

IF YOU ARE
A WOMAN,
**GET ADVICE
ABOUT YOUR
WORKING
RIGHTS
AND THEIR
GUARANTEES**

Ajuntament de
Barcelona



WHAT TO DO IN THE EVENT OF DISMISSAL?

Recommendations to keep in mind

Dismissal is the ending or termination of a working relationship by the company. If as an employee you consider your dismissal to be illegal or not based on the truth, you can make a claim and challenge the dismissal.

There are different kinds of dismissals, as they can affect one person or an entire group:

1. Group dismissal.

2. Individual dismissal or group dismissal, can be:

- 2.1 Dismissal for objective reasons (article 52 of the Workers Statute).
- 2.2 Disciplinary dismissal (article 54 of the Workers Statute).

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WORKING RIGHTS
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Remember that regardless of the type of dismissal in your case, the company must provide you with a letter of dismissal containing the reason for the termination of the working relationship, the events causing it and the date on which the dismissal will come into effect, as established by law, so that the worker can prepare her defence before the legal tribunals.

Therefore, when a worker is improperly dismissed without respecting legal requirements, this can be qualified as improper and oblige the company to readmit the person as an employee or pay her compensation.

Remember that if you are not in a trial period (which varies depending on the type of contract), you have the right to 15 days' notice (in specific cases and depending on the labour agreement, the notice period could be longer). If the established notice period is not respected, the company must pay you compensation.

Remember that, in all cases, the moment you are given written notification of dismissal, **the company must provide you with the following documents:**

- **Company certificate.**
- **Documentation on tax payments.**
- **Letter of dismissal.**
- **Final payment and settlement.**
- **Compensation (if this is the case).**

The **final payment and settlement** is the document the company must provide at the time the working relationship is terminated. This document must include amounts already accrued and not yet paid to which the employee is entitled at the time of termination of the working relationship and must contain the following information:

- Salaries pending payment.
- Benefits in kind pending payment (travel expenses, etc.), if any.
- Financial compensation for days' holidays generated and not taken consisting of the same number of days' salary.
- The proportional part of special payments which were generated up to the time of the termination.
- The proportional part of other employee benefits which are paid at a frequency greater than one month, such as profit-related pay.
- The amount paid for contract termination if this is the case in current labour regulations or specifically stipulated in the applicable labour agreement (this amount, corresponding to the compensation, can be included in a separate compensation document or in the same document as the final payment and settlement).

Remember that in the event of having a worker representative, the company must notify him/her of your dismissal.

Remember it is advisable to sign all of the documents (letter of dismissal and the final payment and settlement document) with the statement **RECEIVED AND NOT ACCEPTED**, adding the day and date on which the letter was received and always keeping a copy. Furthermore, it is recommendable to seek more detailed advice if you doubt the reasons given by the company, as well as the amounts of the settlement and compensation, if applicable.

Remember that by doing this you are reserving the right to make a later claim. If you sign without adding your disagreement (expressed as RECEIVED AND NOT ACCEPTED), you are signing the reception and ACCEPTANCE of the information communicated to you. Therefore, it is important to sign as “not accepted”.

Remember that you have the right for a member of the company committee, if any, to be present at the time of the dismissal.

Remember that **you can also** demand to take the document outside the company to examine it calmly, in detail and with the help of an external advisor. If they refuse you this option, you should sign it RECEIVED AND NOT ACCEPTED in order to reserve your rights.

Remember that you have 20 working days from the effective date of the dismissal to contest it verbally or in writing.

VERBAL DISMISSAL

Remember: if they have dismissed you verbally it is very important that you seek advice. It is advisable for the employee who has been verbally dismissed not to sign any type of document offered by the company until she has spoken to her solicitor, as she may be renouncing her rights.

You can place the verbal dismissal on record in the following ways:

- By sending a registered fax addressed to the company stating that they have dismissed you and that it is not a case of voluntary employment termination.
- By verbally notifying the person representing the employees of the company.

When dismissal by the company is suspected, it is advisable for the employee to have two witnesses present who can verify the dismissal.

Remember it is necessary to gather all possible proof of dismissal, given that the company will probably argue that it did not take place and that you voluntarily left your place of work.

IF YOU ARE WORKING WITHOUT A CONTRACT AND THEY DISMISS YOU:

You should be aware that, although you don't have a written contract or the company has not registered you with social security, if there has been a working relationship according to article 1 of the Workers Statute (you have worked for others, within an organised environment and under the direction of another person and have received payment in exchange for your work) it is assumed that there was a verbal contract and you can therefore contest your verbal dismissal.

Furthermore, if you find yourself in an **unauthorised administrative situation**, you can also contest the dismissal according to the criteria described in the verbal dismissal section.

In any case, if you are working without a contract you will need to provide much more proof. It is essential to have the minimum following information: the company details or the details of the person for whom you have been working; the address of the place where you were working; the payment method; your working hours; the length of time you were working and/or the start date of your working relationship; the professional category and the specific characteristics of the task you carried out at the company.

If you worked in the **domestic service area, as a domestic worker**, you should know that on 1 January 2012, Royal Decree 1620/2011, of 14 November came into effect, which regulates the working relationship of service in the family home. According to this regulation it is mandatory for you to have a contract and to be registered with social security. Therefore, remember that if you have been dismissed you can contest the dismissal according to the criteria described above.

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If you were or are a victim of sexual harassment or harassment due to gender and/or sexual orientation at the company and they have dismissed you, you should know that:

Sexual harassment and harassment due to gender is one of the worst forms of gender violence in the workplace; it is a form of discrimination based on a person's gender and undermines the principal of equality between men and women.

Sexual harassment is considered to be any verbal, non-verbal or physical behaviour of a sexual nature carried out in a working context, which is offensive to and not desired by the victim and which, in turn, generates a hostile, humiliating and intimidating working environment.

Gender-based harassment is any behaviour motivated by the gender of the person with the aim or effect of undermining his/her dignity and create an intimidating, offensive and degrading environment. Situations of discrimination and harassment due to gender endured by women due to pregnancy or maternity are especially serious.

If you have been dismissed in this context, it is advisable that you seek advice as soon as possible and sign all of the documents the company gives you as **RECEIVED AND NOT ACCEPTED**.



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You must notify your solicitor of this situation, given that these are particularly serious violations and the dismissal could be qualified as null and void for infringing fundamental rights, with the possibility of claiming damages for emotional distress.

If as a woman you are or have been a victim of gender violence, you should know that you are supported by a series of labour and social security rights, whose purpose is to help you reconcile your work obligations with your need for protection and complete recovery, based on Organic Law 1/2004 of 28 December on comprehensive protection measures against gender violence. Furthermore, Law 5/2008 of 24 April on the right of women to eradicate violence against women, enshrines and guarantees a set of rights to restore the life project of women in such situations in Catalonia:

- Company bonuses for hiring replacements and business incentives for hiring women.
- Priority access to housing for women suffering gender-based violence.
- Social-labour integration programme for women who are victims of gender-based violence.
- Financial rights of victims of gender-based violence.

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For further information,
you can visit us
for advice at the
**Information and Support
Points for the Women
of Barcelona.**

You can find our
contact details at:
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