

Unfairly Dismissed? Claim Your Compensation No Win-No Fee

By Paula Nuñez de la Peña

The current economic climate is causing many companies to "cut corners" either by reducing jobs or delaying wage payments - resulting in a higher unemployment rate in Spain than ever before! On many occasions we may have asked ourselves what are the causes and formalities to be followed if your employer decides to say goodbye. Well, it's time to resolve your doubts.

Experienced labour lawyer Paula Nuñez de la Peña is now offering No Win, No fee representation for those affected by these matters with the provision of simple documentation.

The Workers' Charter states that a breach of contract can be considered due to:

- Repeated absences and unexcused attendance or punctuality at work
- Lack of discipline or disobedience at work
- The verbal or physical abuse of an employer or other persons working within the enterprise, or family members living with them.
- Violation of contractual good faith and a breach of confidence in job performance.
- The steady decline in performance in voluntary normal or agreed working
- Habitual drunkenness or addiction if causing a negative impact on the job.
- Harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation and sexual harassment.

These causes are contained in the Statute

of the workers and are considered generic causes for termination of the employment relationship; however, it is important to note that in the collective agreement the Company may have set out more specific causes. For example, the number of absences or to allow dismissal for behaviors that are considered as acts of indiscipline or disobedience at work. The disciplinary dismissal requires 3 basic formalities:

- Written notice must be given to the employee
- Written notice must include the causes that motivate the dismissal and the date on which it will take effect.
- A collective agreement which may permit other formal requirements for dismissal

The dismissal is considered appropriate when the facts that we recognized on the termination letter have been accredited in the sentence. This will validate work without compensation or wages during the proceedings, but however, will give the individual rights to claim unemployment benefit.

When the dismissal is qualified as unfair or otherwise, it means it has not met the formal requirements. Where the dismissal is declared unfair, the employer, within five days of notification of the judgment either must:

- Reinstate the worker, with entitlement to wages for the duration of the proceedings from the date of dismissal until the sentence

OR

- Give an allowance of 33 days salary per year of service, prorated for periods that were shorter than year to a maximum of 24 monthly payments. (Compensation shall be provided like this as of 12 February 2012.)
- Give an allowance of 45 days salary per year of service, prior to February 12, 2012 at the rate of 33 days of salary per year of service for any service thereafter.

The payment of compensation determined by the termination of employment contract (which will be understood to be on the date of termination was effective at the workplace) generates the right to unemployment benefits regardless of whether the individual receives a compensation or not. However the dismissal is void if the employer decides to opt for immediate reinstatement of the worker in his job with payment of unpaid wages from the date of dismissal until the date of reinstatement.

If you've been unfairly dismissed you could claim your compensation **No Win – No Fee!**

To claim owed salaries you must provide:

- A Work Contract (or Work History from the social security)
- A year's worth of Payslips (or "base de cotización" from the social security or bank statements proving payments)

To make a claim for unfair dismissal you must provide:

- All of the above
- A notification of Dismissal



As Head of the Labour Law Department at Lexland Abogados, Paula Nuñez regularly advises clients on all labour law related matters which amongst other services includes the drafting and termination of standard employee and senior executive employment contracts, bonus schemes, stock options, collective bargaining agreements and social security contributions. She also provides companies with guidance on staff restructuring, disciplinary procedures, pay reclamations and contract modifications.

Lexland Abogados is able to help you with the application process to claim your rights.

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