

Sri Lanka¹

Sources of regulation

The main pieces of legislation governing the termination of employment in Sri Lanka are the Termination of Employment of Workmen (Special Provisions) Act of 1971 (TEWA), and the Industrial Disputes Act of 1950, as amended (IDA).

Scope of legislation

Both the IDA and TEWA apply to workers in the private sector. However, the TEWA does not apply to employees in establishments with fewer than 15 workers, or to workers with less than six months= service (*sec. 3(a) and (b)*, TEWA). The TEWA applies to an extensive range of industries, listed in the Schedule to that Act, including all shops, offices and factories.

Contracts of employment

Both the IDA and TEWA define a workman broadly as any person who works under a contract of employment in any capacity, including apprentices (*sec. 3(2)*, TEWA, and *sec. 48*, IDA). No distinction is made in the legislation between casual, probationary and fixed-term employees.

Termination of employment

The TEWA provides that employment may terminate with the written consent of the workman (*sec. 2(1)*, TEWA). Aside from this, both the TEWA and the IDA only regulate termination of employment at the initiative of the employer.

Termination of employment at the initiative of the employer

The legislative provisions governing termination of employment at the initiative of the employer in Sri Lanka are somewhat unusual, in that they do not set any standard against which dismissals are to be measured, yet provide stringent procedural controls on dismissals. Indeed, the TEWA specifically provides that the Labour Commissioner (from whom the employer must seek authorization to dismiss) may decide the application *in his absolute discretion* (*sec. 2(b)*, TEWA) and further, that the decision of the Labour Commissioner is non-reviewable (*sec. 2(f)*, TEWA). The Commissioner may also order reinstatement of any worker. No distinction is made in the legislation between casual, probationary and fixed-term employees², so that procedures under the TEWA apply even when a worker has been hired to work in a venture which is to conclude at a specified date or upon the completion of a specified

1 Updated by Arturo Bronstein, January 2001.

2 However, the employee is deemed to have given his/her written consent to his/her termination where a fixed-term contract of employment has specified a date at which the contract would terminate. In case of renewal, the contract would be deemed to have been agreed upon for an unspecified duration.

project, provided the worker has been employed by the employer during more than one hundred and eighty days in the period of twelve months preceding the termination. It should be added that temporary layoffs also need the prior authorization of the Commissioner of Labour.

The IDA does make it an offence to dismiss an employee because that employee has become entitled to the benefit of any collective agreement, award or order (*sec. 40(k)*, IDA), or because the employee takes part in any proceedings against the employer, either as a party or witness (*sec. 40(j) and (p)*, IDA).

Notice and prior procedural safeguards

Those employees not covered by the TEWA, who are not seasonal employees and work for an establishment of greater than 15 workers, and who have been employed for more than a year (*sec. 31E*, IDA), are entitled to one month's notice of any retrenchment. In such cases, the employer must also give this period of notice to the Government and any relevant union (*sec. 31F(a)*, IDA). Nor may the employer effect the dismissal until two months after notice has been given, unless an agreement to the contrary has been reached with the employee or his or her representative (*sec. 31G*, IDA).

As discussed above, employers must obtain the approval of the Labour Commissioner for the dismissal of employees covered by the TEWA. In addition, for these employees, the employer must notify the employee of the reasons for the termination before the expiry of the second working day after the termination (*sec. 2(5)*, TEWA, as inserted by the 1988 Amendment Act).

Severance pay

Since there is no statutory minimum severance pay, the Commissioner of labour determines in his or her award the amount of the compensation to be paid to workers who are to be made redundant. In practice, compensation packages vary from six months pay up to five years pay, depending upon criteria that normally are not spelled out in the Commissioner's award.

Under *sec. 50* of the IDA, retrenched workers have priority for re-employment by their former employer.

Avenues for redress

Sec. 5 of the TEWA provides that any dismissal without the approval of the Labour Commissioner is null and void. However, there is no machinery for persons aggrieved by the decision of the Commissioner to appeal, as the decision is final (*sec. 2(f)*, TEWA).

For dismissals which are invalid under the IDA, the employee may apply to a Labour Tribunal for reinstatement or compensation (*secs. 31B(1)(a) and 31B(6)(c)*, IDA).