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EMPLOYMENT LAW SEMINAR

Basic Principles of Cypriot Employment Law

CYHRMA
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Limassol

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BASIC PRINCIPLES OF EMPLOYMENT LAW

- The Cypriot Employment Law purports to protect the employee
- Its provisions form part of a social policy and it is not of financial nature
- The burden of proof lies on the employer
- It is characterized by strict prohibitive terms
- The Redundancy Fund is established
- The possibility of appeal is limited
- Summary proceedings
- Simplicity of proceedings

THE INDUSTRIAL DISPUTES COURT

The Industrial Disputes Court was established by article 12 of the Annual Leave with Pay Law, Law **8/1967,** as amended

It has sole jurisdiction on:

- All industrial disputes
- All industrial disputes referred to by the Minister of Labour either by consent of the parties or collective agreements or settlement of disputes by arbitration
- All independent claims arising out of the contract of employment including claims for annual leave, wages, bonus, 13th salary and any other claim arising out of law, regulation, collective agreement and custom

THE INDUSTRIAL DISPUTES COURT

For the year 2012 the legal interest has been set at **5,5% from the date of filing the Application** to the Industrial Disputes Court, or in cases of redundancies **6 months from the date of termination**.

Application to the Court **is submitted within 12 months** from the date on which the cause of action arises (Article 12 (10^{A}) Law 8/1967).

In case of Redundancy, the Application to the Court **is submitted within 9 months** from the date which the Redundancy Fund has replied with regard to the redundant staff (Article 12 (10^{A}) Law 8/1967).

Any judgment of the Industrial Disputes Court is subject to Appeal at the Supreme Court **within 42 days** from the date of the judgment.

THE CYPRIOT LEGAL FRAMEWORK

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Main Legislation:

- The Termination of Employment Law, Law 24/67, as amended
- The Collective Redundancies Law, Law 28(I)/2001, as amended
- The Organization of Work Time Law, Law 63(I)/2002, as amended
- The Protection of Maternity Law, Law100(I)/1997, as amended
- The Part Time Workers (Prohibition of Discrimination) Law, Law 76(I)/2002, as amended
- The Equal Treatment in the Employment and Work Law, Law 58(I)/2004, as amended
- The Equal Treatment of Men and Women in the Employment and Work and Vocational Training Law, Law 205(I)/2002, as amended

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Main Legislation :

- The Preservation and Safeguard of the Employees' Rights on the Transfer of Businesses, Facilities or Sections of Businesses Law of 2000, (Law 104(I)/2000), as amended;

- The Information of the Employee by the Employer of the Terms Governing the Contract or the Employment Relation Law, Law 100(I)/2000;

- The Protection of Wages Law, Law 35(I)/2007, as amended;

- The Annual Leave with Pay Law, Law 8/67, as amended.

THE CYPRIOT LEGAL FRAMEWORK

The law of the termination of employment consists mainly of the Termination of Employment Law, (Law 24/67), as amended and the Convention for the Termination of Employment of the International Labor Organization, which was ratified in Cyprus by Law 45/85

The Termination of Employment Law came into force on 1st February 1968. Article 5 provides exhaustively the reasons of lawful dismissal on behalf of the employer relating to the conduct of the employee. It also contains provisions for the establishment of the Redundancy Fund for the payment of employee dismissed due to redundancy.

THE CYPRIOT LEGAL FRAMEWORK

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REASONS FOR LAWFULL DISMISSAL (article 5, Law 24/67)

A. **When the employee fails to carry out his work in a reasonably satisfactory manner**

- The temporary incapacity for work due to illness, childbirth, injury or disease does not fall under this provision
- When an employer dismisses an employee for the above reason he must have in mind that the provision demands "reasonable efficiency" and not "utmost efficiency"
- Before dismissal under article 5 (a) is made the employer should give warnings to the employee regarding his efficiency to work giving him the chance to improve

THE CYPRIOT LEGAL FRAMEWORK

B. **When the employee is rendered redundant**

C. **Force majeure, act of war, civil insurrection, act of God or destruction of installations due to fire which was not the result of deliberate act or negligence on the part of the employer**

D. **Expiration of fixed term contract**

- The Industrial Disputes Court may decide that a fixed term contract or series of fixed term contracts be deemed as an indefinite one
- If the non-renewal of a contract is due to redundancy, the dismissed employee is entitled to payment from the Redundancy Fund
- Completion of the retirement age due to custom, law, collective agreement, employment regulation and other

THE CYPRIOT LEGAL FRAMEWORK

E. **When the employee shows such a conduct so as to give a right for dismissal without notice**

- Deliberate disobedience to legal or reasonable directions, complete disregard to fundamental terms of the employment contract and specifically the term that the employee must obey the directions of the employer. If not, there is a breach of fundamental terms of the employment contract

- There is no rule of law that determines the degree of the breach which justifies dismissal without notice

- Misconduct incompatible with the implementation of express or implied terms of the employment contract justifies dismissal without notice

- An isolated act of negligence or offence (misconduct) does not justify dismissal without notice unless the consequences are very serious

- Deliberate disobedience to lawful and reasonable directions of the employer justifies dismissal without notice

THE CYPRIOT LEGAL FRAMEWORK

F. **Without prejudice to the above mentioned reason (E) the following, inter alia, justify the dismissal of an employee without notice depending on the circumstances of each separate case:**

- Conduct of employee which makes it clear that the employer – employee relation is not reasonably expected to continue
- A serious offence of the employee during the course of his employment
- A criminal offence of the employee during the course of his employment without the express or implied agreement of the employer
- Improper behaviour of the employee in the course of his duties
- Serious and repeated violation or disregard of work regulations or other rules relating to the employment

G. **Voluntary resignation**

If the resignation is not due to constructive dismissal then a voluntary resignation does not give rise to a cause of action by the employee

THE CYPRIOT LEGAL FRAMEWORK

Article 6(1) of the Termination of Employment Law 24/67, as amended by Law 6/73, creates a legal rebuttable presumption according to which: ***«..... Termination of employment by the Employer is prima facie not based one of the grounds contained in Article 5 until the opposite is proven»*** meaning the reasons which do not provide the employee with a right of compensation

The onus is on the Employers to prove that the termination of the employment of the Applicant was based on redundancy under the provisions in Article 5(b) of the Law together with Article 18, which sets out the grounds for redundancy

REDUNDANCY

LEGAL GROUNDS FOR REDUNDANCY (Article 18, Law 24/67):

A. **When the employer ceases or intends to cease the business which the employee is employed at**

B. **When the employer proceeds to change the location the businesses where the employee is employed**

REDUNDANCY

C. **Because of a change in the operation of the business (modernisation, mechanisation, change in production methods or structural changes) of the employer which leads to a reduction of the necessary employees**

Relevant Case Law

Galatariotis Brothers Ltd –v- Paraskevi Grigora and others Civ.App. 10931, dated.18.12.2001:

«In circumstances like the present, in order for modernisation or restructuring or any other change to the business to be a legal ground for redundancy it must be of a certain degree in both extent and seriousness so as to shift the nature of the employee's duties or to make the redundant so that the only remaining solution is ***"reduction of the number of necessary employees"*** *as per Article 18(c)(i) of the Law.»*

REDUNDANCY

D. **Due to any change to the products or production methods or the necessary expertises of the employees of the employer's business**

E. **Due to departments becoming redundant**

F. **Difficulties in getting a market share or credit difficulties**

G. **Due to a reduction of orders or a reduction in the work of the business**

REDUNDANCY

A **method for establishing redundancy** was laid out in the case of *Hindle –v- Percival Boats Ltd (1969) 1All ER 836.*

According to this decision, in order to prove redundancy the real demands on the business need to be ascertained as well as whether these were reduced at the material time. Additionally, it must be ascertained whether the reduced demand is connected to the duties of the employee made redundant. If during this objective test it is found that the work of the employee has indeed been affected, then the employee will be considered redundant.

REDUNDANCY

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The Right to Redundancy Payments from the Redundancy Fund:

Law 212(I)/2002 inserted a provision according to which, starting from 01/01/2001, the employment of an employee, who is employed every year at the same employer with an average yearly employment term of at least 15 weeks, is considered to be continuous for the purposes of redundancy payments. In this case, only the weeks of real employment will be taken into consideration

REDUNDANCY

Cases where redundancy payments are not available (Articles 19 – 20, Law 24/67):

In the event that the employer is a registered company and the company transfers the employee to suitable employment at another company which is connected to the company he is employed at

If prior to the termination of employment another employer company in which the former employer is a main shareholder of or exercises substantial control over offers the employee suitable employment

Relevant Case Law:

Miltiades Ioannou v. 1. Vesta Holidays Ltd, 2. Redundancy Fund (2001) 1B, Α.Α.Δ. 909

REDUNDANCY

YEARS	WEEKS
2	4
3	6
4	8
5	10,5
6	13
7	15,5
8	18
9	20,5
10	23
11	26
12	29

YEARS	WEEKS
13	32
14	35
15	38
16	41,5
17	45
18	48,5
19	52
20	55,5
21	59,5
22	63,5
23	67,5
24	71,5
25	75,5

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REDUNDANCY

Redundancy Notice (Article 21 of Law 24/67):

The employer is obliged to notify the Minister of Labour of any intended redundancy **at least a month before realisation**

The publication notice must include the following:

(a) The probable number of employees which will be made redundant

(b) The affected department or departments of the business

(c) The positions, names and family obligations of the employees affected

(d) The ground for redundancy

REDUNDANCY

An employer that unreasonably omits to notify the Minister of Labour in relation to an intended redundancy is guilty of an offence and in the event of conviction will be liable to a fine not exceeding €854,30

The right of redundant employees to be re-hired (Article 22, Law 24/67):

An employer who wishes within 8 months from declaring personnel redundant to hire employees of the same expertise as those he/she declared redundant, then he/she **must give priority to the personnel formerly made redundant** while taking the needs of the business into consideration

COLLECTIVE REDUNDANCIES

This matter is regulated by the **Collective Redundancies Law, 28(I)/2001**

The term **«Collective Redundancies»** refers to terminations by the employer for one or more reasons, which do not have anything to do with the individual employees, which are made within a period of 30 days and involve a certain number of people as set out below:

(a) A minimum of 10 people, in businesses which employ 20-100 employees,

(b) A minimum of 10% of the total number of employees in businesses which employ 100-300 employees,

(c) A minimum of 30 people, in businesses which employ at least 300 employees

COLLECTIVE REDUNDANCIES

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Informing and Negotiating with Employees (Article 4, Law 28(I)/2001:

The employer is obliged to enter into timely negotiations with the representatives of the employees for the purpose of reaching an agreement in relation to the following issues:

(a) potential ways and means to avoid the mass redundancies or an effort to reduce the number of employees affected

(b) ways and means to reduce the consequences which will follow the redundancy, usually achieved by taking social measures with the purpose of rehiring or retraining the employees made redundant

COLLECTIVE REDUNDANCIES

The Obligation to Provide Information (Article 5, Law 28(I)/2001):

The employer is obligated during negotiations to provide the following:

(a) all relevant information to the representatives of the employees,

(b) to notify them in writing of the reasons for the programmed redundancies, the number and categories of the employees which are being made redundant and the number and categories of the employees which he/she normally employs,

(c) the period during which the redundancies will be made,

(d) the criteria which the employer will use in order to select the employees he will make redundant,

(e) the method of calculating any potential payments other than the legal payments which emanate from Law 24/67

COLLECTIVE REDUNDANCIES

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The Collective Redundancies Procedure (Article 6, Law 28(I)/2001):

The employer informs the Minister of Labour in writing as soon as possible of every programmed mass redundancy, providing all relevant information in relation to the impending redundancies which is mainly the reasons, the number of employees he/she normally employs at the business and the period during which the redundancies will be made

In circumstances where the mass redundancies are decided by the business controlling the employer, the fact that the business did not provide the employer with the necessary information does not amount to a defence for the employer

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Thank you

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