

TERMINATION CAUSES UNDER SPANISH LAW

Dismissals, while they may seem harsh, are an inevitable part of the employment cycle. Just like hiring, they are decisions that businesses must face regularly. However, if not handled properly, they can lead to serious conflicts. That's why understanding the different types of dismissals and the procedures that come with them is crucial for both employers and employees.

What Types of Dismissals Exist in Spain and How Can They Impact Your Business?

There are three types of dismissals:

1. Objective Dismissal

This type of dismissal, regulated by Articles 52 and 53 of the Workers' Statute, is based on justified reasons, such as economic difficulties, technological changes, or internal restructuring. In such cases, the company must be able to demonstrate that these reasons are legitimate and directly affect the business. What's the outcome? The employee is entitled to severance pay of 20 days' salary for each year worked, up to a maximum of 12 months. It is essential for the employer to provide a letter explaining the reasons in detail and to give a 15-day notice, or alternatively, pay the equivalent in salary.

The reasons for objective dismissal can be divided into two categories:

- **Attributable to the company:** Economic, technical, organizational, or production-related reasons.
- **Attributable to the employee:** Incompetence, lack of adaptation, or justified but intermittent absences from work.

2. Disciplinary Dismissal

This is the most severe type of dismissal, reserved for cases where the employee's behaviour is deemed serious and culpable. In these cases, there is no entitlement to severance pay. Common reasons include repeated unjustified absences, disobedience, breach of trust, physical or verbal offenses, low productivity, or intoxication at work. Disciplinary dismissals can be immediate and without prior notice. However, it's crucial

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for the reason to be well justified, as the employee has the right to challenge the dismissal.

Disciplinary dismissal is regulated by Article 54 of the Workers' Statute, but sector-specific collective bargaining agreements often define the behaviours that are considered serious offenses and may lead to such dismissals.

3. Collective Dismissal (ERE)

Collective dismissals, or **Extinction ERE**, occur when a company decides to dismiss a large number of employees for objective reasons similar to those for individual dismissals (economic, technical, organizational, or production-related). It is considered collective if, within a 90-day period, it affects:

- 10 employees in companies with fewer than 100 workers.
- 10% of the workforce in companies with 100 to 300 workers.
- 30 employees in companies with more than 300 workers.

Collective dismissal involves a more formal process, including the creation of a workers' committee, negotiations, and communication with labor authorities.

In addition, it is important to bear in mind that the dismissals of senior executives are regulated by agreements between the parties. This is so as long as such agreements do not collide with the minimum mandatory rights established by its special regulations, Royal Decree 1382/1985, of August 1, 1985.

The Dismissal Process Step by Step

The general process for any type of dismissal involves several key steps:

1. **Notice:** For objective dismissals, the employer must provide at least 15 days' notice or pay the corresponding salary.
2. **Dismissal Letter:** This formal document outlines the reasons for the dismissal, the effective date, and details about the final settlement. It is crucial that the letter is clear, specific, and precise, as failure to do so may lead to a challenge by the employee.
3. **Final Settlement:** This includes any unpaid wages, unused vacation days, and pro-rated bonuses. It may also include severance pay if the dismissal is objective or unfair.

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4. **Challenging the Dismissal:** If the employee disagrees with the dismissal, they have 20 days to challenge it in court. This process includes a conciliation phase where the aim is to reach an agreement before proceeding to trial.

What If the Dismissal Is Not Properly Handled?

If the employer fails to meet legal requirements or cannot substantiate the reasons for the dismissal, it is considered an **unfair dismissal**. In this case, the company must choose between two options:

- **Reinstatement:** The employee is reinstated to their position and paid the wages lost between the dismissal and their reinstatement.
- **Severance Pay:** Compensation is calculated based on the employee's seniority: 45 days' salary per year worked before 2012 and 33 days per year thereafter, with a maximum of 720 days' salary, except in cases where prior to February 2012 a higher amount had been credited.

Null Dismissal: When the Law Protects the Employee

A **null dismissal** occurs when the dismissal is based on discrimination prohibited by law or the Spanish Constitution, or when it violates the employee's fundamental rights. For example, dismissing a pregnant woman or an employee with special legal protection would be considered null. In such cases, the employer has no choice but to reinstate the employee immediately and pay them the wages lost from the date of dismissal until their reinstatement.

In addition to reinstatement and the payment of lost wages, a dismissal declared null for violating fundamental rights may also result in additional compensation for moral damages. This compensation aims to address the emotional distress and suffering caused. The amount varies depending on the seriousness of the infraction, the specific circumstances of the case and the judge's discretion.

Consequences of Mishandling a Dismissal

It is essential to follow the legal process for any dismissal. A poorly managed dismissal can be costly for a company, both financially and in terms of reputation. Dismissals deemed unfair or null by the courts can lead to substantial severance payments, mandatory reinstatements, or prolonged legal disputes.

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In conclusion, while dismissal is a reality in the workplace, handling the process carefully and in compliance with the law is crucial to avoid greater issues. For employees, understanding their rights ensures that, if faced with a dismissal, it is carried out fairly and in accordance with legal standards.

The above does not constitute legal advice but is only for information purposes. For further information or to request legal advice, please contact info@gimenez-salinas.es

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