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**ORDER OF LABOUR CONTRACT'S DISSOLUTION IN
CASE OF EXPOSURE OF DISPARITY OF WORKER HELD
A POSITION OR EXECUTABLE WORK AS A RESULT
OF INSUFFICIENT QUALIFICATION**

In science of labour law and legislation about labour three categories related to stopping of labour legal relationships are used: termination of labour contract, dissolution of labour contract and liberation. Termination of labour contract is completion of action of labour legal relationships of worker with an employer in all cases envisaged by a legislation about labour. Dissolution of labour contract means stopping of labour legal relationships to one-sided wills (whether employer, or worker, or persons that are not the side of labour contract). Thus, concept "termination of labour contract" on the maintenance is wider than concept "dissolution of labour contract". A term "liberation" is used in relation to a worker and on maintenance is the synonym of term "stopping labour contract".

Termination of labour contract is legitimate at the simultaneous presence of such terms: 1) founding of stopping of labour contract envisaged by a legislation; 2) observances of order of liberation; 3) legal fact of stopping of labour contract (order of employer, statement of worker, proper document of person authorized to require avoiding contract).

Article 40 of the Labour Code of Ukraine contains an exhaustive list of reasons for termination of an employment contract on the initiative of the employer. In addition, for certain categories of workers, additional grounds for termination of an employment contract (Article 41 of the Labour Code), which is connected either with the personal qualities of an employee, or with violation or non-performance of his employment duties, are established.

Section 2 of Art. 40 of the Labour Code of Ukraine contains three reasons for the termination of an employment contract: the discovery of an

employee's misconduct of work performed or a position as a result of health and the discovery of inconsistency with the position or performance of work as a result of inadequate qualifications, as well as the abolition of admission to state secrets, if the performance of duties imposed on the employee requires access to state secrets. Common for these reasons is that their presence prevents the continuation of the work, which, by virtue of an employment contract, must be performed by the employee.

Insufficient qualifications of an employee can be expressed in the absence of the necessary knowledge and skills, without which it is impossible to properly perform the duties provided for by the employment contract. At the same time, on this basis, you can not dismiss an employee who has no experience due to the short duration of work. Also, you can not dismiss an employee only on the grounds of lack of his education document, if, in accordance with the current legislation, its availability is not a mandatory condition for the performance of work under an employment contract. The Plenary Session of the Supreme Court of Ukraine has indicated that in the case where according to the legislation certain work is permitted only if there is appropriate education or after the provision of special rights (drivers of motor and electric vehicles) in accordance with the established procedure, deprivation of this right may be grounds for termination of an employment contract with an employee from the reasons for the mismatch of the position held or the work performed.

The revealed mismatch may also be poor performance of work, improper performance of labour duties due to lack of qualifications. The mismatch of the employee's position can be identified by the results of the certification. The Plenary Session of the Supreme Court of Ukraine indicated at the same time that the conclusions of the attestation commission regarding the qualification of an employee should be assessed together with other evidence in the case.

The procedure of attestation of employees of enterprises of various sectors of the economy is regulated by departmental normative acts, except for the certification of civil servants, which is established by the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the Certification of Public Servants" dated December 28, 2000 No. 1922. Additionally, this issue is regulated by the decision of the Constitutional The Court of Ukraine of July 8, 2003 in the case of the constitutional petition of 51 people's

deputies of Ukraine regarding the compliance of the Cabinet of Ministers Cabinet Regulation of Ukraine "On Approval of the Regulations on the Certification of Civil Servants" (the case of certification of civil servants).

According to the general rules, the certification of workers is carried out once every three to five years. The specific terms of attestation are determined by the head of the enterprise, with the consent of the relevant electoral body of the primary trade union organization (trade union representative) and communicated to the persons who are subject to certification, not later than one month before the certification.

Regular certification is not required: persons who work in an enterprise or in an appropriate position for less than one year, as well as young specialists, pregnant women, women who have children under the age of three.

Women who are on maternity leave, as well as to care for the child until she reaches the age of three years, are certified not earlier than one year after entering the work.

For certification, the head of the company appoints a certification commission from among the top managers, highly skilled specialists. The commission may also include representatives of primary trade union organizations.

According to the results of the certification, the commission may take one of the following decisions:

- corresponds to a position held;
- corresponds to a position held on condition of improvement of work and implementation of recommendations of the commission with re-attestation in a year;
- does not correspond to the position occupied.

The Attestation Commission may also give recommendations on promotion of the worker, on the application of incentives to him, on transfer to another job, on improving the work of employees and on improving their business skills.

The Attestation Commission is competent to conduct the certification provided that at least 2/3 of the commission members are present, and decisions are made by the majority of votes of those present at the meeting of the members of the commission.

The decision of the certification committee is of a recommendatory nature. According to the results of the attestation, the employment contract may be terminated not later than two months from the date of certification.

To sum up, applying in practice clause 2 of Art. 40 of Labour Code workers should analyze in sufficient detail all available facts indicating the employee's mismatch in the position or work performed. In addition to the discrepancy found, there must be no fault in the employee's actions. For non-fulfillment of labour duties may be deliberate, then such employee is attracted to disciplinary liability with the application of such disciplinary punishments as reprimand or dismissal, but not for item 2, and for item 3 of Art. 40 of Labour Code.

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THE RIGHT TO A SAFE AND HEALTHY ENVIRONMENT

Everything that is necessary for a person's livelihood comes from nature: air, water, raw materials for industry. The human society as a part of nature is known to be in constant interaction with it. Our impact on the environment is usually disastrous, that is why the environmental protection is one of the most acute issues which the society faces with more and more often. The purpose of the research is to find out the rights and duties of the