

DISCIPLINE ISSUES IN ILO STANDARDS

MEET WITH THE COURT SYMPOSIUM 2018

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DISCIPLINE IN ILO STANDARDS

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- No ILO Convention on discipline
- Termination of Employment Recommendation, 1982 (No. 166)
- Some other provisions
- Example: ILO Staff Regulations

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RECOMMENDATION NO. 166 (PARAGRAPHS 7-13)

Steps

1. Employer
 - Warning (for misconduct)
 - Warning and Instruction (for unsatisfactory performance)
2. Worker: Defence (hearing)
3. Employer: Decision on the worker's termination
4. Employer: Notify termination

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RECOMMENDATION NO. 166 (CONT.)

1. Employer's action towards a worker:
[Misconduct]
 - The worker should not be terminated if the misconduct is repeated on one or more occasions, unless the employer has given the worker appropriate warning.
 - The warning should be in writing.

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RECOMMENDATION NO. 166 (CONT.)

1. Employer's action towards a worker: [Unsatisfactory performance]

- The worker should not be terminated
 - Unless the employer has given the worker warning and instruction, and
 - Unless the worker continues to perform poorly after reasonable time for improvement has elapsed.
- The warning should be in writing.

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RECOMMENDATION NO. 166 (CONT.)

2. Worker's defence (Art. 7 of C.158)

- The worker must be given a chance to defend himself/herself.
- The worker should be assisted by another person.
- This right may be specified in laws or regulations, collective agreements, works rules, arbitration awards or court decisions.

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RECOMMENDATION NO. 166 (CONT.)

3. Employer's decision on termination

- The employer's right to terminate for misconduct should be considered waived if it is not exercised within a reasonable period.
- The employer may consult workers' representatives before a final decision.
 - Encouraged for sound industrial relations.

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RECOMMENDATION NO. 166 (CONT.)

4. Employer notifies termination

- The notification should be in writing.
- The terminated worker should be entitled to receive, on request, a written statement of the reasons of termination (except in case of collective dismissal in accordance with Convention No. 158).

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TERMINATION OF EMPLOYMENT CONVENTION, 1982 (NO. 158)

- Termination must be justified
 - Valid
 - Capacity or conduct of the worker, operational requirements
 - Invalid
 - 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

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CONVENTION NO. 158 (CONT.)

- Right to defend oneself
- Appeal against termination
 - Time limit possible
 - Burden of proof
 - The worker (termination invalid)
 - The employer (existence of a valid reason)
 - Appeal body empowered to conclude on the reason
- Collective termination procedure provided separately.

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ILO CONVENTIONS REFERRING TO DISCIPLINE ISSUES

- Abolition of Forced Labour Convention, 1957 (No. 105)
 - Forced labour must not be used as a means labour discipline ⇒ Disciplinary measure must not go as far as forced labour
- OSH instruments (e.g. Occupational Safety and Health Convention, 1981 (No. 155))
 - The worker who removed himself/herself for safety must not be disciplined ⇒ Exercising right to safe workplace is not subject for discipline.

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ILO CONVENTIONS REFERRING TO DISCIPLINE ISSUES (CONT.)

- Labour Inspection Convention, 1947 (No. 81)
 - Breach of the duty of labour inspectors to maintain professional secret must be bound on pain of appropriate penalties or disciplinary measures.

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ILO STAFF REGULATIONS

- Sanctions under ILO Staff Regulations
 1. Warning (removed after three years w/o sanction)
 2. Reprimand
 3. Censure
 4. Discharge
 5. Summary dismissal

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ILO STAFF REGULATIONS (CONT.)

- Procedure for application of sanctions
 1. Proposal: A proposal to apply sanction is communicated (except for warning).
 - Reason must be stated
 - The official concerned must initial and return a copy within 8 days of receipt, with observations
 2. Appeal: The official has the right to appeal within one month of receipt (except for warning and reprimand)
 3. Sanction: The decision to apply a sanction is communicated. The official concerned must initial and return a copy.