

Employment and Industrial Relations Law

Termination of Employment

Lecturer: Dr Roselyn Borg

Date: 21 February 2023



Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES

Termination of Employment

- What could lead to termination of employment?



Reasons for Termination

- Probation
- Fixed Term Contracts
- Resignation
- Retirement
- Redundancy
- Good and Sufficient Cause



Probation

- 6 months or 1 year depending on position.
- A shorter period may be agreed by both parties.
- Do not give a reason.
- A week's notice is due if in employment for a continuous period of one month.



Fixed Term Contract

- If employer or employee decide to terminate before expiry of contract – a sum equal to half the wages is to be paid for the remaining period.
- Remember the 12 day rule.
- “full wages” or “wages” is to mean the wage payable to an employed person by or on behalf of his employer, excluding any remuneration for overtime, any forms of bonus any allowances, and remuneration in kind and commissions.



Resignation

- On receiving notice from the employee as aforesaid, the employer shall have the option either to allow the employee to continue to perform work until the period of notice expires or, at any time during the currency of the period of notice, to pay the employee a sum equal to the wages that would have been payable in respect of the unexpired period of notice.



Failure to give notice

If an employee fails to give notice – employee is to pay half wages for the period of notice.

If employer fails to give notice – employer is to pay a sum equal to the wages for the period of notice.



What are the notice periods?

By law or as stipulated in the contract.

By law:

- > 1 month but not more than 6 months – 1 week
- > 6 months but not more than 2 years – 2 weeks
- > 2 years but more than 4 years – 4 weeks
- > 4 years but not more than 7 years – 8 weeks
- > 7 years an additional week for every subsequent year up to a max of 12 weeks

Or longer periods as agreed in case of technical, administrative, executive or managerial posts.



Retirement

An employer may terminate the employment of an employee when the employee reaches retirement age as defined in the Social Security Act.



Redundancy

Any employee whose employment is terminated on grounds of redundancy shall be entitled to re-employment if the post formerly occupied by him is again available within a period of one year from date of termination of employment.



Redundancy

If such employee is re-employed he shall be re-employed on conditions not being less favourable than what he had, had his contract not been terminated.

If re-employed he shall be deemed to have continued his employment notwithstanding the termination.



Redundancy

Where an employer intends to terminate the employment of an employee on grounds of redundancy, he shall terminate the employment of that period who was engaged last in the class of employment affected by such redundancy.



NOT a Good and sufficient cause

Law lists what is not good and sufficient cause:

- That the employee at the time of the dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative;
- Except in the case of private domestic employee, that the employee no longer enjoys the employer's confidence;



NOT Good and sufficient cause

- That the employee contracts marriage;
- That an employee is pregnant with child or is absent from working during maternity leave;
- That the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting on the employer's name and interests.



NOT Good and sufficient cause

- That the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities;
- That the business in which the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce.





Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

Exit Strategies – how do we go about these?



Termination Agreement

- What should it include?



Termination Agreement

- Drafting a Termination Agreement/Settlement Agreement:
- The parties to the Agreement
- The Termination Date
- Salary + Contractual benefits up to and including TD.
- Ex gratia Payment
- Tax Indemnity Clause



Termination Agreement

- Return of Company Property
- Confidentiality – may disclose to adviser/immediate family
- Full and final settlement clause
- Withdrawal of grievance, appeal or ET (depends)
- Reference
- Counterparts
- Jurisdiction
- Entire Agreement





Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES