

**No. 23645**

---

**MULTILATERAL**

**Convention (No. 158) concerning termination of employment at the initiative of the employer. Adopted by the General Conference of the International Labour Organisation at its sixty-eighth session, Geneva, 22 June 1982**

*Authentic texts: English and French.*

*Registered by the International Labour Organisation on 3 December 1985.*

---

**MULTILATÉRAL**

**Convention (n° 158) concernant la cessation de la relation de travail à l'initiative de l'employeur. Adoptée par la Conférence générale de l'Organisation internationale du Travail à sa soixante-huitième session, Genève, 22 juin 1982**

*Textes authentiques : anglais et français.*

*Enregistrée par l'Organisation internationale du Travail le 3 décembre 1985.*

## CONVENTION<sup>1</sup> CONCERNING TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER

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 Em-  
ployment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommen-  
dation, 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 in-  
ternational standards on the subject, particularly having regard to the serious prob-  
lems 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 termina-  
tion 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 Em-  
ployment Convention, 1982:

<sup>1</sup> Came into force on 23 November 1985 in respect of the two following members of the International Labour Organ-  
isation, i.e., 12 months after their ratification had been registered with the Director-General of the International Labour  
Office on the dates indicated, in accordance with article 16 (2):

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Sweden .....	20 June 1983
Yugoslavia .....	23 November 1984

Subsequently, the Convention came into force in respect of the following States on the dates indicated, i.e., 12 months  
after their ratification had been registered with the Director-General of the International Labour Office, in accordance  
with article 16 (3):

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Spain .....	26 April 1985
(With effect from 26 April 1986.)	
Venezuela .....	6 May 1985
(With effect from 6 May 1986.)	
Niger .....	5 June 1985
(With effect from 5 June 1986.)	
Cyprus .....	5 July 1985
(With effect from 5 July 1986.)	

## 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<sup>1</sup> 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.

---

<sup>1</sup> United Nations, *Treaty Series*, vol. 15, p. 40; see also vol. 191, p. 143; vol. 466, p. 323, and vol. 958, p. 167, for the Instruments for the amendment of the Constitution of the International Labour Organisation.

## PARTIE I. MÉTHODES D'APPLICATION, CHAMP D'APPLICATION ET DÉFINITION

*Article 1.* Pour autant que l'application de la présente convention n'est pas assurée par voie de conventions collectives, de sentences arbitrales ou de décisions judiciaires, ou de toute autre manière conforme à la pratique nationale, elle devra l'être par voie de législation nationale.

*Article 2.* 1. La présente convention s'applique à toutes les branches d'activité économique et à tous les travailleurs salariés.

2. Un Membre pourra exclure du champ d'application de l'ensemble ou de certaines des dispositions de la présente convention les catégories suivantes de travailleurs salariés :

- a) Les travailleurs engagés aux termes d'un contrat de travail portant sur une période déterminée ou une tâche déterminée;
- b) Les travailleurs effectuant une période d'essai ou n'ayant pas la période d'ancienneté requise, à condition que la durée de celle-ci soit fixée d'avance et qu'elle soit raisonnable;
- c) Les travailleurs engagés à titre occasionnel pour une courte période.

3. Des garanties adéquates seront prévues contre le recours à des contrats de travail de durée déterminée visant à éluder la protection découlant de la présente convention.

4. Pour autant qu'il soit nécessaire, des mesures pourront être prises par l'autorité compétente ou par l'organisme approprié dans un pays, après consultation des organisations d'employeurs et de travailleurs intéressées, là où il en existe, afin d'exclure de l'application de la présente convention ou de certaines de ses dispositions certaines catégories de travailleurs salariés dont les conditions d'emploi sont soumises à un régime spécial qui, dans son ensemble, leur assure une protection au moins équivalente à celle offerte par la convention.

5. Pour autant qu'il soit nécessaire, des mesures pourront être prises par l'autorité compétente ou par l'organisme approprié dans un pays, après consultation des organisations d'employeurs et de travailleurs intéressées, là où il en existe, afin d'exclure de l'application de la présente convention ou de certaines de ses dispositions d'autres catégories limitées de travailleurs salariés au sujet desquelles se posent des problèmes particuliers revêtant une certaine importance, eu égard aux conditions d'emploi particulières des travailleurs intéressés, à la taille de l'entreprise qui les emploie ou à sa nature.

6. Tout Membre qui ratifie la présente convention devra, dans le premier rapport sur l'application de la convention qu'il sera tenu de présenter en vertu de l'article 22 de la Constitution de l'Organisation internationale du Travail<sup>1</sup>, indiquer, avec motifs à l'appui, les catégories qui pourront avoir été l'objet d'une exclusion en application des paragraphes 4 et 5 du présent article, et il devra exposer dans des rapports ultérieurs l'état de sa législation et de sa pratique à leur égard en précisant dans quelle mesure il a été donné effet ou il est proposé de donner effet à la convention en ce qui les concerne.

<sup>1</sup> Nations Unies, *Recueil des Traités*, vol. 15, p. 41; voir également vol. 191, p. 143; vol. 466, p. 323, et vol. 958, p. 167, pour les Instruments pour l'amendement de la Constitution de l'Organisation internationale du Travail.

*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; or
- (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; or
- (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.<sup>1</sup>

<sup>1</sup> United Nations, *Treaty Series*, vol. 883, p. 111.

## 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.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.