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LEGAL GUARANTEES OF EMPLOYEES IN CASE OF DISMISSAL BY THE EMPLOYER

Every employer is interested in long term work of an employee in the enterprise, but at the same time, the employer has the right to stop the employment contract with a particular employee, in which the company has no need. To create mutual interest between the employer and the employee to each other is not always possible. It happens that the interests of the employer and the employee concerning continuation of employment relationships are not the same. The employer resorts to dismissal of those employees who, for reasons both objective and subjective impede development of production, slow down him or cause harm. Unlike the worker, who is free in his decision on the termination of the contract on his/her own initiative, as a rule the employer may terminate the contract only on the grounds established by legislation.

The state guarantees the rights of citizens from unlawful dismissal enshrined in article 43 of the Constitution of Ukraine. For the appropriate implementation of these guarantees it is necessary to thoroughly update labour legislation and to bring its provisions in compliance with market relations and international standards. Appropriate changes are needed and the legislation governing peculiarities of termination of employment contract on the initiative of employer.

Special importance for the improvement of legal regulation of relations in the field of labor during the transition to a market economy and protection of labor rights of citizens from unlawful dismissal, in particular, the adoption of such important legislation as the Laws of Ukraine «On employment of Population», «About state service», «On trade unions, their rights and guarantees of activity», «On the procedure for settling collective labor disputes (conflicts)», etc. Significant changes were made with the Code of labour laws of the day of independence of Ukraine, including on the legal regulation of dismissal of employees on the initiative of employer.

In connection with the adoption of these and other regulations the substance of many norms of current labor legislation is outdated and does not fully reflect the requirements of legal regulation of social relations, including relations that arise upon the cancellation of the employment contract. The preparation of the project of new Labour code and its adoption requires improvement of the project of the code in general and especially one, which regulates the termination of labor relations and dismissal of employees. An important task is to increase guarantees for workers to protect them from wrongful dismissal.

It should be noted that the termination of employment contract may be considered lawful under the following conditions: 1) the availability of reason which

is lawful; 2) the observance of the established order of dismissal on specific grounds; 3) the existence of a legal fact of termination of labor relations.

The termination of employment contract on the initiative of specific people(parties or others subjects). Depending on who its initiator is, the termination of the employment contract takes place: a) at the request of the parties; b) by the employee; C) on the initiative of the employer; g) at the request of the authorities, which are not a parties to labor relations.

The dismissal on the initiative of the employer is one of the most complex in the application of the employment regulations for employees and employers, and also for judges in the resolution of labor cases.

The fundamental principle of the Institute of dismissal on the initiative of the employer is the principle under which the employee may be dismissed only when there are grounds stipulated by the current legislation: these are the main reasons (article 40 of the Labor code of Ukraine) and additional reasons (article 41 of Labor code of Ukraine).Main reasons are considered to be such grounds which are applicable to all workers regardless of forms of ownership and sector of economy. Additional grounds for the termination of employment contract is applied in the case of dismissal of certain categories of employees.

The legislator has envisaged the obligation of the employer to warn workers about the following dismissal not later than in two months. The Law also imposes on the employer the duty to offer the employee the work in the relevant specialty, if there is one. In its absence the employer is obliged to offer another job.

According to article 42 of the Labor code the right of priority to leave at work at redundancy of number or staff of employees have employees with higher skills and productivity. It means that the reduction of the number of employees employer must be guided primarily by the interests of production and leave those employees who are more qualified.

The legislator has provided significant labor guarantees for the protection from unlawful dismissal, for pregnant women and those who have children.

Consequently, the dismissal of employees is made with the provision of guarantees and compensation, but current legislation has many gaps and contradictions that are not conducive to the protection of the right to work. That is why it is necessary to make appropriate additions to the existing Labor code and to regulate the termination of employment in the new Labour code.