

Termination of the employment agreement

“Dragomir si Asociatii” Law Offices

In the Romanian law, the ways to terminate an employment agreement are:

- the termination of the agreement according to the law;
- the termination of the agreement by the consent of the parties;
- the termination of the agreement by unilateral decision of one of the parties;

1.The termination of the agreement according to the law:

- By the death of the employee or by the final judgment death declaratory or declaring the employee incapable to manage his own affaires;
- By the notification of the retirement;
- By the annulment of the employment agreement by the consent of both parties or by judgment;
- As result of the reintegration of a former employee who was unlawful or groundlessly dismissed in the position of a new employee . The termination of the employment agreement operates from the date of the final reintegration judgment;
- By the judicial conviction of the employee to the prison penalty (punishment);
- By the withdrawal of the approval, license or attestation required to profess;
- By the disability inflicted by the law involving the interdiction to profess as result of the final judgment fixing (establishing)a safety measure or a complementary penalty;
- By the termination of the contractual period;
- By the withdrawal of the parents or representatives agreement in the case of the employees 15-16 years aged.

2. The termination of the agreement by the consent of the parties

The common principles regarding the termination offer and the acceptance of the offer are applicable.

3. The termination of the agreement by unilateral decision of one of the parties

- **The resignation**

The employee gives notice to the employer regarding the resignation. The termination of the agreement is possible only with a 15 days prior notice for the employees in implementation positions and 30 days prior notice for the employees in management positions.

Exceptions:

- the resignation interceded in the probation period, when the prior notice is unnecessary for the employee and as well for the employer in the case of the dismissal;
- the prior notice is not necessary before resignation if the employer doesn't observe his obligations undertaken by the employment agreement

The employer can renounce to the benefit of the notice period.

The employee has the right not to justify his resignation.

For the resignation to take effect the approval of the employer is not necessary.

The withdrawal of the resignation is possible only with the express accord of the employer.

- **The Dismissal**

The Romanian law establishes permanent and temporary interdictions regarding the dismissal of the employee by the employer:

- *The permanent interdictions* are related to criteria as: the gender, the sexual orientation, the genetic characteristics, the age, the nationality, the race, the color, the religion or the exercise of his rights.
- *The temporary interdictions* are stipulated by the law in the following situations:
 - during the employees labour disablement, who was established through a certificate of health;
 - during the quarantine leave;
 - in the pregnancy period, if the employer knows the condition of the employee;
 - during the maternity leave;
 - for the duration of one's leave for raising a child up to the age of 2, in case of a disabled child, up to the age of 3;
 - for the duration of one's leave for looking after a sick child aged up to 7 years, or, in case of a disabled child, for incurrent illnesses until he turns 18 years;
 - during the military service;
 - during the exercise of a function in a syndicate and two years later, for reasons that are not related to the employee, except a serious or a repeated misbehavior.
 - during the paid leave.

If none of the temporary or permanent interdiction cases are applicable, the employer can dismiss the employee for the following reasons:

- *Reasons that are related to the employee*
 - the dismissal for disciplinary reasons; in this situation, the employer must carry on the disciplinary proceedings provided by the law before the dismissal;
 - the preventive arrest of the employee for a period of more than 30 days;

- for physical or psychological incapacity of the employee;
- when the employee becomes professional incapable; in this situation, the employer will do his best to give the employee an appropriate position;
- if the employee has the right to demand the retirement, but he does not demand it.

- Reasons that are not related to the employee

- the stricken out of the employee's position from the organizational chart of the employer

In all the situations when the dismissal is not related with the employee, he benefits of a minimum 20 or 30 days prior notice.

Exception - the situation when the employee is arrested (in preventive arrest) because in this case the notice does not justify his function.

If the employee does not receive a 20 or 30 days notice, he has the right to receive an indemnity. The amount of the indemnity is equal to the base salary that the employee had in the moment of the dismissal.

The dismissal decision is transmitted in written form to the employee and it must contain:

- the dismissal reasons;
- the duration of the prior notice;
- a list with the vacant positions in the company, if necessary.

The decision takes effect from the date of the communication to the employee.

The employee may contest the decision with the Tribunal in 30 days from the date of the communication.

The Judgment delivered by the Tribunal is subject to recourse, which is judged by the Court of Appeal.