

CHANGES TO EMPLOYMENT PROCEEDINGS RULES

In October 2009 a new set of employment proceedings' rules was approved and a new package of rules previously established in the employment code entered into force on 1st January 2010, as a result of this new legislation package.

The aim of the changes introduced by this new package of rules is strictly connected to the **SIMPLEX program** established by government both in terms of proceedings and law enforcement.

A FEW OF THE MAIN CHANGES

Dismissals – disciplinary proceedings

Disciplinary proceedings are meant to be easier and quicker. According to the new rules now in force, the employer can decide whether or not to proceed to the investigation stage designated *instrução*.

Contrary to the previous rules, the employer now cannot restart proceedings whenever there is some type of formal irregularity in disciplinary proceedings and as a result, if the dismissal is based on fair grounds despite of any formal irregularity in the disciplinary proceedings, the employee can only aim in such cases to achieve half of the compensation amount that would be legally due for unfair dismissal – equivalent to 15 up to 45 days' basic salary per year of service or fraction, on unfair dismissal claims.

In practical terms, this will mean that in cases where the dismissal is based on fair grounds whenever there are some irregularities of the disciplinary action, the employer sees the risks slightly reduced. The mostly common awarded compensation amounts correspond to 30 days'



basic salary per year of service or fraction meaning that the risk of a compensation award is in most cases reduced to amounts equivalent to 15 days' basic salary per year of service or fraction.

Additionally the court is now forced to produce a decision on the fairness or unfairness of dismissal irrespective of the existence of irregularities of the same.¹

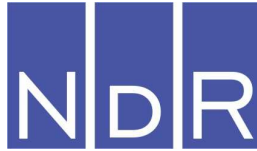
Court actions against dismissals – a new special type of proceedings

The employee has now to use a much shorter time frame of 60 days (used to be 1 year after dismissal) **to claim against a dismissal** arising from disciplinary action, individual redundancy, and inadaptability caused dismissal. The idea behind this is to avoid the risk to the employer of having a claim from the former employees which could be filed up to 1 year after dismissal and as a result reduce the payment due for the interim salaries of such long period.

The claim is meant to be as simple and as short as possible. There is a pre approved application form which the employee needs to fill in and the employer has then the onus of filing the initial petition. This is quite a big change in the players' role as in the past in order to start proceedings the employee had to file the petition which then would be challenged by the employer in a defense if no agreement could be reached in the preliminary hearing in employment tribunal which happened in the interim of the two pleadings.

Proceedings are supposed to be quicker. Presently the preliminary hearing is booked after the application form of the employee is filed in employment tribunal without any pleadings being filed in the process. There is then a time frame established in the Employment Code for the Judge to book the preliminary hearing of 15 days after receipt of such application form by the court administrative services.

¹ According to former legislation whenever irregularities of disciplinary proceedings arose in the process the Judges would not need to rule on the fair/unfair grounds for dismissal.



If no agreement is reached in the preliminary hearing or in case the employer doesn't show, he will then be notified to file the petition together with the disciplinary proceedings pleadings within 15 days after the preliminary hearing.

In case the employee doesn't show in court without presenting the Judge with an acceptable justification for absence, the case will be dismissed and closed.

If the petition is filed in court and in case the employee wishes to contradict the facts alleged in the petition, a defense should be filed within 15 days after the notification of the initial petition of the employer.

Interim Salaries

Regarding interim salaries after dismissal there are also a few changes.

In case the dismissal is declared unfair by the Judge, the **payment of salaries is due by the social security services after 12 months of the application form being filed by the employee** up to 30 days after the final decision becomes effective.

This measure is meant to “persuade” courts to work in a more efficient way and in fact to force the State to share the onus of the delay in the proceedings with the employer.

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