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Termination of employment legislation digest

Country profile – Senegal

Updated in 2007 by Angelika Muller, ILO

Sources of regulation

The sources of labour law in Senegal are found, first and foremost, in the Labour Code (LC) of 1997, regulations and case law.

A number of regulations have also been elaborated by the social partners and these consist of collective agreements, the most important of which is the National Inter-occupational Collective Agreement of Senegal (CCNI) signed on 27 May 1982.

Scope of legislation

The provisions of the LC apply to the relationship between employers and workers (sec. L-2, LC), and each of these terms is broadly defined.

According to sec. L-2 of the LC, persons appointed to permanent posts in the public administrative service are excluded from the scope of the LC. The dismissal of public employees is regulated through the provisions of the General Civil Service Statute (particularly with regard to the exercise of due process of law before a disciplinary commission). Termination of a contract of employment in the maritime services is also governed by separate specific rules (Merchant Marine Code, 1962, secs. 166 to 169).

Contracts of employment

A contract of specified duration is a contract whose duration is stipulated in advance according to the will of the parties (sec. L-41, LC). A contract of employment made for the execution of a specified piece of work or the conclusion of an operation whose duration cannot be assessed beforehand is to

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1 Act No. 97-17 of 1 December 1997.

be treated as a contract of specified duration. A contract whose termination is subject to a future but certain event, the date of which is not exactly known, is also to be treated as a contract of specified duration. A fixed-term contract must be done in writing and its duration cannot exceed two years. The employer has to notify the labour inspector about all fixed-term contracts concluded for more than three months (sec. L-44, LC).

An engagement for a trial period exists when the employer and the worker, with a view to entering into a final contract (either verbal or written), decide to test beforehand the quality of the worker’s services and his or her output (from the employer’s point of view) and the working and living conditions, remuneration, health and safety conditions and human relations in the workplace (from the worker’s point of view) (sec. L-36, LC). Contracts of engagement for a trial period must be in writing (sec. L-37, LC) and cannot extend beyond a period of six months, including renewal (sec. L-38, LC).

If the worker’s employment is continued after expiry of the contract of engagement for a trial period, even if no new contract is made, this will be equivalent to the conclusion of a contract of unspecified duration, taking effect as from the beginning of the trial period (sec. L-39, LC).

Every contract of employment which does not fall within the definitions of a contract of specified duration or contract of engagement for a trial period is to be considered as a contract of unspecified duration (sec. L-49, LC).

**Termination of employment**

The grounds for termination, other than at the initiative of the employer, are common to all contracts:

- termination by mutual consent of the parties;
- force majeure (an external and unexpected event whose consequence is to render the performance of duties impossible); and
- death of the worker.

The worker may terminate the employment relation (sec. 222, LC), without having to give any reasons as justification, by serving 15 days’ prior notice in writing on the employer, except in the case of technicians who must give two months’ prior notice. A worker who fails to give such notice is obliged to pay the employer an amount equal to one week’s wages, which may be deducted from the long-service bonus if the worker is entitled to one. The worker may also end the employment relationship for just cause, and in this case may be entitled to compensation for unjustified dismissal (on the grounds stated in sec. 223, LC).

The following workers are exempted from these rules (sec. 212, LC):

The expiry of the term designates the end of a contract of specified duration. A contract of this nature can be terminated before its normal term only for gross misconduct, by mutual written agreement by the parties or in case of force majeure (sec. L-48, LC).
Unless otherwise specified in the contract, a probationary contract can be terminated at any time by either party (sec. L-40, LC).

The principle governing dismissal in the case of contracts of unspecified duration is unilateral termination, provided that the rules on the notice period are respected (sec. L-49, LC).

**Dismissal**

Every unjustified dismissal is considered as a wrongful dismissal (sec. L-56, LC). “Valid reason” is a concept defined neither by legislation nor by collective agreements. This concept encompasses a large number of instances. In spite of the diversity of facts and situations which may constitute a valid reason for termination, they may be grouped in two categories depending on whether they relate to the worker or the interests of the enterprise. Most cases fall within the category of reasons relating to the worker, which includes all conduct or inaptitude by the worker incompatible with the continuation of employment. Under certain time limitations, medically certified physical incapacity of the worker is a valid reason for dismissal, provided that dismissal is not carried out during the period when employment has been suspended because of illness. The same is true for professional inaptitude which may manifest itself in various forms: poor service, poor management, low output, professional incapacity, non-performance of a job in the agreed period, among others.

In addition, the courts consider the following as misconduct justifying dismissal:

- acts of indiscipline or insolence;
- unjustified absence;
- violation of professional obligations;
- civil or criminal offences; and
- negligence or recklessness.

Dismissal may also be carried out, independently of reasons related to worker’s misconduct or incapacity, it is deemed necessary in the interests of the enterprise. Such is the case when enterprises cease operations, regardless of the reason for doing so (e.g. closure of the enterprise or establishment, bankruptcy, and so on). Retrenchment for economic reasons, however, requires the application of a specific dismissal procedure for economic reasons.

Misunderstanding and lack of cooperation between the worker and the employer or a supervisor also justifies dismissal, provided that these accusations are supported by objective reasons. Dismissal is also legitimate when the worker refuses to accept a modification to the employment contract which is justified by the interests of the enterprise.

Dismissal without legitimate reasons and dismissal on account of the worker’s opinions, trade union activity or membership or non-membership of a particular trade union (sec. L-56, LC), or on the grounds of sex, race or religion are examples of wrongful dismissal.

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3 Issa-Sayegh, J: *Droit du travail sénégalais* (Senegalese Labour Law) (Dakar, Nouvelles éditions africaines, 1987), pp. 606 et seq.
Absence from work for up to six months, which is justified by incapacity due to an illness other than an occupational disease or accident, is not a valid reason for termination. If the worker’s illness requires long-term treatment, taking into account the seniority of the worker in the enterprise, the six-month time limit will be extended to eight months for workers with seven to 15 years’ seniority, and to ten months for workers with a longer period of service with the enterprise (sec. 19, CCNI).

A fixed-term contract cannot be terminated before its expiration date, except by written agreement by the parties, in the case of serious misconduct or force majeure (sec. L-48, LC). Premature termination for any other reason is considered wrongful.

In addition, some workers are governed by a particular regime concerning dismissal, which is characterized by protective rules. For example, because of the importance of their mandate, staff representatives may be dismissed only with the authorization of the local inspector of labour and social security (secs. L-214-217, LC). The same is true for workers who are members of the National Advisory Council on Labour and Social Security (CCNTSS).4

Under sec. L-143 of the LC, an employer may not dismiss a pregnant woman during the period of interruption of work due to pregnancy. Similarly, a worker who has suffered an occupational accident who cannot be reassigned in the enterprise may only be dismissed with the prior agreement of the labour inspector (sec. 118, Social Security Code). Without this authorization, such dismissal is wrongful.

Any individual or collective dismissal that an employer intends to order because of economic reasons or an internal reorganization constitutes dismissal for economic reasons (sec. L-60, LC).

**Notice and prior procedural safeguards**

The termination of a contract of unspecified duration is subject to the giving of notice (sec. L-49, LC). An employer must give written notice of his or her intention to terminate a contract of unspecified duration, stating the reasons for doing so (sec. L-50, LC).

The duration of the notice period is fixed by collective agreement or, in absence of such agreement, by decree. For executives and similar personnel: three months; for monthly paid white-collar workers, blue-collar workers and permanent hourly, daily or weekly paid staff: between eight days and one month, depending on the length of service (sec. 23, CCNI).

For the purpose of seeking other employment, during the period of notice the worker is to be allowed two days off with full wages each week, which he or she may take all at once or one hour at a time, as he or she prefers (sec. L-52, LC).

Sec. L-52 of the LC establishes that during the period of notice the employer and the worker are committed to respecting all the obligations they have assumed towards each other. If these obligations are not respected by one of the parties, no period of notice is enforceable on the other party, who is also entitled to file a claim for damages in a competent court.

Whenever a contract of employment of unspecified duration is broken without notice or without full notice, the employer must pay to the worker compensation in lieu of notice. This amount corresponds to the remuneration, together with full bonuses and allowances, which the worker

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4 Sec. 180 of the LC establishes the CCNTSS within the Ministry of Labour and Social Security for the general purpose of studying problems concerning labour and social security.
would have enjoyed during the period of notice not observed (sec. L-53, LC). If the contract is terminated while the worker is on leave, compensation in lieu of notice is to be doubled (sec. L-55, LC).

However, a contract may be broken without notice in case of serious misconduct, subject to the findings of the competent court of law as regards the gravity of the misconduct (sec. L-54, LC).

With the aim of avoiding economic dismissals, the employer must consult the staff representatives to ascertain whether other possibilities, such as a reduction in working hours, work on a rota system, part-time work, training or reassignment of staff may avert the proposed dismissals. A summary of this meeting must be transmitted by the employer within eight days to the labour inspector, who will have 15 days following the submission of the communication from the employer to possibly exercise his or her good offices (sec. L-60, LC).

If, after the expiry of 15 days, it is necessary to carry out some dismissals, the employer will decide on the order in which to proceed. The first employees to be dismissed will be the workers with the least aptitude for the jobs the employer decides to maintain (sec. L-62, LC).

In the case of workers with equal aptitude, the workers with the greatest seniority will be kept on staff. Seniority in the enterprise is increased, for the purpose of establishing the order of dismissals, by one year in the case of married workers and by one year for each dependent child in accordance with legislation on family allowances.

The employer must inform the staff representatives in writing, giving a list of the workers he or she proposes to dismiss with an indication of the criteria adopted. Staff delegates will be required to meet within seven days to discuss their proposals. After the meeting with the staff representatives, the employer may proceed with the dismissals (sec. L-62, LC).

A worker who has been dismissed for economic reasons will continue to enjoy priority of re-hiring for two years if workers are recruited within the same category in his or her former enterprise (sec. L-62, LC).

**Severance pay**

The LC leaves it open for contracts and collective agreements to determine whether provisions for compensation for dismissal are due or not. There are, therefore, provisions for compensation in most collective agreements, particularly in the CCNI. The above description of the regime for such compensation refers mainly to the CCNI (sec. 30, CCNI).

Workers who have completed a period of service at least equal to the period of eligibility for holidays have a right to such compensation. Similarly, workers who have served for the necessary period under several employment contracts in the same enterprise are also entitled to benefit from such compensation upon dismissal, if their termination was due to staff reduction or retrenchment. In such cases, the amount of compensation is calculated, with deductions made for amount deposited for this purpose during previous dismissals.

For each year of service in the enterprise, severance pay is represented by a percentage (from 25 to 40% depending on the worker’s length of service) of the average overall wages for the last 12 months of service prior to the date of dismissal. These overall wages include all payments representing allowances, except for those allowances corresponding to the reimbursement of travel expenses.
This compensation is not payable if the contract has been terminated because of worker’s gross misconduct.

A worker who has been made redundant for economic reasons will enjoy, apart from notice and compensation for dismissal, a non-taxable special indemnity equal to one month’s gross wages (sec. L-62, LC).

**Avenues for redress**

The principle of judicial monitoring of termination of employment contracts appears in sec. L-56 of the LC, in accordance with which, the labour courts are competent to examine the causes and circumstances of the breach of the contract. The burden of proving the existence of a valid reason for dismissal rests on the employer.

Neither cancellation of the decision to terminate employment, nor reinstatement of the worker are avenues of redress for wrongful dismissal, which may give rise only to the payment of damages. When the responsibility for the termination lies with the employer, damages will be assessed with due regard to custom, the nature of the services contracted for, the worker’s length of service, his or her age and any vested rights. Commissions, bonuses or various advantages and allowances, in so far as they do not constitute repayment for expenses, are also taken into account for the calculation for damages. The judgement must expressly mention the alleged reason given by the employer and substantiate the assessment of damages (sec. L-56, LC).

Termination of employment of a worker without respect of the legal procedure (a written notification stating the reasons of the dismissal) is not deemed wrongful. However, the labour court may allow the worker concerned a compensation for the procedural irregularity (sec. L-51, LC).

The labour court can order the reinstatement of a workers’ representative dismissed without authorisation by the labour inspector (sec. L-217, LC).

In the event of litigation, individual labour disputes concerning termination of an employment contract for economic reasons must be examined as a matter of priority by the labour courts (sec. L-62, LC).

**Further information**

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