

Discipline & Dismissal Penalty According to Iraqi Labour Code

Jawad Khalaf - Partner, Head of Litigation - Iraq - Litigation / Construction and Infrastructure
j.khalaf@tamimi.com - Baghdad

March 2017

As an overview, the Labour Code is the law that regulates employment relationships in Iraq with very narrow exceptions such as public sector employees who are subject to a civil service code and other categories such as army personnel, police and internal security. The Labour Code sets out the minimum rights and entitlements of employees working in Iraq.

Specifically, this article considers the discipline and dismissal sanctions within the Labour Code.

Discipline & Dismissal Penalties

As a starting point, it should be noted that an employment contract cannot dilute the requirements of the Labour Code.

The Labour Code provides that a disciplinary sanction must be put in writing by the employer and the employee must thus be notified of this sanction by way of posting the outcome on a bulletin board or at another prominent place within the work site. Having done so, the employee is unable to assert that he has not been notified of the sanction once a 10 day period has elapsed.

An employee has a right to file a claim disputing the disciplinary sanction (outside of a dismissal) before the Iraqi Labour Court provided he does so within 15 days of the outcome having been communicated to him by his employer. The court judgment will be final.

Separately, if the outcome of the disciplinary is that the employee should be dismissed, the employee has a 30 day period to file proceedings before the Labour Court and the Court will issue its judgment within 30 days of the claim being filed.

In the event that the employer has 10 or more employees, the Labour Code requires it to prepare internal disciplinary rules. Further, the employer has to discuss these rules with any employee representative should one exist. The obligation to do so must be met within three months of the introduction of the rules or within three months of the Labour Code becoming applicable (which, as a reminder was on February 7, 2016).

The content of the internal disciplinary rules will be relevant and agreed to next list of information as follow:

- Hours of operation including starting and finishing times, the site opening time and daily and weekly rest breaks;
- Wages in respect of regular hours and overtime;
- Health and safety procedures;
- Employees' duties and discipline rules;
- Annual and special leave entitlements; and
- Name and titles of applicable supervisors.

In addition, internal disciplinary rules or its amendments are to be approved by legal department at the Iraqi Labour Office. The latter has to notify the employer within 30 days of approval request of its opinion or it will be considered approved.

Moreover, the employer has to post the internal disciplinary rules onto its bulletin board after being approved and to keep it readable and in good condition.

The Labour Code provides that the employer may impose one of the following disciplinary sanctions within 15 days of identification of the employee's act:

- Written warning including implications of further sanctions should the conduct be repeated in the future;
- Three day suspension;
- To remove the employee for consideration for any pay increase for a period of no longer than 180 days;
- Downgrading his position level including his wage according to new demoted level; and
- Dismissal.

However, any of the above discipline sanctions have to be reasonable with reference to the conduct of the employee and the employer is unable to penalise an employee twice for the same infringement.

Furthermore, before imposing any disciplinary sanction, it is necessary that the employer carry out an investigation and consider the employee's defence (if any) to the allegations in the presence of an employee representative (if any). and if penalty assigned in cash to be forward to employees social security department.

As noted, the Labour Code provides that dismissal is one of the available sanctions but that it can only be an outcome in the following situations:

- If the employee has committed a serious error that caused a material damage to the employer.
- If the employee has disclosed one of the employer's secrets.
- If the employee violates vocational health and safety instructions provided that employer in such case previously sent a written notice of a dismissal if such violation take place again.
- If the employee was found drunk, more than once, during work hours according to a medical report from a specialist and employee has been notified more than once regarding same violation.
- If the employee has committed a behavior that does not comply with work honour and ethics, provided that he has been notified before regarding same behaviour.
- If the employee has inflicted physical harm on the employer personally or upon a supervisor or colleague, whether or not at work.
- If an employee has been absent from work without justification for 10 consecutive days, or for 30 non-consecutive days in a given year.
- If the employee has committed, during work hours, a felony or an offence against one of his colleagues and was convicted with a clear-cut judgment for such felony or offence.
- If the employee was convicted to serve a one year prison sentence or more with a clear-cut judgment.

Furthermore, in terms of dismissal by reason of absence (item VII above) the employer has to warn the employee in writing after five consecutive days of absence or twenty non-consecutive days of absence from work without justification. If so, then the employer can dismiss the employee after a further five consecutive days of absence or after ten extra non-consecutive days of absence.

Accordingly, if the reason for dismissal is not stated in the Labour Code, the employer can only lawfully

terminate any employee's employment contract in circumstances where the employee has made an error which is repeated once or more provided that the employer has warned the employee about the implications of committing such an error again. Furthermore, an employer can dismiss an employee by reason of his poor performance provided that it has provided him with sufficient instructions (in order to improve his performance) and a writing warning but where the employee has continued to underperform for thirty days from date of the warning notice. Once again, it is necessary that the employee be provided the right to be supported throughout the process by an employee representative or union or any other person he may choose to be his defendant against allegations regarding his behaviour or performance.

Court dealing with labour case disputing sanctions imposed by employer may reinstate dismissed employee and may ruling to compensate the same because of any sanction imposed by his employer when find it illegal according to Labour Code and taking on considerations Iraqi Civil Law No. 40 for the year 1951 and Retirement and social security law No. 39 of 1971, all that only if and if employee request compensation/reinstatement on his dispute.

The Labour Code considers the employee responsible before the employer in respect of any damages caused when an employee has acted in breach of his contractual obligations to the employer. However, the employer has to prove that damages were caused by reason of the breach for the Court to award any compensation to the employer. Further, any such breach requires to be intentional or by reason of gross negligence or as a result of serious error.

In conclusion, the Labour Code provides a welcome structure to govern the employment relationship in Iraqi and balances the employer and employee interests in a manner that was not evident in previous years. It remains to be seen whether the employment laws in Iraqi will continue to be developed in the future but the Labour Code is a promising starting point.