

Written Warning Letters for each Day of Absence from Duty as a Precondition for Lawful Employment Termination under Article 27(1)(b): Cassation Division Interpretation

Description

By DMLF Team

The Federal Supreme Court Cassation Division on Cassation File No 249795 on August 1, 2024 rendered a judgment between Applicant Compassion International Ethiopia and Respondent Ato Ayele Kefeni. The Cassation Division gave an interpretation on Labour Proclamation No. 1156/2019 Article 27(1)(b). Here is a brief summary of the Cassation Division Judgment.

Article 27(1)(b) is about unjustified absence from duty for a total of five days in a six month period resulting in termination of contract of employment without prior notice. One of the conditions to terminate an employment contract on such grounds is that the employee is given written warnings of his absence from duty. The wording of Article 27(1)(b) states as follows:

b) Absence from duty for a total five days in six months period while being warned in writing of such a problem; and where the absence cannot be classified in any of the leaves provided under the Proclamation;

Hence the Cassation Division on the above judgment concluded that an employer has the obligation to give warning letters in **writing** each time an employee is absent. The employer may initiate termination of the employment contract having written warnings for each time of unjustified absence from duty. When a question is raised about the evidence of the absence, then the employer is obliged to produce those written warning letters. Written warnings of each day of absence is a precondition and not meeting such precondition shall be conceived as unlawful termination.

Warning letters are different from final termination notices. Warning letters are given prior to termination notice letters. Warning written letters are given to the employee while the latter is on the job. The purpose of warning letters is to inform the employee of his actions, learn from it and not to repeat it. On the other hand, a termination letter is given to the employee to inform the employee that his actions have resulted in termination of his employment contract. The termination notice will state the reasons for termination and date of termination. Article 27(2) provides that '*Where an employer terminates a contract of employment in accordance with this Article, he shall give a written statement specifying the reasons for and the date of termination*'.

Therefore, as per the Cassation Bench interpretation, a precondition that has to be fulfilled to terminate an employment contract based on Article 27(1)(b) is the fact that the employer has given written warning letters for the employee on each date of the employee's unjustified absence from work. Failure to back up the termination on Article 27(1)(b) by such writing warning letters may render the termination unlawful.

The interpretation of the law by the Federal Supreme Court Cassation Division is binding on all levels

of the Federal and Regional Courts from the date the judgment is rendered(Article 10(2) of Proclamation 1234/2021).

For any inquires on employment law, you may contact us at info@dmethiolawyers.com

Find attached the FSC Cassation Division Judgment for additional details.

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