



**INTERNATIONAL STANDARDS REGARDING  
FIXED-TERM CONTRACTS IN THE PUBLIC SECTOR**

**“MEET WITH THE COURT” 2017**

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# RELEVANT STANDARDS

1. Termination of Employment Convention, 1982  
(No. 158)
2. Termination of Employment Recommendation, 1982  
(No. 166)
3. Employment Relationship Recommendation, 2006  
(No. 198)

# CONVENTION NO. 158 & RECOMMENDATION NO. 166

## SCOPE OF APPLICATION

Applies to all branches and all employed persons

Exclusions:

- Fixed-term workers;
- Workers employed for a specified task
- Workers on probation;
- Casual workers
- Other workers

Adequate safeguards against recourse to fixed-term contracts to avoid protections of the Convention

# TERMINATION MUST BE JUSTIFIED

## Valid reason

- Capacity or conduct of the worker, operational requirements

## Invalid reasons:

- Union membership and activities
- Lodging complaint or court proceedings
- Discrimination  
race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- Taking maternity leave
- Taking sick leave
- Additional grounds (R166): age, and absence from work due to compulsory military service or other civic obligations

# TERMINATION PROCEDURE

Right to defend oneself

Guidance on steps prior to termination (R.166)

- Disciplinary warnings (misconduct)
- Prior instruction (unsatisfactory performance)
- Assistance (the worker's defence)
- Timeliness of termination (misconduct)
- Consultation with worker's representatives before final decision
- Details on notice of termination

# TERMINATION PROCEDURE (CONT.)

## Appeal against termination

- Body
  - Impartial
  - Can award remedies
- There may be time limit to appeal
- Burden of proof
  - Not on the worker alone
  - Then how?
    - The employer required to prove the existence of a valid reason and/or
    - Appeal body empowered to conclude on the reason

# TERMINATION PROCEDURE (CONT.)

## Notice

- “Reasonable period of notice” or compensation in lieu
- Unless serious misconduct
- R166
  - Reasonable time-off to seek new job
  - Certificate of employment

## Income protection

- Severance allowance
- Unemployment insurance
- Combination of both

# PROCEDURE FOR COLLECTIVE DISMISSALS

## Prior to termination...

Bipartite consultation - The employer must inform:

- Reasons for the terminations contemplated
- Number and categories of workers affected
- Period of terminations

Possibility to avert or minimise the terminations must be sought (R166)

- restriction of hiring
- spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce
- internal transfers
- training and retraining
- voluntary early retirement with appropriate income protection
- restriction of overtime
- reduction of normal hours of work



# PROCEDURE FOR COLLECTIVE DISMISSALS (CONT.)

## Prior to termination...

When terminations are contemplated, the employer must notify the competent authority

- Reasons
- Number and categories of workers to be affected
- Period of termination

# PROCEDURE FOR COLLECTIVE DISMISSALS (CONT.)

## During termination...

Termination must be based on the criteria for selection

- Pre-established
- By law or regulations, collective agreements, company rules, court decisions, etc.
- Due weight to the interests of the undertaking and the workers

# PROCEDURE FOR COLLECTIVE DISMISSALS (CONT.)

## After termination...

### Priority in rehiring (R166)

- Certain priority of rehiring if the employer again hires with comparable qualifications

### Measures to mitigate the effects of termination (R166)

- Placement in alternative employment
- Assistance in job search
- Income protection and reimbursement of expenses for training for alternative employment

# “JURISPRUDENCE” OF THE SUPERVISORY BODIES

- ❑ Trend to substitute employment contracts by self-employment exists.
- ❑ “Reasonable duration” of probation (re: scope of application)
  - C.158’s only requirement – must be pre-determined
  - Must be determined nationally in good faith
- ❑ Prohibiting termination where the opportunity for defence has not been given does not mean prohibition of termination without a valid reason.

# EMPLOYMENT RELATIONSHIP RECOMMENDATION, 2006 (NO. 198)

## PART I. NATIONAL POLICY FOR REVIEWING AND ADAPTING RELEVANT LAWS AND REGULATIONS

Minimum contents – Measures to:

- Provide guidance on identifying an employment relationship
- Combat disguised employment relationship
- Ensure laws and regulations apply to all contractual arrangements, including multi-party ones
- Ensure access to dispute settlement procedures
- Achieve compliance
- Train all stakeholders in international and national legislation

# PART I. NATIONAL POLICY (CONT.)

## Additional contents

- Measures for vulnerable workers (women, young workers, older workers, workers in informal economy, migrant workers, and workers with disabilities)
- Gender equality policy

## Transnational movement of workers

- Measures to protect and prevent abuses of migrant workers
- Concluding bilateral agreements to prevent abuses and fraudulent practices

## PART II. DETERMINING AN EMPLOYMENT RELATIONSHIP

### Main guidance

“...the determination of the existence of [an employment relationship] should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.”

## PART II. DETERMINING AN EMPLOYMENT RELATIONSHIP (CONT.)

Clear methods should be promoted. Such methods should:

- allow a broad range of means
- provide for a legal presumption that an employment relationship exists where one or more relevant indicators is present; and
- deem workers to be either employed or self-employed

Indicators should be considered

- subordination
- dependence



## PART II. DETERMINING AN EMPLOYMENT RELATIONSHIP (CONT.)

### Dispute settlement

- a matter for industrial or other tribunals or arbitration authorities

### Compliance measures

- e.g. labour inspection in collaboration with the social security and the tax authorities
- Regular monitoring, especially occupations and sectors with many women workers
- Removing incentives to disguise an employment relationship
- Promotion of collective bargaining and social dialogue as a means to find solutions

## PART III. MONITORING AND IMPLEMENTATION

A mechanism should be established

- To monitor the labour market and to advise on the implementation of the national policy
- The most representative employers' and workers' organizations should be represented. They should also be consulted on the basis of technical inputs.
- Information and data should be collected. Changes in the patterns and structure of work should be studied.

A mechanism for transnational employment relationships

- To identify employment relationship in a transnational setting
- Information should be exchanged with other States.