Termination of employment legislation digest

Country profile – Cameroon

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Sources of regulation

Termination of employment is regulated by the 1992 Labour Code (LC)\(^1\) and the following orders and decrees of the Ministry of Labour and Social Security of Cameroon:

- Order No. 015/MTPS/SG/CJ of 26 May 1993 stating the conditions and duration of the notice period;
- Order No. 016/MTPS/SG/CJ of 26 May 1993 setting the terms for compensation and calculation of severance pay;
- Order No. 017/MTPS/SG/CJ of 26 May 1993 setting the terms for probationary period; and
- Decree No. 021/MTPS/SG/CJ of 26 May 1993 setting the terms for termination of employment for economic reasons.

In 1988, Cameroon ratified the ILO Termination of Employment Convention, 1982 (No. 158).

Scope of legislation

All workers are governed by the LC, except for employees in the public service, members of the judicial and legal service, members of the armed forces and national security personnel, prison personnel and auxiliary administrative employees (sec. 1(3), LC)\(^2\).

Contracts of employment

A contract of employment may be concluded for a specified or unspecified duration.

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\(^1\) Act No. 92/007 of 14 August 1992 to promulgate the Labour Code.

\(^2\) Unlike the former Code, the 1992 Labour Code applies to workers governed by certain rules of custom and who perform their services within the traditional family framework.
A contract of unspecified duration is one whose term is not fixed in advance and which may be terminated at any time by either of the parties, with notice (sec. 25(1)(b), LC).

Contracts of specified duration are concluded for a maximum duration of two years and may not be renewed more than once (sec. 25(1)(a), LC). If the employment relationship continues after the second period of renewal, the contract becomes one of unspecified duration (sec. 25(3), LC).

These restrictions on contracts of specified duration do not apply to temporary employment to replace a worker, employment to complete a task within a specified period which requires additional manpower, occasional or exceptional work, seasonal work or urgent tasks for reasons of public security.

The LC defines engagement for a trial period as a period of assessing the quality of the work and output of the employee and gives the worker the opportunity to assess the working conditions, lifestyle, remuneration, occupational safety and health and the atmosphere at the workplace (sec. 28(1), LC).

This type of contract for probationary purposes is to be in writing. Order No. 017 of 1993 sets up the duration of the trial period, which can last fifteen days to 4 months, depending on the professional category of the worker. The renewal is authorized once. The probationary period then may not exceed six months, including renewal. However, the probationary period for managerial personnel may be extended up to eight months. The extension of a contract beyond this period without the conclusion of a new contract transforms it into a contract of indeterminate duration (sec. 28(5), LC).

**Termination of employment**

A contract of employment may be terminated, other than at the initiative of the employer, in several ways:

- by mutual agreement;
- because of protracted illness;
- upon the death of the employee; or
- by force majeure.

**Dismissal**

A contract of specified duration may be terminated before its expiry only on the grounds of serious misconduct, force majeure or by written agreement of the parties (sec. 38, LC).

The termination of a contract of employment of unspecified duration may be terminated at any time at the will of either party, provided the notice is given in writing to the other party, stating reasons for the termination (sec. 34(1), LC).

In some enterprises, the internal regulations stipulate that contracts of unspecified duration may be validly terminated for reasons relating to the conduct of the worker or for reasons relating to requirements of the undertaking. Professional inaptitude may justify termination and may manifest
itself in various ways including through the worker’s incompetence, poor service, inadequate output, or slowness in the performance of the worker’s tasks.

Under secs. 36(2) and 37(1) of the LC, serious misconduct justifies the termination of a contract of unspecified duration without notice. The courts consider several attitudes as misconduct which justifies dismissal: acts of insubordination or insolence, unjustified absences, acts of negligence and carelessness, the contravention of professional obligations, and fraudulent or illicit acts causing harm to the employer.

Misunderstanding or the impossibility of collaboration between a worker and employer or a person in the management of the undertaking is also grounds for dismissal, provided that these accusations are substantiated by objective elements.

Dismissal effected without a valid reason, and dismissal because of the opinions of the worker, his or her membership or non-membership of a trade union (sec. 39(1), LC) or by an employer seeking to avoid legal or contractual obligations (for example, dismissal following a claim for overtime pay), is considered wrongful. Moreover, certain categories of workers enjoy special protection.

The dismissal of a workers’ representative is subject to prior authorization of the labour inspector (sec. 130, LC). The aim of such authorization is to ensure that the dismissal is not motivated by the activities of the workers’ representative in the exercise of his or her functions. The absence or refusal of such authorization results in the reinstatement of the worker (sec. 130, LC).

A pregnant woman may not be dismissed because of her pregnancy. Similarly, during maternity leave, the employer may not terminate her contract of employment (sec. 84(1), LC).

The job of a worker suffering from a non-occupational disease is protected. The employer may not replace him or her before six months have passed.

Workers suffering from an occupational disease or accident are not covered by the six-month limit mentioned above. Their employment is protected during the entire duration of their illness or period during which they are indisposed. The employer may not terminate their contracts or permanently replace them.

The LC provides for the termination of employment for a substantial modification of the contract (sec. 42(2), LC). Dismissal which is ordered following a substantial modification to the contract of employment is not wrongful if it is done in the interests of the undertaking (sec. 42 (2-a), LC). This rule applies only if the employer proposes a substantial modification of the contract and the worker refuses. If termination follows, it is to be attributable to the employer and therefore the worker is entitled to notice and severance pay. Furthermore, if such modification is not justified by the interests of the undertaking, the termination of the contract will be considered wrongful and the worker will be entitled to damages. This new rule covers cases wherein the employer forces an employee to resign (“constructive dismissal”) by setting less favourable working conditions for him or her.

The most important amendments made to the LC in 1992 are related to the conditions and a broader definition for termination of employment for economic reasons.

Pursuant to sec. 40(2) of the LC, termination of employment for economic reasons means any dismissal effected by an employer for one or several reasons which are unrelated to the worker, such as the abolition of posts or conversion of jobs, or a modification of a contract resulting from economic difficulties, technological changes or internal restructuring.

Notice and prior procedural safeguards

The termination of a contract of unspecified duration is subject to written notice given in advance by the party taking the initiative, except in the case of serious misconduct (sec. 34(1), LC). The notice period starts to run from the date of notification. It is not subject to any condition precedent or condition subsequent. Under no circumstances may it be set against the leave period of the worker.

The rules on the duration of the notice period are prescribed in Order No. 015 of 1993, which was issued by the Ministry of Labour. These rules have regard to the worker’s length of service and the occupational group to which he or she belongs. They provide for periods of notice as follows which differ according to the professional category of the worker:

- 15 days or a month for workers with less than one year of service;
- one to three months for workers with one to five years of service; and
- two to four months for workers employed for more than five years of service.

For the purpose of seeking other employment during the period of notice, the worker must be allowed one day off each week (with full wages), which he or she may take all at once or one hour at a time as he or she prefers (sec. 35(2), LC).

If the employer fails to give notice, he or she is obliged to pay the worker compensation corresponding to the remuneration and any other advantages to which the latter would have been entitled during the notice period (sec. 36, LC).

As regards termination of employment of a workers’ representative, the employer has to obtain the prior authorisation of the labour inspector. The period in which the decision of the inspector is due is one month. Workers’ representatives enjoy this protection for up to six months after the expiry of their terms of office, and candidates to the office of workers’ representatives up to six months after the date of the notification of their candidature (sec. 130, LC).

Even if the inspector gives his or her authorization for dismissal, the workers’ representative may in any event bring an appeal before the competent court in order to ascertain the validity of the reason given for dismissal.

Sec. 40(3) of the LC lays down mandatory and prior conditions for a termination of employment for economic reasons to be valid. These prior conditions constitute a real obligation to enter into negotiations.

The LC requires an employer who is contemplating termination of employment for economic reasons to meet with the workers’ representatives and to discuss with them, in the presence of the labour inspector, all measures to avert termination. These include the reduction of hours of work, working on a shift system, part-time work, lay-offs, readjustment of allowances, compensation and benefits of all kinds, and even the reduction of wages, if unavoidable. The duration of such negotiations should not exceed 30 days.

If a worker refuses to comply with the measures negotiated, he or she may be dismissed with payment for the notice period and, if he or she qualifies for it, a severance allowance (sec. 40(5), LC). The statute authorizes termination based on refusal⁴.

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If the above-mentioned negotiations or measures adopted do not produce the expected results, the employer is authorized to proceed with the dismissals following the procedure established by the LC and Decree No. 021 of 1993. He or she must decide on the order of dismissals, taking into account the skills of the workers, their length of service in the undertaking and family responsibilities, and these criteria should be considered cumulatively and not alternatively\(^5\).

If no agreement is reached, the employer must inform the staff delegates in writing of the steps taken for dismissal. The staff delegates must respond to the written notice in eight days. The employer’s communication and the workers’ representative’s response must then be submitted without delay to the local labour inspector for arbitration (sec. 40(6)(d), LC).

A worker who has been dismissed for economic reasons will continue to enjoy priority of rehiring for two years if workers are recruited for the same type of job in his or her former undertaking. A worker who refuses a job loses this right\(^6\).

**Severance pay**

Apart from instances of serious misconduct, any worker who is dismissed after working for at least two years in the same undertaking is entitled to severance pay which takes into account his or her length of service (sec. 37(1), LC). The terms and conditions for the award of such an allowance and the calculation of severance pay are laid down in Order No. 016 of 26 May 1993 issued by the Ministry of Labour. For the purpose of calculating length of service, the following periods are taken into account: paid leave, exceptional permission for paid or unpaid leave, periods during which the contract has been suspended, and legal periods of internship and professional training.

Unless there are more favourable provisions in an applicable collective agreement, individual contract of employment or specific text, severance pay is equivalent to a percentage of the average monthly wages during the last 12 months preceding the dismissal for each year of service in the undertaking. The rates applicable are fixed as follows:

- from the first to the fifth year: 20 per cent;
- from the sixth to the tenth year: 25 per cent;
- from the 11th to the 15th year: 30 per cent;
- from the 16th to the 20th year: 35 per cent;
- from the 21st year: 40 per cent.

For the purpose of the calculation, partially completed years are also taken into account on a proportionate basis.

**Avenues for redress**

A dismissed employee may seek relief from a judge (sec. 39, LC). The judge who is called upon to decide on the dismissal must examine the facts of the case and the validity of the reasons given for

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\(^{6}\) Sec. 4 of Decree No. 021/MTPS/SG/CJ of 26 May 1993 setting the terms and conditions of termination for economic reasons.
the dismissal. The judge must also ascertain whether the various procedures prescribed by law have been observed.

In all cases of dismissal, it is up to the employer to show that the grounds for dismissal alleged by him/her are well-founded (sec. 39(3), LC).

A wrongful termination of a contract may give rise to damages (sec. 39, LC). The LC amends the factors which the court must take into account in order to set the amount of damages. If the responsibility rests with the employer, the LC repeals the element of “common practice” and considers only the nature of the employment, length of service, the age of the worker and any accrued rights (sec. 39(4)(b), LC).

Damages for wrongful dismissal are not to exceed a maximum of one month’s wages for each year of service with the undertaking, and the total awarded should not be less than three months’ wages. The wage to be taken into account is the average monthly gross wages in the last 12 months of service of the worker. This minimum and maximum limit of damages prevents the existence of too great a discrepancy between the amounts allocated by the various courts of law.

In the event of a lawful dismissal, which has not been ordered according to the prescribed procedures, the maximum level of damages is one month’s wages (sec. 39(5), LC).

Further information

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