ILO STANDARDS ON TERMINATION OF EMPLOYMENT AND UNEMPLOYMENT PROTECTION

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ILO INSTRUMENTS ON TERMINATION OF EMPLOYMENT

Termination process
- Termination of Employment Convention, 1982 (No. 158)
- Termination of Employment Recommendation, 1982 (No. 166)

Severance pay
- Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)
- Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180).

Unemployment benefits
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
- Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176)
C158&R166 - TERMINATION MUST BE JUSTIFIED

Valid reason: capacity, conduct and operational requirements

Invalid reasons:
- union membership and activities
- complaint or court proceedings
- race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- maternity leave
- sick leave
- R.166 – Additional grounds: age, and absence from work due to compulsory military service or other civic obligations.
Right to defend oneself during consideration

Reasonable period of notice required unless the case of serious misconduct

Appeal against termination
  • Burden of proof on both the worker and employer

Income protection
  • Severance allowance → C173
  • Unemployment insurance → C102, C168
  • Combination of both
C158&R166 - ADDITIONAL REQUIREMENTS ON TERMINATION PROCEDURE (COLLECTIVE DISMISSALS)

Efforts to avert or minimise the terminations
Bipartite consultation on the reasons and affected workers
Termination must be based on pre-established criteria for selection
Priority in rehiring should be given to terminated workers
Measures to mitigate the effects of termination
Both foreigners and nationals covered

Trend to substitute employment contracts by self-employment

Termination without a valid reason must be expressly prohibited. Prohibiting termination without the opportunity for defence does not fulfil this requirement.
C173&R180 — PROTECTION IN CASE OF EMPLOYER’S INSOLVENCY

Two means for protection

▪ By a privilege
  Law requiring in insolvency proceedings to treat workers’ claims as privileged debts (higher than those of the State and social security)

▪ By a wage guarantee institution
  A system (typically a fund) to guarantee the payment of workers' claims when the employer cannot pay because of insolvency
C173&8180 – WAGE GUARANTEE INSTITUTION

Principles for operation: Paragraph 8 of R180

- Administratively, financially and legally independent of the employer
- Employers should contribute, unless this is fully covered by the public authorities;
- The institution should pay even if the employer may not have fully contributed to the institution
- The institution should assume a subsidiary responsibility for the liabilities of insolvent employers in respect of protected claims, and should be able to act in place of the workers concerned
- The funds may only be used to guarantee workers’ claims
<table>
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<th>Guarantee institution (Part III)</th>
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<td>Wage claims</td>
<td>3 months</td>
<td>8 weeks</td>
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<td>Holiday pay</td>
<td>The year of insolvency and the preceding year.</td>
<td></td>
<td>6 months</td>
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<tr>
<td>Paid absence</td>
<td>3 months</td>
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<td>Severance pay</td>
<td>Due upon termination</td>
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<td>Due upon termination</td>
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WAGE GUARANTEE INSTITUTIONS IN PRACTICE

Guarantee **funds** are the most common mechanism

Usually **managed by public institutions** as part of ministries of labour, employment agencies, social security institutions, or unemployment funds

Usually financed through **employer contributions** and in some cases by the government only through general revenue or specific taxes

Employers’ contributions are usually paid based on the same earnings considered for the **social security contributions**

In the Caribbean, **Barbados, Dominica and St. Kitts and Nevis** have implemented a guarantee fund.
Full, productive and freely chosen employment must be promoted by measures such as employment services, vocational training and vocational guidance.

Employment policy must be coordinated with a system of protection against unemployment. The system must not discourage employers from offering and workers from seeking productive employment.
Coverage: suspension or loss of earnings due to inability to obtain suitable employment

- The person concerned must be actually seeking work.
- Protection should be extended to loss of earnings due to partial unemployment (e.g. reduced working hours) and temporary suspension of work.
- Social benefits must be provided to certain categories of persons seeking work who are not covered by the protection.
## C102, C168 — Unemployment Benefits

<table>
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<th>Nature of benefits</th>
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<td>• Periodical payments corresponding to at least 45% of the reference wage.</td>
<td>• Periodical payments corresponding to at least 50% of the reference wage.</td>
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<td>• Beyond the initial period, special rules of calculation may apply. But the total of benefits must guarantee healthy and reasonable living conditions.</td>
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<tr>
<td>Qualification</td>
<td>• Qualifying period may be prescribed.</td>
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### C102, C168 — UNEMPLOYMENT BENEFITS (CONT.)

<table>
<thead>
<tr>
<th>Duration of benefits</th>
<th>Convention No. 102</th>
<th>Convention No. 168</th>
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</table>
| • Waiting period of seven days may be established.  
• To be granted throughout the contingency.  
• Nevertheless, the duration of the benefit can be limited to 13 to 26 weeks, depending on the case, within a period of 12 months. | | • Idem.  
• Idem.  
• The initial duration of the benefit may be limited to 26 weeks for unemployment, or to 39 weeks over any period of 24 months.  
• Beyond the initial period, the duration of benefit may be different. |
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- Social protection