Termination of employment legislation digest

Country profile – Tunisia

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Sources of regulation


Another important source of regulation is the Framework Collective Agreement (FCA) concluded on 20 March 1973 as amended.

Scope of legislation

The LC applies to all enterprises in the private and public sector (sec.1, LC).


In Tunisia, household employees (domestic workers) do not benefit from the protective provisions of the LC. Their relationship with their employer continues to be subject to the general provisions of civil contract law.

Contracts of employment

The LC indicates in secs. 6 to 6(4) that there are two types of contracts of employment: contracts of employment for an indefinite period and contracts of employment for a specified period.

The contract of employment for an indefinite term is standard practice. The contract of employment for a specified period is usually transformed into a contract of employment for an indefinite term if the worker continues working after the expiration of the fixed-term and the employer does not express opposition (sec. 17, LC).

The fixed-term contracts of employment can be renewed. However, their total duration must not exceed four years (sec. 6(4), para. 2, LC).

**Termination of employment**

Sec. 14 of the LC provides that all contracts of employment may be terminated, other than at the initiative of the employer, by:

- agreement between the parties;
- serious breach by the employer;
- rescission pronounced by a court; or
- impossibility of performance resulting either from the death of the employee or the occurrence, before or during the performance of the contract, of force majeure.

A contract of employment for a specified period terminates by the expiration of the agreed term or by the completion of the task to which the contract relates. In these situations, neither the employer nor the worker has to justify the termination or comply with any formalities (sec. 14, LC).

A contract of employment for an indefinite period may be terminated on notice by the employee (sec. 14, LC).

**Dismissal**

The termination of employment is unlawful unless there is a “real and serious” reason and legal procedures or procedures prescribed under collective agreements are observed (sec. 14(C), LC). One of the real and serious reasons for dismissal is serious misconduct. A list of serious misconduct able to justify dismissal is set out in sec. 14(D) of the LC. Serious misconduct includes, inter alia:

- wilful damage to the property of the undertaking;
- wilful reduction of the product volume or product quality;
- non-observance of rules related to safety and health;
- neglect of the duty to take necessary measures to assure personal security or to safeguard confidentiality;
- disobedience of legitimate orders;
- bribe-taking;
- theft;
• turning up for work in a state of intoxication;
• consumption of alcohol at the workplace;
• absence or desertion of the workplace without good cause or the employer’s permission;
• violence or threats against colleagues or other persons during working hours;
• divulging trade secrets; and
• refusal to lend assistance in case of imminent danger to the firm or persons at the workplace.

Termination of a contract of employment by one of the parties will be deemed wrongful in certain situations. For example, termination is wrongful when it is unlawful. Unlawful dismissal includes dismissal because of absence from work during a period before or after childbirth or because of illness, provided the illness is not sufficiently serious or prolonged and the circumstances do not oblige the employer to replace the ill worker (sec. 20, LC). Termination is also unlawful when a workers’ representative is dismissed without the applicable special procedure being followed (i.e. submitting the dismissal to the decision of the competent labour inspector and complying with his or her decision), except when the existence of a real and serious reason justifying dismissal is proved by a court which entertains jurisdiction (sec. 166, LC). Certain sector-based collective agreements (banks, insurance, perfumeries, etc.) have also extended this protection to trade union representatives. Termination may be wrongful not because it is unlawful, but because the circumstances of the termination disclose misconduct on the part of the employer. Such misconduct may consist of an intention to harm, of disloyalty or even of harmful imprudence.

Dismissal may also be effected for economic and technological reasons, provided the applicable procedure is followed (see below).

**Notice and prior procedural safeguards**

Before dismissal, the worker has a right to appear before the Discipline Council (conseil de discipline) to defend his or her case. The Council is composed of an equal number of employers’ and workers’ representatives.

The worker also has a right to present to the Council a written statement of his or her case and to receive the assistance of a worker of his or her own choosing, a trade union’s representative or a lawyer (sec. 37, FCA).

Employers and employees are required to give one month’s notice in writing. This period of notice is the same for all categories of employees. If there are provisions which result from a contractual or collective agreement, general practice or vested rights that require a longer period of notice, these provisions are applied (sec. 14(2), LC).

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1 F. Mehri in R. Blanpain (ed.), op. cit., p. 76.
2 For example, the period of notice for journalists (sec. 398, LC) and commercial travellers and sales representatives (sec. 410, LC) is calculated at between one and three months.
In the notice letter, the employer must indicate the reasons for termination of employment (sec. 14(3), LC).

If compensation is paid in lieu of notice, the amount paid must at least be equal to wages payable for the length of notice period or for the remaining period of notice (sec. 16, FCA).

The employee has a right to time off to seek other employment during the second half of the notice period, without any loss of salary (sec. 14(2), LC).

Every employer who contemplates to dismiss all or part of his or her permanent personnel for economic or technological reasons has first to notify the matter to the labour inspectorate (l’inspection du travail), which will attempt conciliation (sec. 21, LC).

If conciliation is unsuccessful, the labour inspectorate transmits the file to the Commission for the Control of Dismissals (commission de contrôle des licenciements) chaired by the chief of the territorial labour inspectorate. This Commission is also composed of a trade union and an employers’ association representatives (secs. 21-3, 4 and 5, LC).

The Commission can accept the dismissals as justified, refuse to accept the dismissals, or make proposals for alternative solutions, such as redeployment programmes for employees, re-orientation of the firm’s activity towards new products, temporary suspension of all or part of the activity, revisions of conditions of work (e.g. reduction of working time) or early retirement (sec. 21-9, LC).

When the Commission is not consulted on the dismissals, except in cases of agreement between the parties or force majeure, these dismissals are unlawful (sec. 21-12, LC). In practice, in most cases, the Commission comes to a solution other than dismissal (e.g. lay-off for a short period, reduction of hours of labour, early granting of annual holidays and so on).

If the request for collective dismissals is accepted, the Commission puts forward an opinion about redundancy pay which may be awarded in respect with legislation in order to allow the workers to be paid immediately (sec. 21-10, LC).

The official record of conciliation is enforceable against the parties. In the absence of agreement, every party involved retains a right of appeal to the court of relevant jurisdiction. On appeal, the court may definitively fix the redundancy compensation which is payable, with regard to the laws in force (sec. 21-11, LC).

As regards the reduction in personnel for economic reasons, it is to take account of occupational skills, family circumstances and length of service. Moreover, workers whose employment is terminated for economic reasons are given priority in re-engagement (under the conditions of their remuneration at the moment of dismissal), if the enterprise decides to re-engage workers with the same professional skills (secs. 9, 21-13, LC). This right can be exercised within one year. The order of re-engagement is determined according to the length of service in the enterprise (seniority).

Severance pay

Except for serious misconduct, every employee bound by a contract of employment for an indefinite term and dismissed after the expiration of the probationary period is entitled to receive a severance allowance, calculated on the basis of one day’s salary (which is paid at the moment of the dismissal) for each month of effective service in the same enterprise (sec. 22, LC).
The compensation cannot exceed three months’ salary, whatever the duration of effective service has been. However, collective agreements can raise the amount of compensation.

Avenues for redress

The intervention of the Discipline Council does not preclude the worker’s right of appeal against a dismissal to the courts of relevant jurisdiction (sec. 38, FCA). The courts are not bound by the decision of the Council. The court with jurisdiction over individual labour disputes is a specialized labour court (Conseil de prud’hommes) of tripartite composition. Appeals from its decisions are to courts of general jurisdiction (secs. 183 and 221, LC).

According to sec. 14(4) of the LC, it is up to the court to judge the existence of a real and serious reason of the dismissal, as well as the observance of legal procedures or those prescribed in collective agreements, on the basis of the evidence presented by both sides. The judge can order all measures of investigation which he or she deems necessary.

A worker dismissed without justification cannot claim to be reinstated into the enterprise. The compensation for unjustified dismissal is an award of damages. The amount of compensation depends solely on the length of service of the dismissed employee and not on the harm caused by the employer’s actions.

In the absence of a real and serious reason for dismissal, the amount of damages for unjustified termination of a contract of employment for an indefinite term varies from one or two months’ salary for each year of service, up to a maximum of three years’ salary (sec. 23(1), LC).

The existence and the extent of the employee’s losses are judged by the court, taking into account the worker’s qualifications, his or her length of service in the firm, age, remuneration, family situation, the impact of dismissal on his or her retirement, compliance with the specified procedures and any special circumstances.

If it transpires that the termination of employment is justified by a real and serious reason, but has been effected without observing legal procedures or those under collective agreements (notice periods, procedures for dismissal of a workers’ representative or for economic or technological reasons, etc.), the dismissal is considered unjustified, but the amount of damages is limited to an amount between one and four months’ salary (sec. 23(2), LC).

The amount of damages for unjustified termination of a contract of employment for a specified period corresponds to the payment due for the remaining contract period or for the remaining work left to perform (sec. 24, LC).

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Further information

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