective dismissal, the employer shall commence the termination of employment contracts of the employees not earlier than 30 days after obtaining the approval of the labour inspectorate[85].

(4) Effects of the dismissal

According to TLS § 90 (1) 1), the amount of compensation paid to employees upon dismissal due to the liquidation of a legal person, bankruptcy of the employer and lay-off of employees depends on the length of work of the employees for the employer. Employers are required to pay the following compensation to employees upon their dismissal:

- compensation in the amount of two months' average wages to employees who have been continuously employed by the employer for up to 5 years;
- compensation in the amount of three months' average wages to employees who have been continuously employed by the employer for 5 to 10 years;
- compensation in the amount of four months' average wages to employees who have been continuously employed by the employer for more than 10 years;

Upon dismissal due to the employer's bankruptcy or abatement of bankruptcy proceedings, the Estonian Unemployment Insurance Fund pays compensation to the

[84] See 5.4(1) and 5.4(2) for greater detail.

[85] The representative of employees has the right to extend this term by up to 30 days if the problems related to the dismissal cannot be solved in time (TLS § 89^3 (6)).

employees (TLS § 90 (2)). According to TKindlS § 20, upon insolvency of an employer, the following shall be compensated to an employee:

- wages and holiday pay which were not received before the declaration of insolvency of the employer;
- compensation which was not received upon termination of the employment contract before or after the declaration of insolvency of the employer.

Thus, besides the compensation for dismissal, the Estonian Unemployment Insurance Fund also compensates the employees for wages and holiday pay which were not received. In total, an employee is paid up to three times the employee's average gross monthly wages but not more than three times the Estonian average gross monthly wages published by the Statistical Office (TKindlS § 20 (3)). If an employee's claims exceed three times the Estonian average monthly wages, the employee can file these claims in the bankruptcy proceedings according to the general procedure — employees' claims are not priority claims.

According to TKindlS § 16, in the event of collective dismissal[86] a part of the compensation is paid to the employees by the Estonian Unemployment Insurance Fund, whereas the compensation payable by the employer is reduced by the amount of compensation paid by the Estonian Unemployment Insurance Fund. Upon collective dismissal, an employee has the right to receive a benefit from the Estonian Unemployment Insurance Fund as follows:

- in the amount of one month's average wages of the employee, if the employee has been continuously employed by the employer for up to 5 years;
- in the amount of 1.5 times one month's average wages of the employee, if the employee has been continuously employed by the employer for 5 to 10 years;
- in the amount of two months' average wages of the employee, if the employee has been continuously employed by the employer for over 10 years.

Non-payment of the compensation does not render the dismissal unlawful.

Whether a dismissal is due to the liquidation of a legal person, the employer's bankruptcy or lay-off of employees, the employee is entitled to unemployment benefit under the general procedure provided in the TKindlS. Dismissal on these grounds does not affect a person's entitlement to pension insurance benefits. According to RaKS § 6 (3), the health insurance cover of employees terminates two months after termination of the employment relationship.

(5) Remedies

Disputes arising from dismissal due to the liquidation of a legal person, the employer's bankruptcy or lay-off of employees are settled according to the general rules for settling individual labour disputes[87].

(6) Suspension of the effects of the dismissal

It is not possible according to the legislation to suspend the effects of dismissal due to the liquidation of a legal person, the employer's bankruptcy or lay-off of employees.

(7) Restoration of employment

[86] If the dismissal is due to the liquidation of a legal person or termination of the operations of an employer who is a natural person or lay-off of employees.

[87] See paragraph 3(4) for greater detail.

According to TLS § 98 (3), an employee whose employment contract has been terminated due to a lay-off may demand reinstatement in his or her position if the employer creates new jobs or if the existing jobs become vacant after the lay-off. In such case, a new employment contract is made. An employee can demand the entry into a new employment contract within six months after his or her dismissal.

If an employee believes that his or her dismissal was unlawful, the employee may refer to a labour dispute resolution body and demand that the dismissal be declared unlawful and he or she be reinstated in his or her position (TLS § 117 (1))[88].

(8) Administrative or criminal penalties

It follows from AÜS § 26^3 that an employer who violates the requirement to inform or consult the trade union upon collective dismissal will be punished by a fine of up to 100 fine units[89]. This regulation does not concern other representatives of employees.

(9) Collective agreements

Collective agreements do not regulate the procedure for dismissal due to the liquidation of a legal person and bankruptcy of the employer. Collective agreements sometimes list the persons who have the preferential right to remain at work in the event of a lay-off. Collective agreements also sometimes set forth the notice periods for lay-offs and amounts of compensation, if these are more favourable to the employees compared to those provided by law.

(10) Special arrangements

(a) Insolvency

According to TLS § 86, the declaration of an employee's bankruptcy is one of the three economic grounds for dismissal[90].

(b) Transfer of the firm

As employment contracts are automatically transferred to the acquirer of the firm when the firm is transferred, neither the transferor nor the transferee can terminate employment contracts by reason of the transfer (TLS §§ (6) and (6^1)). This provision does not preclude the termination of employment contracts on other grounds (mutual agreement, the employee's conduct or unsuitability, etc.), if a legal basis exists. If there is a need to reduce labour force as a result of a transfer, employees can be laid off.

(c) Closure of the business

According to TLS § 86, the liquidation of a legal person is one of the three economic grounds for dismissal[91]. Employment contracts cannot be terminated on this ground

[88] See paragraph 5.2(6) for greater detail.
[89] According to § 47 of the Penal Code, a fine unit is the base amount of a fine and is equal to sixty kroons (~3.75 euros) (Karistusseadustik (Penal Code). Passed on 6 June 2001 – RT I 2001, 61, 364; 2006, 7, 42). The labour inspectorate may impose a fine on an employer for violating the AÜS.
[90] See 5.4(1)–5.4(4) for greater detail.
[91] See 5.4(1)–5.4(4) for greater detail.

when the business (enterprise) as an economic entity is closed, because a business is not a legal person. When an enterprise is wound up, the employees are laid off.

6. Resignation by the employee

(1) Substantive conditions

If an employee wishes to resign, he or she must give written notice to the employer, whereas the request to terminate the employment contract must be expressed unconditionally (TLS § 72 (1)). Judicial practice has taken the view that an employer can prove the submission of an employee's application to resign using all the evidence permitted, including the testimonies of witnesses.

An employee may leave work after the period of advance notice has passed, i.e. the employer cannot prevent him or her from leaving by not formalising the termination of the employment contract[92]. If the employee continues work after the period of advance notice has passed, neither of the parties can terminate the employment contract on the basis of the same application (TLS § 83).

An employee does not have to reason resignation, unless he or she has a proper cause that entitles him or her to a shorter period of advance notice.

The TLS provides for different rules for resignation depending on the ground for resignation and the type of contract. This regulation is divided as follows:

1) termination of open-ended employment contracts;
2) termination of fixed-term employment contracts;
3) termination of employment contracts due to the employer's breach of contract.

Following is an explanation of the content of all these termination options.

1. Termination of open-ended employment contracts

According to TLS § 79, an employee shall give an employer at least one month's advance notice of termination of his or her open-ended employment contract.

During a probationary period, an employee has the right to resign if the employee gives the employer three calendar days' notice.

If there is a proper cause for termination of an employment contract (e.g. illness, need to care for a family member who is ill, or commencement of studies, which hinders continuation of work) or if the employee is a woman who raises a child under three years of age[93], the employee must give five calendar days' notice of resignation.

2. Termination of fixed-term employment contracts

As mentioned above[94], the employee and employer may terminate a fixed-term contract in the same way as an open-ended employment contract. As the only exception, TLS § 80 (5) provides that if a fixed-term employment contract is entered into because the employment contract provides for a special benefit for the employee (TLS § 27 (2) 5)), the employee may resign prematurely only if he or she is prevented from continuing the

[92] For the details of written formalisation of termination, see paragraph 7(3).
[93] With a view to the equal treatment of employees, this provision should be applied by analogy also to men.
[94] See 2(3) and 3(1).

work by an illness, incapacity for work or the need to care for an incapacitated family member.

Under TLS § 80, the notice periods for termination of fixed-term employment contracts are shorter for employees compared to open-ended contracts. If an employee wishes to terminate a fixed-term employment contract before the expiry of the term of the contract, the employee is required to give the employer at least two weeks' advance notice, if the term was longer than one year, and at least five days' notice if:

- the contract was made for a period of up to one year; or
- there is a proper cause for termination (e.g. illness, need to care for a family member who is ill, or commencement of studies, which hinders continuation of work); or
- the employee who wishes to terminate the contract is a woman raising a child under three years of age[95].

3. Termination of employment contracts due to the employer's breach of contract

Pursuant to TLS § 82 (1), an employee may resign due to the employer's breach of contract in the following cases:

- failure to comply or unsatisfactory compliance with the terms of the contract by the employer;
- fundamental deterioration of the working conditions due to the transfer of the enterprise[96];
- changes in working conditions in connection with reorganisation of production or work[97];
- the introduction of part-time working time or holiday with partial pay due to a temporary decrease in work volume or orders[98].

An employee must give the employer five calendar days' advance notice of resignation due to the above reasons (TLS § 82 (2)).

According to labour dispute resolution bodies, resignation on the ground of the employer's breach of contract is lawful if the employer was in fundamental breach of the contract. What constitutes fundamental breach depends on the circumstances of the breach in each specific case. For example, delay in the payment of wages, not allowing an employee to take a holiday, etc. may constitute a fundamental breach.

In addition to the TLS regulation, the MTS lists the fundamental breaches of an employer on which ground a crew member may resign. According to MTS § 59 (1), a crew member has such a right if:

1) the ship on which the crew member is required to work is not seaworthy and if the master fails to perform his or her duty to verify the seaworthiness of the ship and intends to leave port;

[95] With a view to the equal treatment of employees, this provision should be applied by analogy also to men.

[96] This provision has no great practical relevance, since the working conditions of employees must not deteriorate as a result of a transfer.

[97] According to TLS § 64, employers have the right to amend the bases for remuneration of employees and work regimes upon reorganisation of production or work according to the procedure provided by law. Employers have to accept these changes or they can resign due to the employer's breach.

[98] Under TLS § 68, upon a temporary decrease in work volume or orders, an employer has the right to establish part-time working time for an employee or to send the employee on a holiday with partial pay pursuant to the procedure provided by law. Employers have to accept these changes or they can resign due to the employer's breach.

2) the living conditions of the crew on the ship endanger the life or health of the crew member and the shipowner fails to apply measures necessary to improve the situation;
3) the crew member has been subjected to abuse on the ship and the master has been unable to provide him or her with protection although the master has been notified of the relevant facts;
4) the ship loses the right to fly the Estonian flag;
5) his or her seafarer's contract of employment has been entered into for a particular voyage and the destination of the ship is changed;
6) after commencement of employment on the ship it becomes evident that the ship may be subjected to the authority of a foreign power or be damaged in a war zone, or that the danger thereof has increased significantly;
7) after commencement of employment on the ship it becomes evident that the port of destination has been declared to be an area suffering from an epidemic.

When an employment contract is terminated due to the employer's breach, problems may arise from the question of what will happen if the employer does not agree to the termination and does not formalise the termination in the employment contract[99]. According to labour dispute resolution bodies, an employer can, in such case, formulate the termination on the employee's initiative and then dispute the termination in a labour dispute resolution body, or terminate the contract itself on the ground of the employee's conduct (breach of duties). As the formulation of termination causes problems also in the case of termination on other grounds[100], it would be reasonable to consider abolishing the formal requirement for termination.

(2) Desertion of the post

If an employee does not come to work or deserts the post without filing an application, this constitutes a breach by the employee and the employer may dismiss him or her due to the employee's conduct (breach of duties). Such termination is not resignation, since the employee has not filed a relevant written application.

(3) Procedural requirements

As stated above[101], an employee has to give the employer written advance notice of resignation. According to practice, an employee may send the resignation application to the employer by registered letter.

(4) Effects of the resignation

As a rule, an employer is not required to pay compensation to a resigned employee. The employer has to pay compensation only if the resignation is due to the employer's breach:
- in the event of fixed-term contracts — in the amount of the employee's average wages until the resignation, but not exceeding two months' average wages;
- in the event of open-ended contracts — in an amount of the employee's two monthly wages (TLS § 82 (2)).

[99] For the details of written formalisation of termination, see paragraph 7(3).
[100] See e.g. 3(1).
[101] See 6(1).

According to TKindlS § 6 (3) 1), an insured person is not entitled to unemployment insurance benefit if his or her employment contract was terminated on the employee's initiative, unless the termination was caused by the employer's breach of contract. Resignation does not affect a person's entitlement to pension insurance benefits. According to RaKS § 6 (3), the health insurance cover of employees terminates two months after termination of the employment relationship.

(5) Remedies

Disputes arising from resignation are settled according to the general rules for settling individual labour disputes[102].

(6) Compensation to the employer

Upon an employee's resignation, the employer can file the following claims against the employee:

- if the employee has left prior to the expiry of the term for advance notice, the employer may demand compensation in the amount of the employee's average daily wages for each working day short of the term for advance notice (TLS § 84 (2));
- if the employee ceases employment without filing an application, the employer has the right to demand compensation from the employee in the amount of his or her one month's average wages (TLS § 118 (1));
- if the employee has entered into an employment contract for a fixed term with special benefits and ceases employment without a proper cause[103], the employer has the right to demand the return of that which was received under the employment contract and compensation in the amount of the employee's three months' average wages (TLS § 118 (2))[104].

(7) 'Contrived' resignations

There is no regulation on 'contrived' resignations.

(8) Resignation for proper cause

An employee does not have to reason resignation, unless he or she has a proper cause that entitles him or her to a shorter period of advance notice[105]. Amongst other things, resignation must be reasoned if it is due to the employer's breach of contract.

(9) Collective agreements

The procedure for resignation is usually not regulated by collective agreements.

[102] See paragraph 3(4) for greater detail.
[103] See paragraph 6(1) for greater detail.
[104] The employee is under the same obligation if the employment contract is terminated for reasons arising from the employee's capacities or personal attributes or conduct, except for the employee's long-term incapacity for work.
[105] See paragraph 6(1) for greater detail.

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

(1) Non-competition agreements and confidentiality agreements

According to TLS § 50 6), an employee is required to maintain the business and production secrets of the employer and not compete with the employer, including not working for a competitor of the latter without the permission of the employer, if such duties are prescribed by the employment contract. The employee has such duties also after termination of the employment contract if the parties entered into such an agreement and the employer paid special remuneration or provided other compensation to the employee for performance of such duties.

It follows that the obligations to maintain business and production secrets and not compete with the employer, which apply both at the time and after the termination of the employment contract, have to be agreed on in writing in the employment contract.

Since the TLS only superficially regulates non-competition agreements and confidentiality agreements, the relevant obligations of employees are specified in employment contracts. Employment contracts usually define the employer's competitors[106], competing activities, and business and production secrets.

If the non-competition agreement and confidentiality agreement apply after the termination of the employment contract, the employment contract sets forth the term of validity of these restrictions (usually one to two years) and the procedure for payment of special remuneration to the employee. In practice, the special remuneration is usually included in the employee's salary during the term of the contract. Although such method of remuneration frequently fails to meet its goal of ensuring an income for the employee for the time after the termination, labour dispute resolution bodies have accepted this method of remuneration. However, it is found that the amount of the special remuneration for observing the non-competition agreement must be fair and compensate for the employee's limited choice of a job.

Since the TLS does not provide for employees' liability for breaches against non-competition agreements or confidentiality agreements, this issue also needs to be regulated by the employment contract. In practice, the employee's liability is usually stipulated in the form of a contractual penalty, the amount of which depends on the special remuneration or the average monthly wages paid to the employee.

For the clarity of the employees' and employers' rights and obligations, the employees' prohibition on competition and the obligation to keep business and production secrets should be regulated by law in much greater detail.

(2) Agreements to the effect that the employee will not terminate the contract during a certain period

The TLS does not regulate prohibitions on the termination of employment contracts during a certain period which may be agreed on in employment contracts. However, TLS § 80 (5) provides that if a fixed-term employment contract is entered into because the employment contract provides for a special benefit for the employee (TLS § 27 (2) 5)), the employee may resign prematurely only if he or she is prevented from continuing the work by an illness, incapacity for work or the need to care for an incapacitated

[106] Competitors are usually understood as legal persons engaged in the same business as the employer.

family member[107]. A special benefit is understood as training at the employer's expense or other material benefit given by the employer to the employee.

In practice, employment contracts are rarely made for a fixed term for the reason that they provide for a special benefit. More frequently, open-ended employment contracts provide for the employee's obligation to work for the employer for a certain period after receiving the special benefit (usually one to three years).

(3) Formalisation of termination of an employment contract

According to TLS § 28 (1), employment contracts are, as a rule, made in writing[108]. According to TLS § 73 (1), employers must formalise the termination of employment contracts in writing in the employment contract, regardless of the ground of termination. An employer makes an entry of termination in the employment contract, with a statement of the ground for termination and reference to the section, subsection and clause of the TLS, the date of termination, payment of compensation to the employee or employer and return of that which was acquired under the contract.

The date of termination of an employment contract is usually the last date on which the employee is at work. If an employee has left work prior to the termination of the employment contract without authorisation, the employer terminates the employment contract with the employee as of the date following the date on which the employee left without authorisation (TLS § 73 (2) and (3))[109].

(4) The issuing of a reference and employment record book

According to TLS § 22 (2), at the request of an employee, the employer is required to provide the employee with a certificate showing in what capacity and for what length the employee has worked for the employer. At the request of the employee, a statement of the basis for termination with reference to the section, subsection and clause of the TLS shall be entered in the certificate.

Under TLS § 20 (2), employers are required to maintain employment record books for all employees. As a rule, the employment record book only contains data on the length of employment[110]. Until 1999, employment record books were necessary to prove the pension qualifying period. But as the pension qualifying period is now based on information about the social tax paid for the person, there is no need to keep employment record books.

An employer makes an entry in the employment record book of an employee regarding the termination of the employment contract, indicating the date of termination. An employer is required to return an employee's employment record book to the employee on the date of termination of the employment contract (TLS § 74 (1) and (2)). Upon withholding an employment record book, an employer is required to pay the employee his or her average wages for each day of delay in delivery of the employment record book until the employment record book has been delivered (TLS § 119 (2)).

As pursuant to ITVS § 8 (3), limitation periods do not apply to claims concerning the receipt of employment record books from employers, employees who have not

[107] See also 2(3), 6(1) and 6(6).
[108] An oral employment contract may be entered into for employment for a term of less than two weeks.
[109] About problems concerning the formalisation of the employment contract see e.g. paragraphs 3(2) and 6(1).
[110] Other information is entered in the book only at the employee's request.

received their employment record books from the employer after the termination of the employment contract often refer to labour dispute resolution bodies several months after the termination, claiming their average wages for withholding the employment record book. Since employment record books are irrelevant, the related liability of employers is unreasonably great, and judicial practice has taken the view that employment record books should be considered withheld only if an employer does not give an employee his or her book at the employee's request. The law should be amended in this respect and the requirement for keeping employment record books should be abolished.

(5) Full and final settlement

Upon the termination of employment contracts, no documents are formalised concerning the full and final settlement of claims for damage.

According to TLS § 74 (2), an employer is required to pay the final settlement (consisting of wages not received, holiday compensation[111] and compensation for termination[112]). Upon withholding a final settlement, an employer is required to pay the employee his or her average wages for each day of delay in payment of the final settlement, but not more than one month's average wages of the employee (TLS § 119 (2)).

[111] Unless the employee has used all his or her holiday by the time of termination.

[112] If compensation is provided for by law or agreed on in the employment contract or a collective agreement.

Appendix: Legislation on 'probationary periods'

Whether an employment contract is made for an unspecified term or a fixed term, the employee and employer may agree on the application of a probationary period. Once an employee has commenced work for an employer, a probationary period can no longer be introduced.

Under TLS § 33 (5), a probationary period cannot be applied to disabled persons who work in positions which are prescribed for them, and to minors.

The purpose of a probationary period is to confirm that the employee's health, knowledge, abilities, and skills conform to the requirements for the position or job (TLS § 33 (1)).

According to TLS § 33 (2), the maximum length of a probationary period is four months. A probationary period begins from the employee's commencement of work. The probationary period only covers the actual time of employment. Time during which an employment contract is suspended (for the time of the employee's illness, holiday, etc.) is not included in a probationary period (TLS § 33 (3)). In such case, the final term of the probationary period is postponed by the relevant period.

The employer assesses the results of a probationary period (TLS § 34 (1)); in the event of a dispute, the employer must be able to prove the circumstances of the employee's unsuitability (insufficient knowledge, skills, etc.). If the results of the probationary period prove unsatisfactory, the employer may dismiss the employee without prior notice and without compensation (TLS § 102).

An employee has the right to resign during a probationary period by giving the employer three calendar days' notice (TLS § 79 (1)).