

Breach of labour discipline

– a reason to terminate an employment relationship?

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Employers often ask themselves whether the breach of labour discipline they are facing is one entitling them to give notice to an employee or to terminate the employment relationship immediately.

Even though one ground entitling an employer to terminate an employment relationship is that an employee breached labour discipline, not every breach of labour discipline is a ground for terminating a contract.

In the first place it ought to be said that regarding the right to dismiss an employee it is irrelevant whether the breach is identified in the employment contract or in the internal regulation of the employer.

A specific breach of labour discipline must be of a certain seriousness which would hold up in a court of law. In the case of an immediate termination of an employment contract the law requires a substantial breach of labour discipline. However, the line between a minor breach and a substantial breach is very thin.

The seriousness of the breach is decided by the court on a case-to-case basis taking into consideration the employee's character, his or her position in the organisational structure of the employer, their previous attitude towards labour discipline and the quality of their work.

Less serious breaches of labour discipline may include ignoring orders from superiors, leaving the workplace during working hours and failing to notify an employer in time of an impediment to work and its expected length.

According to the case-law, the courts consider substantial breaches of labour discipline to be the inability to work caused by drinking alcohol, unjustified absences, breach of confidentiality, an employee working for himself during their employer's time, causing an injury and using an employer's vehicles for private purposes.



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In addition to the essential presumption for giving notice, i.e. a breach of labour discipline by the employee, the employer must observe the standard requirements for giving notice and the particular procedural steps set out by the Labour Code, mainly:

* an employer is obliged to notify an employee of the possibility of the termination their

employment relationship due to a breach of labour discipline by a notice in writing prior to the termination of the employment relationship and not later than six months before the termination of the employment relationship (i.e. in order to give a ground for termination of the employment relationship the employee must breach labour discipline at least twice);

* an employer may only give notice to an employee within a period of two months of the day that the employer became acquainted with the reason for the notice, however, not later than one year from the day the reason for the notice occurred;

* an employee, who should be given notice on the ground of a breach of labour discipline, must be acquainted with the reason for the notice and must be allowed to give their own statement on the matter (either orally or in writing).

As stated above, a substantial breach of labour discipline entitles an employer to terminate an employment relationship immediately, without the need to provide an employee with a notice period. An employer may dismiss an employee within a period of one month from the day that it became acquainted with the reason justifying immediate termination, however, no later than one year from the day the reason occurred. In this case only a written notice specifying the failure as a reason for immediate dismissal can be delivered to the employee.

Each case of labour discipline therefore needs to be considered on a case-to-case basis. Moreover, an employer should respect the procedural steps or otherwise risk facing a successful lawsuit by the dismissed employee that the termination of the employment was invalid.

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