

Dismissal on an emergency basis

Various facts can cause dismissal of an employee on an emergency basis. Jurisdiction accepted that, amongst other, the following facts can result in a valid dismissal as such: illegal absence, infringement of the employer's authority as for instance refusal of a permitted job alteration or renunciation of the work regulation, theft at work, unpermitted competition, etc. Too often, however, the strict procedure regulations and evidence requirements with which such termination is related, are ignored. By renunciation of these strict conditions dismissal on an emergency basis can be declared invalid, and the employer can, moreover, be sentenced to pay a high termination compensation.

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A. Conditions for Dismissal on an Emergency Basis

Emergency basis applies to 'the severe failure that immediately and finally renders impossible any professional cooperation between employer and employee' (Article 35, paragraph 2, Belgian Employment Agreement Act).

This law provision implies that dismissal on an emergency basis is valid when three cumulative conditions are fulfilled:

(1) There must be a severe failure.

Essentially, there must be a failure that is sufficiently severe or important. Extraordinary is that not only contractual failures, but also pre-contractual errors (e.g. incorrect declarations when concluding the contract) and private actions can cause dismissal on an emergency basis. Repeated failure can also result in such dismissal.

(2) The failure must render impossible any professional cooperation and this (3) in an immediate and final manner.

The facts on which the dismissal are based, should be of such nature to render impossible the continuation of the employment relation, even during a short period of time. This involves that the employer cannot do anything from which it could be derived that an immediate and final dismissal was not necessary. Therefore, assignment or job finalization by the employee and thus his or her continuance in office should be avoided. Nonetheless, the possibility exists and, after all, it is very

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appropriate to investigate in order to acquire enough certainty on the severity of the facts on which the possible dismissal on an emergency basis, is based. However, this research should be initiated as quickly as possible.

B. Strict Term Regulation

Upon dismissal on an emergency basis, strict terms are to be observed, which because of their renunciation often result in the invalidity declaration of the dismissal later on, and consequently in the sentence to pay a termination compensation. First, a notice of dismissal on an emergency basis can only be given within three working days following the day on which the facts were disclosed or provided that one has sufficient certainty thereof. This term starts on the day following the day on which the facts were disclosed.

Next, there is a second three working days term, starting on the day following the day on which the employment agreement was terminated, to notify the employee of the facts on which the dismissal is based.

The notification of the urgent reason must be submitted under penalty of being null and void:

- either by registered letter;
- by bailiff notice;
- or by issue of a document to the other party, whereby the signature on the duplicate only counts as acknowledgement of receipt of the notification.

The decision of dismissal of the employee on an emergency basis and the notification of the fact can also be included in one single letter, provided that it is sent within the term of three working days following the day on which the facts were disclosed.

An extremely important fact in practice appears to be the description of the emergency. The courts keep on stressing the fact that the description of the emergency must be as precisely and accurately as possible. Not only to inform the employee sufficiently about the facts, also because the courts must deduct from this notification that the reasons claimed are severe enough and are equal to those brought before court (Cass. 2 June 1976, Judicial Code 1976-77,1022).

Therefore, one cannot assume that the employee is aware of the facts and that a brief referral to the facts is enough! It is also absolutely out of the question to use

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the standard letters of dismissal that circulate, because every dismissal is to be assessed concretely on a case-by case basis!

C. Evidence Regulation

Another issue is the evidence regulation of the dismissal on an emergency basis. After all, the dismissal can actually be well-founded, yet it should also be legally proven. Moreover, the person invoking the emergency must not only show evidence of this reason, but he or she must also prove that the above-mentioned term requirements of the dismissal and the notification of the reason were observed.

It is recommended to gather appropriate evidence that might confirm the dismissal as soon as possible and already upon investigation of the facts, rather than to wait for court proceedings to be initiated. However, any evidence obtained contrary to the privacy rights protection, shall in principle be null and void. Examination of the employee, evidence with witnesses or a criminal investigation might possibly help.

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