TERMINATING THE EMPLOYMENT CONTRACT

Cancellation of employment contract for reason arising from employee
• The employer may cancel an employment contract for a good reason arising from the employee if:
  ✓ The deterioration of the health of the employee has prevented him or her from working during a long period of time;
  ✓ The employee has not coped with his or her duties during a long period of time due to insufficient knowledge or skills;
  ✓ The employee has disregarded the employer’s orders;
  ✓ The employee has been at work in a state of intoxication;
  ✓ The employee has stolen or cheated;
  ✓ The employee has damaged the employer’s property.
• These grounds do not prohibit termination of the employment contract for any other good reason.
• The employer may not cancel an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave if:
  ✓ The deterioration of the health of the employee has prevented her from working during the working time;
  ✓ The employee has not coped with her duties due to insufficient knowledge or skills.
• The employer must offer the employee another job, including, if necessary, arrange for training, change working conditions and adapt the job if the employer cancels the employment contract because:
  ✓ The health of the employee prevents him or her from continuing working;
  ✓ The employee does not cope with his or her duties due to insufficient knowledge or skills.
• The employer may cancel the employment contract:
  ✓ Within a reasonable time after he or she has become aware of a circumstance that is the basis of cancellation, for example, of a violation of a duty;
  ✓ if the employer has previously warned the employee. No warning is needed if the employee has materially violated his or her duties.

Cancellation of employment contract for economic reasons
• The employer has the right to extraordinarily cancel an employment contract due to the layoff of an employee.
• Layoff represents a situation where the employer is no longer able to provide work to the employee on agreed terms. Work ends, for example, due to a decrease in the work volume, reorganisation of work, or bankruptcy. Layoff is not, for example, when an employee refuses to agree to change in working conditions (wage).

ACTS on cancellation of employment contract
www.rights.ee:
• Employment Contracts Act;
• Unemployment Insurance Act;
• Government of the Republic Regulation of 11.06.2009 No. 91 “Conditions and procedure of payment of the average wages”.

Additional information:
Ministry of Social Affairs
Gonsiori 29, 15027 Tallinn
e-mail: info@sm.ee, tel: 626 9301
www.sm.ee

Labour Inspectorate
Gonsiori 29, 15027 Tallinn
e-mail: ti@ti.ee, tel: 626 9400
Lawyer’s hotline: 640 6000
Lawyer’s e-mail: jurist@ti.ee
www.ti.ee
CANCELLATION OF EMPLOYMENT CONTRACT

Additional information: www.tooelu.ee

The employment relationship may be terminated by agreement of the parties, on expiry of the term, at the employee’s or employer’s initiative. Occasionally, the cause of termination of an employment relationship may be a conflict between the parties; however, even if this is the case, it is advised to act reasonably, in mutual good faith and to remain fair in respect of the other party in order to maintain good relations and abide by the law. It is easier for both the employer and the employee to terminate the employment contract if they know their rights and obligations and observe them.

Terminating the employment contract

• The employee and employer may, at any time, terminate the employment contract by agreement of the parties. Termination of the employment contract by agreement must be formalised in writing to prevent subsequent disputes.
• The employment contract may be terminated by cancellation at the initiative of the employee or the employer.
• The employment contract entered into for a specified term expires upon the expiry of the term. No notice advance notice needs to be given of the expiry of the employment contract when the term arrives.

What to take into account when the employment contract is entered into for a specified period expires?

• If the employment contract has been entered into for a specified period without a good reason, it is an employment contract entered into for an unspecified term. Temporary nature of the work is considered a good reason.
• If the employee continues to work after the expiry of the term, the employment contract entered into for a specified term becomes an employment contract entered into for an unspecified term.

Cancellation of employment contract How to cancel an employment contract during the probationary period?

• The employee and employer have the right to cancel the employment contract during the 4-month probationary period by notifying the other party 15 calendar days in advance.
• The employer must justify cancellation of the employment contract during the probationary period, i.e., name the reasons why the employee is not fit to do the agreed work. In this assessment, the employer explains why the employee's health, knowledge, skills, abilities and personal characteristics do not correspond to the level required for performance of the work.
• The employee is not required to justify cancellation of the employment contract during the probationary period.

Ordinary and extraordinary cancellation

• Cancellation of an employment contract may be ordinary or extraordinary.
• Only the employee may cancel an employment contract ordinarily. The employer may not cancel an employment contract ordinarily. The employer may cancel an employment contract extraordinarily in the presence of good reasons.
• Ordinary cancellation does not need to be justified. Extraordinary cancellation must always be justified.

Cancellation of employment contract at initiative of employee

ORDINARY CANCELLATION BY EMPLOYEE:

• The employee may ordinary cancel an employment contract entered into for an unspecified term.
• The employee may ordinarily cancel an employment contract entered into for a specified term only if the contract was entered into to substitute another employee.
• Ordinary cancellation of an employment contract does not need to be justified.
• An employee may ordinarily cancel an employment contract:
✓ By a cancellation application either in a format that can be reproduced in writing (for example, an e-mail), or in a written format (signed by hand or digitally).
✓ By a notice of at least 30 calendar days.

EXTRAORDINARY CANCELLATION OF EMPLOYMENT CONTRACT BY EMPLOYEE

• The employee may extraordinarily cancel an employment contract entered into for an unspecified and specified term:
✓ With good reason;
✓ Within reasonable time after coming into knowledge of a circumstance that is the grounds of cancellation;
✓ By a cancellation application either in a format that can be reproduced in writing (for example, an e-mail), or in a written format (signed by hand or digitally).
• The employee must justify the cancellation:
✓ Upon extraordinary cancellation, the employee is not required to follow the 30-calendar-day advance notice period.

Which reasons provide basis for extraordinary cancelling?

• A good reason that gives grounds to cancel an employment contract may be a situation where:
✓ The employer has degraded the employee;
✓ The employee has considerably delayed the payment of wage;
✓ Continuation of work poses a real threat to the employee’s health;
✓ Performance of work is prevented by the employee's inferior state of health;
✓ Continuation of work is impossible due to family obligations, such as child rearing or parental care.
• These grounds do not prohibit termination of the employment contract for any other good reason.
• If the employee cancels the employment contract on the grounds that the employer is in fundamental breach of the contract, the employer shall pay the employee compensation to the extent of three months’ average wage of the employee. Court or labour dispute committee may change the amount of the compensation.

Cancellation of employment contract at initiative of employer

• If the employee gives notice of the termination of the employment contract less than 30 calendar days in advance, the employer has the right to claim compensation for days less notified in advance. The employer’s average wage for a working day is the compensation.

EXTRAORDINARY CANCELLATION OF EMPLOYMENT CONTRACT BY EMPLOYER

• The employer may extraordinarily cancel an employment contract entered into for an unspecified and specified term:
✓ With good reason;
✓ The employee is not required to justify cancellation of the employment contract during the probationary period.
• The employee may extraordinarily cancel an employment contract entered into for an unspecified and specified term:
✓ With good reason;
✓ Within reasonable time after coming into knowledge of a circumstance that is the grounds of cancellation;
✓ By a cancellation application either in a format that can be reproduced in writing (for example, an e-mail), or in a written format (signed by hand or digitally).
• The employee must justify the cancellation:
✓ Upon extraordinary cancellation, the employee is not required to follow the 30-calendar-day advance notice period.

Which reasons provide basis for extraordinary cancelling?

• A good reason that gives grounds to cancel an employment contract may be a situation where:
✓ The employer has degraded the employee;
✓ The employee has considerably delayed the payment of wage;
✓ Continuation of work poses a real threat to the employee’s health;
✓ Performance of work is prevented by the employee's inferior state of health;
✓ Continuation of work is impossible due to family obligations, such as child rearing or parental care.
• These grounds do not prohibit termination of the employment contract for any other good reason.
• If the employee cancels the employment contract on the grounds that the employer is in fundamental breach of the contract, the employer shall pay the employee compensation to the extent of three months’ average wage of the employee. Court or labour dispute committee may change the amount of the compensation.

CANCELLATION OF EMPLOYMENT CONTRACT

The employer may cancel an employment contract entered into for an unspecified or specified term only extraordinarily:

• With good reason related to the employees or the economic situation;
• By a cancellation application either in a format that can be reproduced in writing (for example, an e-mail), or in a written format (signed by hand or digitally). The employer must justify the cancellation.

Prohibition to cancel employment contract

The employer may not cancel an employment contract on the grounds that the employer:
• Is pregnant or entitled to maternity and paternity leave;
• Performs family responsibilities (such as raising children, caring for parents);
• Is ill;
• Represents other employees;
• The full-time employee does not wish to continue working part-time or the part-time employee does not wish to continue working full-time;
• Is in military service or alternative service.

Additional restriction upon cancellation of employment contract

The law provides that cancellation of the employment contract of a pregnant woman, a parent raising a child under three years of age, or a representative of employees, is unlawful. The employer must prove that the employment contract was cancelled on lawful basis (for example, breach of duty).

Terms for advance notice of termination of employment contract

• The employer must give an employee advance notice of termination of the employment contract in accordance with the following gradation of length of the employee’s employment relationship with the employer:
   - Less than 1 working year – at least 15 calendar days;
   - 1–5 working years – at least 30 calendar days;
   - 5–10 working years – at least 60 calendar days;
   - 10 and more working years – at least 90 calendar days.
• The employer does not have to comply with the terms for advance notice if the employee materially violates duties, as a result of which the employer cannot be required to continue the contract.
• During the term for advance notice, the employer gives the employee time off to find a new job.
• If the employer gives notice of the termination of the employment contract less days in advance, the employer must pay to the employee compensation for days less notified in advance. The employer’s average wage for a working day is such compensation.