

Description: Convention concerning Termination of Employment at the Initiative of the Employer  
(Note: Date of coming into force: 23:11:1985.)

Convention:C158  
Place:Geneva  
Session of the Conference:68  
Date of adoption:22:06:1982  
Subject classification: Termination of Employment - Dismissal  
Subject: Employment security  
The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office,  
and having met in its Sixty-eighth Session on 2 June 1982, and  
Noting the existing international standards contained in the Termination of Employment  
Recommendation, 1963, and  
Noting that since the adoption of the Termination of Employment Recommendation, 1963,  
significant developments have occurred in the law and practice of many member States on  
the questions covered by that Recommendation, and  
Considering that these developments have made it appropriate to adopt new international  
standards on the subject, particularly having regard to the serious problems in this field  
resulting from the economic difficulties and technological changes experienced in recent years  
in many countries,  
Having decided upon the adoption of certain proposals with regard to termination of  
employment at the initiative of the employer, which is the fifth item on the agenda of the  
session, and  
Having determined that these proposals shall take the form of an international Convention  
adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two  
the following Convention, which may be cited as the Termination of Employment Convention,  
1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1  
The provisions of this Convention shall, in so far as they are not otherwise made effective by  
means of collective agreements, arbitration awards or court decisions or in such other manner  
as may be consistent with national practice, be given effect by laws or regulations.

Article 2  
1. This Convention applies to all branches of economic activity and to all employed persons.  
2. A Member may exclude the following categories of employed persons from all or some of  
the provisions of this Convention:  
(a) workers engaged under a contract of employment for a specified period of time or a  
specified task  
(b) workers serving a period of probation or a qualifying period of employment, determined in  
advance and of reasonable duration  
(c) workers engaged on a casual basis for a short period.  
3. Adequate safeguards shall be provided against recourse to contracts of employment for a  
specified period of time the aim of which is to avoid the protection resulting from this  
Convention.  
4. In so far as necessary, measures may be taken by the competent authority or through the  
appropriate machinery in a country, after consultation with the organisations of employers and  
workers concerned, where such exist, to exclude from the application of this Convention or  
certain provisions thereof categories of employed persons whose terms and conditions of  
employment are governed by special arrangements which as a whole provide protection that  
is at least equivalent to the protection afforded under the Convention.  
5. In so far as necessary, measures may be taken by the competent authority or through the  
appropriate machinery in a country, after consultation with the organisations of employers and  
workers concerned, where such exist, to exclude from the application of this Convention or  
certain provisions thereof other limited categories of employed persons in respect of which  
special problems of a substantial nature arise in the light of the particular conditions of  
employment of the workers concerned or the size or nature of the undertaking that employs  
them.  
6. Each Member which ratifies this Convention shall list in the first report on the application of  
the Convention submitted under Article 22 of the Constitution of the International Labour  
Organisation any categories which may have been excluded in pursuance of paragraphs 4  
and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent  
reports the position of its law and practice regarding the categories excluded, and the extent  
to which effect has been given or is proposed to be given to the Convention in respect of such  
categories.

Article 3  
For the purpose of this Convention the terms termination and termination of employment  
mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION

DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4  
The employment of a worker shall not be terminated unless there is a valid reason for such  
termination connected with the capacity or conduct of the worker or based on the operational  
requirements of the undertaking, establishment or service.

Article 5  
The following, inter alia, shall not constitute valid reasons for termination:  
(a) union membership or participation in union activities outside working hours or, with the  
consent of the employer, within working hours  
(b) seeking office as, or acting or having acted in the capacity of, a workers' representative  
(c) the filing of a complaint or the participation in proceedings against an employer involving  
alleged violation of laws or regulations or recourse to competent administrative authorities  
(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political  
opinion, national extraction or social origin  
(e) absence from work during maternity leave.

Article 6  
1. Temporary absence from work because of illness or injury shall not constitute a valid  
reason for termination.  
2. The definition of what constitutes temporary absence from work, the extent to which  
medical certification shall be required and possible limitations to the application of paragraph  
1 of this Article shall be determined in accordance with the methods of implementation  
referred to in Article 1 of this Convention.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7  
The employment of a worker shall not be terminated for reasons related to the worker's  
conduct or performance before he is provided an opportunity to defend himself against the  
allegations made, unless the employer cannot reasonably be expected to provide this  
opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8  
1. A worker who considers that his employment has been unjustifiably terminated shall be  
entitled to appeal against that termination to an impartial body, such as a court, labour  
tribunal, arbitration committee or arbitrator.  
2. Where termination has been authorised by a competent authority the application of  
paragraph 1 of this Article may be varied according to national law and practice.  
3. A worker may be deemed to have waived his right to appeal against the termination of his  
employment if he has not exercised that right within a reasonable period of time after  
termination.

Article 9  
1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the  
reasons given for the termination and the other circumstances relating to the case and to  
render a decision on whether the termination was justified.  
2. In order for the worker not to have to bear alone the burden of proving that the termination  
was not justified, the methods of implementation referred to in Article 1 of this Convention  
shall provide for one or the other or both of the following possibilities:  
(a) the burden of proving the existence of a valid reason for the termination as defined in  
Article 4 of this Convention shall rest on the employer  
(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a  
conclusion on the reason for the termination having regard to the evidence provided by the  
parties and according to procedures provided for by national law and practice.  
3. In cases of termination stated to be for reasons based on the operational requirements of  
the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention  
shall be empowered to determine whether the termination was indeed for these reasons, but  
the extent to which they shall also be empowered to decide whether these reasons are  
sufficient to justify that termination shall be determined by the methods of implementation  
referred to in Article 1 of this Convention.

Article 10  
If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if  
they are not empowered or do not find it practicable, in accordance with national law and  
practice, to declare the termination invalid and/or order or propose reinstatement of the  
worker, they shall be empowered to order payment of adequate compensation or such other  
relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11  
A worker whose employment is to be terminated shall be entitled to a reasonable period of  
notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is,  
misconduct of such a nature that it would be unreasonable to require the employer to continue  
his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12  
1. A worker whose employment has been terminated shall be entitled, in accordance with  
national law and practice, to-  
(a) a severance allowance or other separation benefits, the amount of which shall be based  
inter alia on length of service and the level of wages, and paid directly by the employer or by a  
fund constituted by employers' contributions  
(b) benefits from unemployment insurance or assistance or other forms of social security, such  
as old-age or invalidity benefits, under the normal conditions to which such benefits are  
subject  
(c) a combination of such allowance and benefits.  
2. A worker who does not fulfil the qualifying conditions for unemployment insurance or  
assistance under a scheme of general scope need not be paid any allowance or benefit  
referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving  
an unemployment benefit under paragraph 1, subparagraph (b).  
3. Provision may be made by the methods of implementation referred to in Article 1 of this  
Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1,  
subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF  
EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR  
REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13  
1. When the employer contemplates terminations for reasons of an economic, technological,  
structural or similar nature, the employer shall:  
(a) provide the workers' representatives concerned in good time with relevant information  
including the reasons for the terminations contemplated, the number and categories of  
workers likely to be affected and the period over which the terminations are intended to be  
carried out  
(b) give, in accordance with national law and practice, the workers' representatives  
concerned, as early as possible, an opportunity for consultation on measures to be taken to  
avert or to minimise the terminations and measures to mitigate the adverse effects of any  
terminations on the workers concerned such as finding alternative employment.  
2. The applicability of paragraph 1 of this Article may be limited by the methods of  
implementation referred to in Article 1 of this Convention to cases in which the number of  
workers whose termination of employment is contemplated is at least a specified number or  
percentage of the workforce.  
3. For the purposes of this Article the term the workers' representatives concerned means the  
workers' representatives recognised as such by national law or practice, in conformity with the  
Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14  
1. When the employer contemplates terminations for reasons of an economic, technological,  
structural or similar nature, he shall notify, in accordance with national law and practice, the  
competent authority thereof as early as possible, giving relevant information, including a  
written statement of the reasons for the terminations, the number and categories of workers  
likely to be affected and the period over which the terminations are intended to be carried out.  
2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases  
in which the number of workers whose termination of employment is contemplated is at least  
a specified number or percentage of the workforce.  
3. The employer shall notify the competent authority of the terminations referred to in  
paragraph 1 of this Article a minimum period of time before carrying out the terminations, such  
period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15  
The formal ratifications of this Convention shall be communicated to the Director-General of  
the International Labour Office for registration.

Article 16  
1. This Convention shall be binding only upon those Members of the International Labour  
Organisation whose ratifications have been registered with the Director-General.  
2. It shall come into force twelve months after the date on which the ratifications of two  
Members have been registered with the Director-General.  
3. Thereafter, this Convention shall come into force for any Member twelve months after the  
date on which its ratification has been registered.

Article 17  
1. A Member which has ratified this Convention may denounce it after the expiration of ten  
years from the date on which the Convention first comes into force, by an act communicated  
to the Director-General of the International Labour Office for registration. Such denunciation  
shall not take effect until one year after the date on which it is registered.  
2. Each Member which has ratified this Convention and which does not, within the year  
following the expiration of the period of ten years mentioned in the preceding paragraph,  
exercise the right of denunciation provided for in this Article, will be bound for another period  
of ten years and, thereafter, may denounce this Convention at the expiration of each period of  
ten years under the terms provided for in this Article.

Article 18  
1. The Director-General of the International Labour Office shall notify all Members of the  
International Labour Organisation of the registration of all ratifications and denunciations  
communicated to him by the Members of the Organisation.  
2. When notifying the Members of the Organisation of the registration of the second  
ratification communicated to him, the Director-General shall draw the attention of the  
Members of the Organisation to the date upon which the Convention will come into force.

Article 19  
The Director-General of the International Labour Office shall communicate to the Secretary-  
General of the United Nations for registration in accordance with article 102 of the Charter of  
the United Nations full particulars of all ratifications and acts of denunciation registered by him  
in accordance with the provisions of the preceding Articles.

Article 20  
At such times as it may consider necessary the Governing Body of the International Labour  
Office shall present to the General Conference a report on the working of this Convention and  
shall examine the desirability of placing on the agenda of the Conference the question of its  
revision in whole or in part.

Article 21  
1. Should the Conference adopt a new Convention revising this Convention in whole or in  
part, then, unless the new Convention otherwise provides-  
(a) the ratification by a Member of the new revising Convention shall ipso jure involve the  
immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above,  
if and when the new revising Convention shall have come into force  
(b) as from the date when the new revising Convention comes into force this Convention shall  
cease to be open to ratification by the Members.  
2. This Convention shall in any case remain in force in its actual form and content for those  
Members which have ratified it but have not ratified the revising Convention.

Article 22  
The English and French versions of the text of this Convention are equally authoritative.