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## **ORDER OF TERMINATION OF LABOUR CONTRACT IN CASE OF EXPOSURE OF DISPARITY OF WORKER HELD A POSITION OR WORK PERFORMED DURING THE PROBATION PERIOD**

Labor legislation of Ukraine uses different terms to denote the termination of labor relations. In this case, the termination of labor relations generally involves the termination of an employment contract. And although in its content this is a different phenomenon, since the termination of an employment contract is a legal fact that is the reason for the termination of labor relations, in literature these two terms are often identified. However, there are reasons to argue that not always the termination of employment relationships entails the termination of employment contract and vice versa. The term "termination of an employment contract" is generalized for all cases of its termination. This includes the grounds provided by both the Labor Code of Ukraine and special legislation. However, there are also more restrictive terms used to terminate the employment relationship. The term "termination of employment contract" is used in cases where an employment contract is terminated on the initiative of one of its parties or persons who are not a party to an employment contract.

The term "termination of employment contract" is used in cases when employment contract is terminated on the initiative of one of its parties or persons who are not a party to an employment contract. Finally, the term "dismissal", which is also used to terminate an employment contract, relates, first of all, to the procedure for technical drawing up of already terminated employment relationships. Termination of an employment contract is allowed only subject to the following conditions: 1) there are legitimate reasons for its termination; 2) the established order of dismissal from work is observed.

Legitimate grounds for termination of employment contract are such circumstances, which are determined by legislative acts. Mostly they are foreseen in the Labor Code of Ukraine. However, Art. 7 of the Labor Code of Ukraine stipulates that, in addition to the provisions of the Code for the termination of employment contract for certain categories of employees, under certain conditions, special legislation may also provide for other grounds. The grounds for termination of employment contract are stipulated in Art. 36 and other articles of Labor Code of Ukraine. Depending on who is the initiator of termination of labor contract, the grounds are divided into the following groups:

- termination of employment contract by a joint (reciprocal) initiative
- parties to employment contract (for example, agreement between the parties, expiration of the term);
- termination of employment contract on the initiative of an employee (Articles 38, 39 Labor Code of Ukraine);
- termination of employment contract on the initiative of the employer (Articles 40.41 Labor Code of Ukraine);
- termination of an employment contract on the initiative of persons who are not the to it party (third parties) (paragraphs 3.7 of Article 36, Article 45 of the Labor Code of Ukraine, etc.).

Item 2 of Art. 40 of the Labor Code contains 3 reasons for the termination of employment contract: the discovery of employee's misconduct of the work performed or occupied position as a result of health, the discrepancy between the position held or the work performed due to inadequate qualifications and the abolition of admission to state secrets. Common for these reasons is that the discrepancy found prevents the continuation of work that the worker must carry out by virtue of employment contract.

Insufficient qualifications of an employee can be manifested in the absence of the necessary knowledge and skills, without which it is impossible to properly perform the duties provided for by the employment contract. At the same time, due to this reason, you can not dismiss an employee who has no experience due to the short duration of work. Also, you can not dismiss an employee only on the grounds of lack of the education document, if, in accordance with the current legislation, its

availability is not a mandatory condition for the performance of work under an employment contract.

The revealed mismatch may also be poor performance of work, improper performance of labor duties due to lack of qualification. The mismatch of the employee's position can be identified by the results of certification. The decision of certification committee is of a recommendatory nature. According to the results of attestation, the employment contract may be terminated not later than 2 months from the date of certification. The reason for the termination of employment contract under Clause 2 of Art. 40 of Labor Code may also be the state of health of the employee: a persistent decline in the ability to work, which impedes the proper performance of labor duties.

Temporary incapacity for work is not a ground for termination of an employment contract. The impossibility of properly performing labor duties because of the state of health must be confirmed by a medical report. The presence of, for example, disability can not be the reason for the termination of an employment contract if the employee duly fulfills the work entrusted to him.

Cancellation of admission to state secrets is the reason for dismissal under Clause 2 of Art. 40 of the Labor Code only if the performance of duties entrusted to employee is impossible without access to state secrets. On the grounds provided in clause 2 of Art. 40 of the Labor Code, it is possible to terminate an employment contract with the head of the enterprise or a structural subdivision if he is unable to provide the proper discipline of subordinate employees. When dismissed on this basis, the employer is obliged to offer the employee another job. Because of impossibility to offer it or in case of the refusal of the employee to take up work that he has been offered, he is dismissed.

First of all, we should note that, in accordance with Article 26 of the Labor Code of Ukraine the probation period should be established by an employee upon agreement of the parties when concluding an employment contract with the possibility of checking person's compliance with the work which entrusts him.

Recruitment with probationary period will be considered legal if the test condition is:

– written in the employment contract and secured by an employment order;

– stipulated in the application for employment and fixed in the order of recruitment;

– not included in the application, but included in the employment order, with which the employee is acquainted under signature before the beginning of work;

– is not included in application, but entered into an order for hiring, with which the employee is acquainted with under signature after the start of work and gave his agreement with the content of the order and working conditions

The procedure for the settlement of relations according to the results of the test is determined by Article 28 of the Labor Code. So, according to Part 2 of Art. 28 of the Labor Code in case of establishing by the owner or an authorized body of the employee the misperformance of the position occupied by him or in the work he carries out, he is entitled during the term of the trial to dismiss such employee, in the notice submitted to him in three days.

To sum up, it is worth saying that important for proper disclosure of specified grounds for dismissal of a worker there are circumstances such as: insufficient qualifications health status, and denial of access canceling access to state secrets, if the fulfillment of obligations imposed on him requires access. After all, as well as the under-state qualification, and unsatisfactory state of employee's health must be confirmed certain conclusions, that is to have a documentary confirmation. And only after all circumstances and facts are objectively studied by the employer has the right to make a decision and to dismiss employee taking into account all the requirements of the current labor legislation.

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