

Employee Dismissal

1. Dismissal

1) Definition: Dismissal occurs when an employer unilaterally terminates the employment contract with an employee and nullifies the working relationship.

2) It has the same legal nature as the termination of employment contract under the Civil Code (Article 658-663 of the Civil Code). Under the Civil Code, an employment contract without a predefined employment period can be terminated with a written notification by any party, and it takes effect after a month of notification period. However, allowing such freedom of unilateral dismissal to the employer means a loss of work to the employees, who are the economically disadvantaged. Therefore, the Labor Law, which pursues the warranty of three labor rights and equal footing for the workers and management, modifies the principle of the civil law and widely limits the freedom of dismissal.

3) The Labor Standard Act (hereinafter called “Act”) defines that an employer may not terminate an employee without a justifiable reason as a general limit for the dismissal (Section 1, Article 23 of the Act). Although there is no specific definition for the “justifiable reasons” in the same Act, its general content means that there exists a reason that would preclude the employer from maintaining the working relationship with the employee. A dismissal without a justifiable reason is certainly not valid and is subject to some amount of penalty (Article 107 of the Act).

The justifiable reason for the dismissal and the grounds for the disciplinary action at the time of the disciplinary dismissal must be substantiated by the employer. An employer may not terminate an employee during and 30 days after the leave of absence due to work-related injury or illness, as well as during and 30 days after a maternity leave. However, it is possible to terminate an employee during such periods with a temporary compensation (Article 84 of the Act) or in the event that a continuation of business is not possible as a result of inevitable circumstances such as natural disasters, etc (Article 23 of the Act). In addition, when an employer terminates an employee, the employer should notify the employee at least 30 days prior to the dismissal date or should pay the usual wage for at least 30 days. However, the employee may be terminated immediately in the event that a continuation of business is not possible as a result of inevitable circumstances such as natural disasters, etc. or when it is found that an employee intentionally caused a significant damage to the business or property (Article 26 of the Act).

2. Advance Notice of Dismissal

An employer shall give an advance notice to a worker at least thirty days before dismissal (including dismissal for managerial reasons). If the notice is not given thirty days before the dismissal, ordinary wages of more than thirty days shall be paid to the worker, except in cases, prescribed by the Ordinance of the Ministry of Employment and Labor, where it is impossible to continue business because of natural disasters, armed conflicts, or other unavoidable causes, or where worker has caused considerable difficulties to business, or damage to properties on purpose (Article 26 of The Labor Standards Act).

3. Disciplinary Action

1) Justifiable Reasons

The employer shall clearly stipulate reasons for disciplinary action related to company service regulations in the Rules of Employment or other appropriate document, before implementing disciplinary action. This regulation of disciplinary action shall satisfy the need for justifiable reason under the precondition that “an employer cannot discipline an employee without justifiable reason” from Article 23 (1) of the Labor Standards Act.

2) Disciplinary Process

a. Written notification of reasons for dismissal

An employer who wants to dismiss an employee should give written notice as to the cause for dismissal, the date of dismissal, etc. If the employer dismisses the employee without giving such written notification, the dismissal shall be rendered null and void under Article 27 of the Labor Standards Act.

b. Observation of disciplinary process

An employer shall observe the disciplinary process guidelines described in the Collective Agreement and Rules of Employment to guarantee fair implementation of disciplinary action and promote rational operation of the disciplinary system.

3) Concrete Examples for Disciplinary Dismissal

- a. Misrepresentation of educational background and career, concealment and falsification of information in the resume, etc.
- b. Poor work attitude such as being absent without notice, etc.
- c. Disobedience to ‘movement of personnel’ orders, such as relocation, change of job, or transfer to another company
- d. Disobedience to job-related instructions
- e. Use of violence against colleagues and superiors
- f. Misconduct in private life
- g. Prohibition against holding other jobs
- h. Employees convicted of criminal offenses
- i. Slander, sedation, disclosure of company secrets, etc. against the company

4. Dismissal for Managerial Reasons

1) Concept

Dismissals for managerial reasons are for purpose of reducing the number of employees because of organizational restructuring due to economic, industrial and/or technical changes. An employer who has violated the requirements and procedures for dismissal for managerial reasons, in accordance with Article 24 of the Labor Standards Act, shall be considered as having committed an unfair dismissal and be punished by imprisonment for not more than 5 years or a fine for compulsory performance of not more than 30 million

won is imposed.

2) Effect of Dismissal for Managerial Reasons

A dismissal with proper cause shall satisfy the following conditions. If these are satisfied, the employer can be exempt from legal responsibility as proper cause under the four conditions of Article 24(1).

- a. Urgent necessity in relation to the business
- b. Efforts were made to avoid dismissal
- c. Fair criteria for the selection of those persons subject to dismissal
- d. The employee representative is informed 50 days in advance and after consulting in good faith.

[Source: Bong Soo Jung, Korean Labor Law: Disputes & Resolutions, Joongang Economy]

3) Imposition of enforcement fines and penalties in the event of failure to comply with an unfair dismissal relief order (Revised content)

a. Delete the penal provisions for unfair dismissal (Article 30 (1) of the Act) (Article 110)

- Where the Labor Relations Commission fails to implement a remedy order for unfair dismissal, etc., penalties and enforcement fines are introduced accordingly
- The provisions on the prohibition of pre-natal and post-natal dismissal under Article 30 (2) require absolute protection from difficult situations, so the punishment provisions remain as they are now

b. New Compulsory Fees for Performance (Article 33-6)

- Relief order subject to compulsory performance money
 - Relief orders from the Regional Labor Relations Commission and the Central Labor Relations Commission
 - Imposition of enforcement fines on the decision of the Labor Relations Commission, even if the party raises an administrative lawsuit by raising an objection
- Authorized to impose compulsory performance charge
 - labor committee
 - Imposed amount and collection
 - Imposed twice a year up to two years with a limit of 30 million won
 - The type of violation subject to the imposition of enforcement fines, the amount according to the degree of violation, the return procedure, etc. shall be prescribed by Presidential Decree later
 - Types of violations: dismissal, leave of absence, suspension, transfer, salary reduction, and other punishment
 - Degree of violation: Compulsory amount of performance according to the degree of reasons attributable to the employer
 - Return Procedure: Return Procedure in Case of Rescission of Relief Order
 - Procedures for Imposing Compulsory Fees for Performance
 - Relief order → Implementation period of relief order → (notification of the parties) → Notice of imposition of enforcement fine → Imposition of enforcement fine → elapse of payment deadline → Urgent → Compulsory collection
 - Measures in case of non-payment of compulsory performance fee
 - Compulsory collection by example of disposition for arrears of national taxes (seizure → sale → liquidation)

c. New provisions for punishment (Article 113-2 and Article 113-3)

- As a penalty for those who fail to fulfill the finalized relief order, imprisonment for not more than one year or a fine of not more than 10 million won shall be imposed, but the right to file a complaint shall be held only by the Labor Relations Commission.
- The only reason why the Labor Relations Commission has the authority to file a

complaint is to operate in connection with the performance compulsory fee system if the original position is not performed.

d. Relationship between enforcement and punishment

- Penalties and enforcement penalties are introduced for the purpose of securing the effectiveness of the relief order, but penalties can be imposed on those who have not fulfilled the confirmed relief order, and enforcement fines can be imposed at both stages
- Therefore, penalties and enforcement fines can be imposed at the same time for those who fail to fulfill the confirmed relief order, but those who fail to fulfill the relief order will be imposed first when operating the system in the future, and penalties will be imposed if they do not follow suit.