

EMPLOYMENT BRIEFING: Special Edition

Recent Developments in Employment Legislation

Law 4611/2019, published in the Government's Gazette on 17 May 2019, introduces changes to the legislation concerning the termination of employment contracts and the liability of employees during the term of their employment.

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A. Main Provisions of Law 4611/2019

1. Pursuant to Article 48 of Law 4611/2019 (the **New Law**), the requirements for terminating an employment contract have been amended so that a termination is deemed lawful only if:
 - a. it is based on a valid reason as set out in Article 24 of the Revised European Social Charter, ratified by the first article of Law 4359/2016;
 - b. it is in writing;
 - c. due compensation has been paid; and
 - d. the employment of the dismissed employee had been registered with EFKA (the mandatory Social Security Organization).
2. The New Law also provides that if a termination is challenged before the Courts, the burden of invocation and proof that the requirements for a valid termination have been met is borne by the employer.
3. Article 49 of the New Law replaces Article 652 of the Greek Civil Code, by introducing substantial changes to employee liability. More details are set out under D below.
4. Article 51 of the New Law provides that the employer is under an obligation to deposit any compensation for the termination in the bank account to which the salary of the dismissed employee is paid.

B. Valid Reason for Termination of Employment

1. Before the New Law, terminations of employment:
 - a. could be effected without invoking a specific reason, provided that the termination was in writing and that any compensation due was paid; and
 - b. in accordance with case law, dismissals could not be abusive in the sense of Article 281 of the Greek Civil Code, based on the criteria set out by the Courts.
2. The New Law introduces the requirement of a valid reason for the termination to be lawful. Article 48 refers to the Revised European Social Charter, in Article 24 of which the meaning of a valid reason is specified.
3. In particular, a reason for termination is valid when connected with the capacity or conduct of the employee, or with the operating requirements of the undertaking, establishment or service acting as employer.
4. The Ministry of Labour, Social Security and Social Solidarity issued Circular 26100/98 on 7 June 2019, providing that the Information System ERGANI will be updated with regards to form E6 (Termination of Indefinite-Term Employment Contracts (With or Without Notice)) with the addition of a new field requiring employers to stipulate a valid reason for termination, by choosing among the following:
 - a. capacity of the employee;
 - b. conduct of the employee; or
 - c. operational requirements of the undertaking.
5. The New Law does not go into further detail on the facts behind a-c above, but the determination of what is valid is the result of a balance of the interests of the employer and employee, as interpreted by the Court.
6. Case Law also stipulates that the reason for termination must be:

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- a. actual and not ostensive; and
 - b. reasonable, without necessarily being serious, with reference to the principle of ultima ratio which provides that a termination is lawful if no other measure can be taken which would have an equal but milder outcome.
7. The European Committee of Social Rights also specifies that a valid reason for termination:
- a. must be connected with the reasonable interests of the undertaking, establishment or service, or have another fair goal; and
 - b. must be adequate and necessary for achieving this goal, with reference to the principle of proportionality.
8. Any judgments on what constitutes a valid reason will be made by the Courts on the basis of the specific facts of each case. Case law stipulates that in order for the reason for termination to be valid, it must have resulted in the disruption of the employment relationship.
9. The Case Law of other countries that require a valid reason for the lawful termination of employment can contribute substantially to the interpretation of the term by the Greek Courts. Existing Greek Case Law regarding non-abusive dismissals can also be taken into account.

C. Burden of Invocation and Proof

1. The previous legislation provided that a termination of employment could be challenged as abusive, but the burden of invoking and proving its abusive nature was borne exclusively by the employee.
2. Under the New Law the burden of invoking and proving the reason for termination is valid is borne by the employer.
3. A termination may be challenged as abusive when it has been effected legally but in a way that manifestly exceeds the restrictions implied by good faith or good moral values,

or if it is based on social or economic reasons which are not within the spirit of the New Law. In these cases, the employee must prove their allegation.

D. Liability of the Employee

1. Pursuant to the pre-existing Article 652 of the Greek Civil Code, employees were liable in full for any damage caused to the employer, either intentionally or negligently.
2. Article 49 of the New Law qualifies this and provides that:
 - a. employees are obliged to perform their work diligently;
 - b. the level of diligence required is determined with reference to the employment contract, type of work assigned, any education or special knowledge required for the position, and any capabilities and qualifications of the employee that the employer is or should be aware of;
 - c. employees are liable for any intentional damage caused to their employer;
 - d. in the event that damage to an employer is due to employee negligence (either gross or slight) during the course of the performance of their work, the Courts may:
 - i. exonerate the employee from any liability, in particular in cases of slight negligence;
 - ii. allocate the damage between the employer and employee, by attributing to the employer any damage pertaining to risks associated with the employer's business or that are disproportionate with the benefit the employee derives from the employment contract.
3. Article 49 of the New Law (par. 2) also provides that an agreement between the employer and employee is not valid when it restricts the rights of the employee as provided for by the Greek Civil Code, or when it increases the liability of the employee as set out in 2 above.

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