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*15 Years of Partnering for Positive Change in Kosovo*

Contract Law Enforcement (CLE) Program

# **KNOW YOUR RIGHTS PROCEDURES OF EMPLOYMENT CONTRACT TERMINATION**

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## INTRODUCTION

The growth of business and economy, as well as the change of the doing business methods in a modern world have affected the employment relationships throughout Kosovo's private and public sector. In order to regulate those relationships, and provide for the protective and operational framework for both employers and employees, the Assembly of Kosovo has promulgated a Law on Labor that entered into force in 2011.

The Kosovo Labor Law covers a variety of crucial topics for a normal employment relationship, including the rights, duties and responsibilities of both parties during the termination of contract, collective dismissals, suspensions and other similar scenarios. The Law also provides for protections and punitive measures related to employment relationships.



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How can a termination of employment relationship occur?

In everyday business, termination of employment relationship can occur in many ways. According to the Kosovo Law on Labor, termination of employment relationship can occur in the following ways:

- Termination of employment contract on legal basis;
- Termination of employment contract with the agreement;
- Unilateral termination of the contract by the employee;
- Termination of employment contract by the employer; and
- Collective dismissals.



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What is a termination of employment contract on legal basis?

An employment relationship cannot be terminated without a reason. There are different cases and situations when an employment contract can be terminated with a legal basis, and some of them are enumerated in Article 67 of the Kosovo Law on Labor. Legally, an employment, may be terminated with the death of the employee; with the death of the employer when the work performed or services provided by the employee are of personal nature and the contract cannot be extended to the successors of employer; with the expiry of duration of contract; when an employee reaches the pension age, sixty- five (65) years of age; on the day of the submission of plenipotentiary proof of the loss of labor competencies; if an employee shall serve a sentence which will last longer than six (6) months; with the decision of the competent court, which leads to the termination of employment relationship; with the bankruptcy or liquidation of the enterprise; and, other cases specified by Laws in force.

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What is a termination of employment contract with an agreement?

Very often during and individual career process, an employee gets another opportunity which might be more attractive for different reasons, and decides to pursue the opportunity prior to his current employment contract expires. On the other hand, very often an employer might need to reorganize its business, has no more need for the services of the certain employee, or other reasons, and it needs to end the employment relationship. In such cases, the termination of the current employment is conducted in an agreement between the employee and the employer. The employer and the employee discuss the remaining issues, such completion of the work assignments, training of the replacement, transfer of workload, usage of annual leave, payment of the salary for the days until the termination takes effect, etc.

The agreement for termination of contract should be conducted in writing.

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What is a unilateral termination of the contract by the employee?

Every employee is entitled to terminate the employment contract under which he/she is working. The unilateral termination might seem very similar to the termination with an agreement. However, there are certain timeframes under which the employee can validly terminate the contract in a unilateral manner. Such timeframes are:

- An employee on a fixed term contract shall inform the employer in writing of his/her termination of the employment contract with fifteen (15) calendar days notice, whereas an employee on an indefinite term contract within thirty (30) calendar days.
- An employee may cancel his/her employment contract without providing prior notice in written form defined in paragraph 1 of this Article, where the employer is guilty a breach of obligations under the employment contract.

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What is a termination of the contract by the employer?

Similarly with the employees right to terminate the employment contract, the employer also has the right to do so. Nevertheless, employer has a specified list of the reasons, timeframes and cases which it needs to have and follow for validly terminating the contract with the employee. The process is defined in Article 70 of the Kosovo Labor Law as follows:

An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when such termination is justified for economic, technical or organizational reasons, and/or the employee is no longer able to perform the job.

The employer may terminate the employment contract in the circumstances specified above if, it is impracticable for the employer to transfer the employee to other employment or to train or qualify the employee to perform the job or other jobs.

An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in:

- serious cases of misconduct of the employee; and
- because of dissatisfactory performance of work duties;

An employer shall notify the employee about his/her dismissal immediately after the event which leads to this decision or as soon as the employer has become aware of it.

An employer may terminate the employment contract of an employee without providing the period of notice of termination required, in the case when:

- the employee is guilty of repeating a less serious misconduct or breach of obligations,
- the employee's performance remains dissatisfactory in spite of the written warning.

The employer may terminate the employment contract of an employee under the circumstances of the previous paragraph only when after the employee has been issued previous written description of unsatisfactory performance, with a specified period of time within which they must improve on their performance, as well as a statement that failure to improve the performance, shall result with a dismissal from work without any other written notice.

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What is a termination of the contract by the employer?

The employer should hold a meeting with the employee to explain termination of an employment contract or for the purpose of issuing a warning, and the employee is entitled to be accompanied by a representative of his or her choice.

Notification periods for termination of contracts by the employer are prescribed in Article 71 of the Kosovo Labor Law and are as follows:

- For terminating a contract with indefinite period the notifications of termination should be:
  - from six (6) months - 2 years of employment, thirty (30) calendar days;
  - from two (2)- ten (10) years of employment: forty-five (45) calendar days;
  - more than ten (10) years of employment: sixty (60) calendar days.
- For terminating a contract with a fixed term the notification of termination should be thirty (30) calendar days. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

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## 6 What are collective dismissals?

According to the Kosovo Labor Law, collective dismissals are considered layoffs at least ten percent (10%) of the employees but not less than twenty (20) employees within a six (6) month period. During collective dismissals, certain actions should be undertaken by the employer, such as notifying its employees and, where applicable, the employees' trade union(s) one (1) month in advance in writing of the changes planned and their implications, including:

- The number and type of employees to be discharged;
- The measures to be taken by the employer, if any, to alleviate the consequences of collective dismissal, including:
  - limiting or stopping the hiring any new employees;
  - internal reordering of the employees;
  - limiting the overtime working hours;
  - reducing the working hours;
  - offering professional retraining, and
  - the rights of its employees as set out in the Employment Contract, Employer's Internal Act or Collective Contract.

Another step that the employer should undertake is to notify in writing the Employment Office about removing of employees from work, so EO be able to provide assistance to them to find other employment.

Additionally, during collective dismissals, an employee may not be discharged until the employer provides a single severance payment to the employee. The severance payment shall be paid to the employees with indefinite period contract on the date of termination at the following scale:

- from two (2) to four (4) years of service, one (1) monthly salary;
- from five (5) to nine (9) years of service, two (2) monthly salary;
- from ten (10) to nineteen (19) years of service, three (3) monthly salary;
- from twenty (20) to twenty-nine (29) years of service, six (6) monthly salary; and
- from thirty (30) years of service or more, seven (7) monthly salary.

The discharged employees have an advantage of being reemployed by the same employer in a case when within a period of one (1) year from the termination of the employment contracts, the employer hires employees with the same qualifications or training.



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Is suspension from work equal to termination of employment contract?

No, it is not. Suspension is a temporary measure imposed on the employee in certain occasions. It represents a temporary removal from a work post as a result of other circumstances, and the employee retains the right to return to work as soon as the circumstances are over. According to Article 73 of the Kosovo Labor Law, an employee may be temporary suspended from work if:

- Criminal procedures are initiated against an employee because of alleged criminal offence of any kind;
- An employee is detained; and
- An employee conducts a serious violation of work related obligations.

Temporary suspension from work may not last more than six (6) months, during which period the employer shall either return the employee to work or shall terminate the labor contract. Furthermore, for the duration of the temporary suspension from work, an employee is entitled to salary compensation in amount of fifty percent (50%) in accordance with Article 74 of the Kosovo Labor Law.

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Are there any situation when it is forbidden to terminate the employment contract?

Yes, there are. In accordance with Article 53 of the Kosovo Labor Law, the employer shall not terminate the contract with the employee and/or make a transfer to another post during pregnancy, maternity leave and absence from work due to special care for the child, except in cases of termination of the contract during collective dismissals.



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What can I do if I feel that my rights as an employee have been violated?

Kosovo Labor Law provides for various actions that can be undertaken by an employee in the situations when he/she feels that labor rights have been violated. The actions for labor rights protection can be brought before and/or resolved in different instances: relevant bodies of the employer (if they exist), the Court, mediation, and Labor Inspectorate.

Usually the first step to be taken when there is suspicion of labor rights violation, is to address the issue in front of the employers higher bodies. When an alleged violation is addressed, the employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted, and should issue a written decision and deliver it to the employee within eight (8) days of taking a decision.

If an employee is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term of 15 days, can initiate a work dispute at the competent Court within thirty (30) days.

Furthermore, an employee and employer may resolve disputes deriving from work through mediation with the provisions of the Law on Mediation as well as with other applicable legal provisions.

Finally, an employee may submit an appeal to the Labor Inspectorate at any time for issues falling under the competencies of this body. Labor Inspectorate oversees the application of legal provisions related to labor issues, including employment relationships, workplace safety, employees' health protection, and work environment. Labor Inspectorate is obliged to issue a decision regarding the appeal of the employee within thirty (30) days, or inform the submitter of the appeal regarding the extension of the term when the decision shall be reached.

Labor Inspectorate covers the entire Kosovo territory, and has municipal inspectors in all municipalities. Depending on the location of business, the Labor Inspectorate should be contacted in a relevant municipality.

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What can we expect after an issued court decision?

The employee's case in the court can have different results and different remedies. Therefore in its Article 80, Kosovo Labor Law has prescribed several steps that employer needs to take based on the different court decisions. If the court finds that the employer's cancellation of the employment contract is unlawful according to the provisions of this Law, the collective contract or the employment contract, it shall order the employer to do one of the following:

- to pay the employee compensation, in addition to any allowance and other amounts to which the employee may be entitled under this Law, the employment contract, a collective contracts or the Internal Act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or
- in cases where the dismissal is deemed unlawful, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.



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General Advices for Employers and Employees

**KEEP EVERYTHING IN WRITING.** Starting from the employment contract, any amendments, rules, orders, instructions, decisions, or any other piece of correspondence exchanged between the employer and employee.

Having the employment contract in writing is of special importance. The main advantage of having a written employment contract is that it provides a high level of specificity regarding the details of the employment. It allows for both parties to negotiate the terms under which they are willing to cooperate with one another, and is especially important for companies who need to protect particular trade secrets or copyrighted material.

Another advantage is that the contract can be referred to in the future if a dispute arises over a particular aspect of the employment. The written document can be used as evidence if necessary. Finally, employment contracts are important for fostering a positive relationship between the employer and the employee. Employers usually feel that an employment agreement creates an enhanced degree of organization and structure in the work relationship. For employees, an employment agreement can provide a sense of stability and security, especially if the agreement lists the time frame for the period of employment.

This is an overall advice based on legal requirements, as well as practice. In the worst case if either the employer or the employee needs to resolve a dispute, or initiate any legal action or protection related to employment relationships, the process is conducted much faster when there are things in writing.

Despite the method the employer or employee chooses to pursue its rights, having written evidence makes the conversation between the employee and employer and/or HR department, base the conversation on facts, and often results in a clarification of the issue that occurred due to misunderstanding or misinterpretation.

Additionally, any institution the employer or employee decide to use for resolving the dispute, such as Negotiation Center, Labor Inspectorate and/or Court, will have a credible basis on which to base their decision or advice.