



Termination of the Employment Contract by Mutual Agreement in the Democratic Republic of Congo

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1. Introduction

Dismissal, whatever the reason, often leads to disputes before the courts and tribunals. The trials that follow are public in principle, which very often tarnishes the image of the employer, of legal persons for the most part; such trials last for months or even years; and are costly for both the employer and the employees (hereinafter “the Parties”).

The termination of the employment contract by mutual agreement of the parties, known as amicable separation, is preferred in practice because of its discretion, its speed, and its reduced cost. It is also preferred in practice by the employees because it is often accompanied by the payment of a supplement for the benefit of the latter.

Nevertheless, this termination must be done in accordance with a certain procedure to prevent the employee from evoking a lack of consent, and therefore take legal action to request the requalification of the termination by mutual agreement into a dismissal without valid reason, and therefore claim damages relating thereto. *Thus, what is the procedure to be followed to reduce any risk of dispute later?*

2. Outline of Procedure to be followed

2.1. *Invitation of the worker to an interview*

The worker is invited to an interview during which the employer will propose the termination of his employment contract by mutual agreement. It is desirable that the letter of invitation be given to the worker in person against acknowledgment of receipt, at the place of work and during working hours. The invitation letter should indicate the day, place and time of the interview. It is preferable that the interview take place within two (2) working days following the day of receipt of the letter of

invitation to allow the worker to prepare for it.

It is also preferable that the interview be held in the workplace, and especially during working hours. Indeed, if the interview takes place after working hours, the worker is entitled to consider the interview time as overtime.

2.2. Invitation of the local Labour inspector

The competent Labour Inspector is invited by the employer to attend the interview if that it has been decided so. This for two reasons: the Labour Inspector will ensure that the interview takes place in compliance with the worker's rights and will draw up the conciliation report when the Parties have signed the agreement to terminate the employment contract by mutual agreement (hereinafter "the Termination Agreement").

2.3. Conducting of the interview

During the interview, which preferably takes place in the presence of the Labour Inspector, the employer presents the employee with the draft Termination Agreement showing the amount of the final statement, possibly increased by a supplement for termination at the amicable.

The final statement is made up of any sum remaining due in execution of an employment contract.

The employer also presents the employee with the drafts of all the documents relating to the termination of the employment contract: *certificate of end of service, written statement, and receipt for settlement of all accounts*. It is not excluded that the Parties be assisted by a worker, a union delegate, a worker representative, or by any other person of their choice such as the Lawyer.

2.4. Signature of the Termination Agreement

If the Parties agree on the draft Termination Agreement, on the drafts of all the documents relating to the termination of the employment contract, and on the amount of the final statement and possibly the supplement for amicable termination, they can sign the Termination Agreement.

The Parties may sign the Termination Agreement immediately. However, the employee may request a period of reflection before being able to sign, the employer is required to grant it.

Like the employment contract, the Termination Agreement is drawn up in French in at least four copies. Each party is entitled to one copy, the third copy goes to the Labour Inspector, who will need it to draw up the conciliation report. And the fourth copy will be used by the employer to make the declaration of termination of the employment contract to the local Labour Inspectorate and to the National Employment Office (hereinafter "ONEM").

2.5. Delivery of the end of service certificate

When signing the Termination Agreement, the employer is required to issue the employee an end-of-service certificate (hereinafter "the Certificate") attesting to the nature and duration of the services provided, the date of the start and the end of the benefits as well as his registration number at the National Social Security Fund (hereinafter "the CNSS").

No other indication can be added to it. The certificate must be delivered no later than two business days after the signing of the Termination Agreement.

Indeed, the signing of the Termination Agreement marks the end of the employment contract.

2.6. *Payment of the final account*

When signing the Termination Agreement, the final statement must be paid to the employee, at the latest within two working days following the date of the termination of services.

Indeed, the signing of the Termination Agreement marks the definitive cessation of the employee's effective services.

2.7. *Submission of a written statement*

The employer is required to give the employee at the time of payment of the final statement, a written statement of the amount paid.

2.8. *Issuance of the receipt for balance of any account*

The receipt for the settlement of all accounts is delivered to the employee by the employer at the time of signing the Termination Agreement. In practice, it is issued at the time of payment of the final statement.

2.9. *Establishment of the conciliation report*

At the time of the signing of the Termination Agreement by the Parties, the Labour Inspector proceeds to the hearing of the worker to reassure in person that the latter's consent is not vitiated.

At the time of the employee's hearing, the Labour Inspector draws up a report of the hearing to record the employee's consent. The hearing report is signed by the Labour Inspector alone.

At the end of the employee's hearing, the Labour Inspector draws up a conciliation report noting the Termination Agreement. The conciliation report is signed by the Labour Inspector and the Parties. These receive copies.

If the Labour Inspector was not present at the signing of the Termination Agreement, he can only draw up the conciliation report after hearing the worker in the presence of the employer and after drawing up the hearing report.

2.10. *Obtaining the enforcement formula*

At the request of the interested party, especially the employer in many cases, the enforcement formula is affixed to the conciliation report by the President of the Labour Tribunal in whose jurisdiction this conciliation report is signed.

The President rules by means of an ordinance. This order confers on the conciliation report the character of a final judgment and, therefore, the enforceability attached to such a judgment.

Is therefore inadmissible, any legal action initiated based on a conciliation report bearing the enforceable formula, which definitively extinguishes any dispute between the Parties.