

Legal Education Support Network | Ad hoc Lecture Series

***Recent Developments in Employment
Law and Terminations***

20 February 2021

Foreigners

HR Manager to be local
SIXTY PERCENT of Management
MED to regulate "Senior management"
Effective date: 5 years

Working Hours

Record Keeping
Right to Leave Work After Hours

Service Charge

Ten Percent Mandatory Reporting Obligation
Restatement of One Percent Rule
Penalty of MVR 100k Fine

Leave

Salary Advance Prior to Leave
Medical Leave is now **FIFTEEN DAYS**

Minimum Wage

MED to Regulate Locals **BEFORE END OF 2021**
Foreigners **WITHIN TWO YEARS**

Special Leave

Employment Agreement

Aminath Shizleen v Islanders Education | 355/HC-A/2017 – Not issuing a copy of the employment agreement to the employee does not invalidate it altogether.

- **THREE MONTHS** otherwise face a fine up to MVR 20k

Probation Period

Reaffirmation of the current position. Reinstatement of principle that even those under probation period are still afforded the rights from section 32 to 57

Redundancy

Again reaffirmation of current applicable law. Insertion of explicit allowance under section 21. Explicit pre-determined **NOTICE PERIODS** for redundancy. Strictly **RESTRICT** redundancy to financial necessity. Further, elaboration on procedural fairness on requisite documents etc.

Constructive Dismissal

The "**OPPORTUNITY**" has been redesigned as a "**RIGHT**" but still requires employees to stipulate to their notice periods when resigning.

Section 34 "Senior Employees"

Realignment that Section 34 employees are exempt only from provisions on working hours and public holidays rather than the whole chapter 4. Still no clear definition of who "senior employees" are.

Staff Accommodation / Training for Locals

TERMINATION OF EMPLOYMENT

MAIN PROVISIONS

- Section 21(a) – No dismissal unless with Reasonable Cause
- Section 22(a) – Dismissal with Notice
- Section 23(a) – Summary Dismissal
- Section 24(a) – Reference
- Section 25 – Payment “in lieu of” Notice
- Section 26 – Constructive Dismissal
- Section 27 – Onus of Proof
- Section 28 – Legal Recourse
- Section 29 - Remedies

Dismissal without notice is only allowed only “when an employee's work ethic is deemed unacceptable and **further continuation of employment is on reasonable grounds seen by the employer would be** **DETRIMENTAL** to the employer

→ **Ahzam Adil & Ors v State** | 27/VTR/2017

Reinstatement of Rule under Section 21 – No “At Will” contracts

→ **Reethi Rah Resort v Ali Muaz** | 24/HC-A/2010

First established the requirements of substantial and procedural fairness

→ **Maldivian Gas v Umar Waheed** | 166/HC-A/2013

→ **Dhiraagu v Ahmed Yoosuf** | 77/HC-A/2013

Breaches of the leave policy without due cause and notice amounts to gross misconduct

→ **Blue Lagoon v Iyaz Naseer** | 146/HC-A/2014

Suspension pending investigation is not unreasonable

→ **Naushad Waheed v MNDF** | 146/HC-A/2014

Even the military cannot ignore the principles of natural justice

→ **Ismail Rimah v Maldives Customs** | 03/SCA/2013

Excessive leaves taken (despite it being within the statutory minimums) amounted to gross misconduct

REDUNDANCY

MACL v Ali Adam Manik | 89/HC-A/2011

Established Redundancy as an acceptable means of termination of employment in Maldives

MTCC v Ahmed Mohamed | 134/HC-A/2011

Just failure of procedural fairness will entitle the employee to compensation

MNU v Aminath Shafia | 166/HC-A/2013

Employees on annual leave may be made redundant

BML v Maleeha Jamal

14/SC-A/2017

Justice Shujune

Maleeha was subjected to graver disciplinary measures while two others accused of the same matter was not subject to the same measure.

Endorsement of a major evil if not reinstated (para 42)

Ibrahim Adnan Anees

18/SC-A/2019

Justice Shujune

Adverse inference on someone exercising their right to silence and right against self incrimination cannot be drawn unless with explicit authority of statute as per Article 16.

MACL v Jabir Abdul Rahman

49/SC-A/2018

Justice Suood

Affirmation of Standard of Proof in Labour Disputes to be “Balance of Probabilities”

Graver Infractions require greater duty of care over investigation

Original Remedy is Restatement Always

Impediments to Re-instatement

*Breakdown of trust and confidence
Period Lapsed
Size/Circumstance of the Employer*

In Support of Re-instatement

*First offence justified with warning
Special Circumstances
Endorsement of a major evil*

See CSC v Ahmed Shuzad
37/SC-A/2017 (Justice Shujune)

HDFC v Ali Masood

27/VTR/2017

Justice Suood

Test for Misconduct: GROSS

*Affect a material term of contract
Violate trust and confidence
Direct breach of the employee*

Acts Complained of:

*Secret recordings,
Email confidentiality
Undue influence in recruitment
Bad mouthing the employer
Criminal intimidation*

Compensation for failure over procedural fairness should be less than compensation awarded for failure of substantive fairness. In such cases of only failure over procedural fairness exemplary nominal damages is to be awarded.

Nominal = Exemplary???