



Economic Dismissal Vs Amicable Termination of Employment Contract in Democratic Republic of Congo

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An employment contract can end in various ways. Depending on how, there are legal rules that must be followed. This brief discusses the termination of contract for economic reasons vs by mutual agreement in the Democratic Republic of Congo.

Dismissal for economic reasons in the Democratic Republic of Congo

is based on article 78 of the labour code of law 2002 as amended and supplemented by law N016/010 of July 15, 2016 as well as ministerial order no. 12/ CAB.MIN/ETPS/038/08 of August 8, 2008 provisionally prohibiting the mass dismissal of workers by labour inspectors, amending Order No. 12/CAB.MIN/TPS/016/2005 of October 2 2005 establishing the terms of dismissal of workers.

The Ministerial decree No. 12/CAB.MIN/TPS/016/2005 of October 2, 2005 establishing the terms of dismissal of workers distinguishes dismissal based on the operational needs of the company from that based on economic reasons. This distinction is also enshrined in Article 62 of the Labour Code which provides that: *“Any termination at the initiative of the employer of a contract of indefinite duration, based on the needs of the operation of the company, of the establishment or service, is subject to the conditions which will be defined by an order of the Minister responsible for labour and social security”*.

In fact, within the meaning of this article, it is up to the company manager to take all measures necessary to ensure the smooth running of his business and consequently to pronounce the dismissal meeting this objective. However, it turns out that this distinction is unnecessary since the operating requirements of a company are closely linked to its economy. So only the economic motive is valid.

For an economic dismissal to be valid, it must have a motive or cause that is foreign to the employee. Above all, the employer must demonstrate that the dismissal is justified by economic reasons. The labour code strictly lists the economic causes that can justify the termination of the employment contract.

- The economic cause must be based on economic difficulties, technological changes or a reorganization intended to safeguard the competitiveness of the company.

- The cause invoked by the employer must result in the elimination of the employee's position.

Examples of economic difficulties:

- Judicial recovery of the company

- Virtual status of cessation of payment

- Financial losses

- Serious cash flow difficulties

- The decline in company activity

- The decline in profitability of the company

Thus, several reasons are posed on the one hand, by a qualification that in the case of the absence of character inherent to the person of the employee (confers dismissal for personal reasons), the dismissal then has an economic reason.

The suggested option is not to apply for an economic dismissal but deals with individual cases based on the labour code of law 2002 as amended and supplemented by law N016/010 of July 15, 2016 and especially its article 61 bis for amicable termination.

Why consider an amicable dismissal?

Several situations justify the use of amicable termination of the contract.

- The amicable dismissal procedure is quicker in practice.

- The employer wishes to separate from an employee, while avoiding the burden and risks of dismissal.

- Several situations can lead the employer to wish to terminate an employment contract: disagreement with the employee not justifying dismissal, personal reason or economic reason as defined by law.

- In this context, amicable dismissal offers major advantages: The employer can carry out a conventional termination without justification, the legal procedure for amicable dismissal is faster and less complex compared to dismissal for personal or economic reasons. The employer avoids constraints and costs.

- As an amicable termination, the conventional termination is likely to protect the company from a conflict situation that could create internal disorganization or jeopardise its image or reputation.
- Amicable dismissal is by definition less risky: the employee's mandatory consent to the terms of their departure reduces the risk of legal proceedings before the labour Tribunal. The financial risk decreases accordingly – lawyer and procedural costs.

Please note however that the conventional termination requires the agreement of the employee. He/she may be inclined to refuse amicable dismissal if he/she wishes to remain in the company and the employer cannot justify a legal reason for dismissal. The employer must therefore present convincing arguments. In the event of refusal of amicable dismissal, the employer has no other choice than to dismiss the employee following the procedure provided for economic reasons .