



Legal Counsel
BARRISTERS-ADVOCATES-LEGAL CONSULTANTS

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NEWS BULLETIN



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EDITORIAL

As a part of our continuing effort to disseminate important legal information, we are pleased to publish the seventeenth issue of the quarterly 'The Legal Counsel News Bulletin' with some important updates.

ON A SERIOUS NOTE:

An IT expert asked a user to choose a password of 8 characters.

The user replied: "Snow White and the Seven Dwarves".

"I can see that you are a Lawyer."

"Yes, you're right. But how did you know?"

"The answer you gave is 100% accurate and 100% useless."



SEPARATION OF EMPLOYMENT

When asked, the majority of people still think "dismissal" (meaning to say separation by employer) and "resignation" are the only two methods by which separation from employment can happen. Another dilemma lies in the usage of the words 'fire' and 'sack', which has been prevalent amongst us when the question of employee dismissal arose. Some seldom pay heed to the fact that an employee cannot simply be 'dismissed' immediately, that a process needs to be followed. There are several other modes of separation available under the Bangladesh Labour Laws that an employer can opt for based on different circumstances.

Here, some light is shed on the available modes of separation of an employee under the Bangladesh Labour Laws for the 'worker' category of employees.

Simple termination/termination simpliciter

The simplest and least complex mode of separation an employer can opt for is simple termination, popularly known as, termination simpliciter, as this method does not require the employer to assign any reason whatsoever. Under simple termination, the employer has to give the concerned employee, if s/he is a permanent worker, a 120 days' notice if s/he is a monthly rated worker and a 60 days' notice for other workers. In case of temporary workers, the employer has to give a 30 days' notice for a monthly rated worker and a 15 days' notice for other workers. However, for an immediate effect, the employer can give an equivalent payment in lieu of notice to the employee, for instance, a 120 days' payment of basic salary instead of a 120 days' notice, or where the employee is required to work for 20 days, then 100 days of payment is applicable. Thus, when it comes to terminating an employee immediately without cause, termination simpliciter is used.

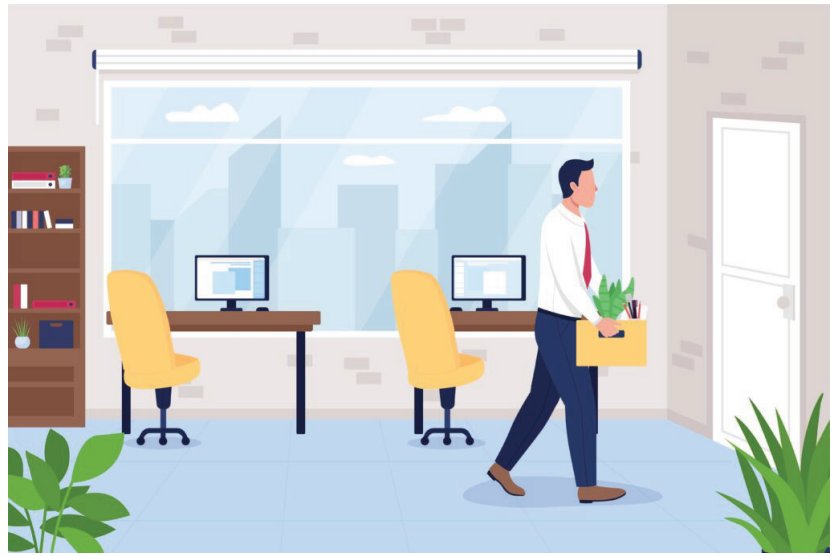
Retrenchment

When an employer wishes to reduce employees in the organization due to redundancy or needlessness, the employer may opt for retrenchment. The employer, under this method, is obliged to provide a one month's notice with the reasons of retrenchment or, pay the employee one month's basic salary instead of notice if the employee has worked in the organization for at least a year. Retrenchment is a situation-based separation, with the legal requirement of intimation to the labour office stating the reasons of redundancy also.

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Discharge from Services

How many of us have thought that an employee can also be separated for medical grounds? There are times when an employee may become incapable of carrying out the work s/he is assigned for. When such incapability arises as a result of being physically or mentally incapacitated or due to prolonged health issues that is registered by a medical practitioner, an employer may terminate the concerned employee by way of discharge from services. The laws are silent on the requirement of any notice period and so the organizations are free to give any notice.



Retirement

Retirement is a common mode of separation which, under the laws, takes place as soon as an employee turns 60. It is a default process, no question of notice arises. What people miss is the understanding that retirement is not just available to those turning 60, an employee has the option of voluntarily retiring from upon completing 25 years in the organization.

Resignation

When it comes to resignation, there are two ways in which resignation may take place. On one hand, an employee may serve a 60 days' notice (if permanent), and 30 days' notice (if temporary and monthly rated) and 14 days' notice (if other temporary workers). If the employee wishes to resign immediately, the employee would have to pay/forfeit an amount equal to the basic salary for the period of missing notice.

On the other hand, resignation may take place by conduct. This is a relatively new concept, introduced only in 2013, and applies to when employees remain absent from work without providing prior notice or taking permission, and perhaps do not even respond to the calls/contact from the employer. In such a case if an employee fails to respond to the employer when the employer tries to contact the employee by serving two notices in a span of at least 17 working days (10 days' and 7 days' notices), the employee will be deemed to have resigned from the date of his/her unauthorised absence.

Dismissal

Now the question arises as to exactly when or how does an employer 'fire' an employee. Dismissal usually results when an employee has been proved to have committed misconduct through a complex process of domestic inquiry. Thus, dismissal is more of a punishment than a simple mode of employee separation. Thus, an employer cannot dismiss an employee immediately, rather has to follow a hearing procedure. However, once the punishment is sanctioned, no notice or payment in lieu need be given, and that is why dismissal is termed immediate separation.

Death

Needless to say, an employee is separated from employment upon his/her death, be it natural or accidental.

The modes of separation discussed above come with benefits that the concerned employee will be entitled to. The amount of benefit given depends on which mode an employer opts for. The benefits that come with each mode are briefly articulated below.

Separation Benefits

For termination simpliciter, retrenchment, retirement, death or discharge of services, an employee, who has completed at least one year of service at the organization, shall be entitled to compensation at the rate of 30 days' basic salary for every completed year of service. For dismissal, the rate is 15 days' basic salary, no compensation is paid if an employee is dismissed due to theft, fraud or dishonesty, disorderliness, arson etc.

For resignation, eligibility starts after five years of service. The rate is 14 days' basic salary per completed year between five and ten years of service and for ten or more years of service the rate is 30 days' basic salary.

Exceptionally, along with the above statutory compensation, someone separated for death shall get an additional 'death benefit' if s/he has completed at least two years of service at the organization. The amount shall be 30 days' basic salary per completed year of service for normal death and 45 days' basic salary for natural or accidental death at the workplace.

If the organization has a gratuity policy in place, then the higher of the two: gratuity and statutory compensation, is paid to employees (exception: no gratuity option for dismissal under the laws).

Separation is a sensitive matter and is the last communication with a former employer/employee. With the view to be respectful towards laws, knowing that paths may cross again with employer/employee, with a view to create a great reputation as a worker or as an organization, both the parties must ensure the severance formalities are done in compliance with the laws.

CURRENT AFFAIRS



September 2, 2023 witnessed inauguration of the Dhaka Elevated Expressway, first for Bangladesh. This will link the Shahjalal Int'l Airport to Kutubkhali through Mohakhali Tejgaon and Kamalapur. This dedicated path will relieve pressure on surface streets, facilitating quicker, more effective trips across major parts of the city. Aside from halving commute time, this will significantly

lower fuel wastage, decreasing costs of transporting goods and commodities, ameliorating productivity of human resources, improving businesses, lowering inflation rates and thus benefiting the economy of the country. Improved connectivity within the city and its environs can lure foreign investments, encouraging companies to locate in the city, promoting job growth. The Dhaka Elevated Expressway might improve air quality due to cut on the pollution caused by heavy traffic. Overall, it can bolster Dhaka's position as a thriving hub of trade and commerce in Bangladesh, where it has long served as the country's economic center.



Legal Counsel's hearty congratulations to the Indian Space Research Organisation (ISRO) for the historical landing of Chandrayaan-3 in the lunar south pole region and making us proud as South-East Asians. We hope this groundbreaking achievement brings valuable development on the knowledge about satellites, planets and the universe as a whole. We look forward to effective collaborations between ISRO and Bangladesh Space Research and Remote Sensing Organization (SPARRSO) in future projects related to this mission to benefit the human race.

DID YOU KNOW

- ✔ As per Section 10 of the Premises Rent Control Act 1991, the Lessor cannot receive any payment or amount in the form of security, in addition to the monthly rent or claim or receive any amount exceeding one month's rent as rent in advance without the prior permission of the Rent Controller unless it is a long lease not less than 20 (twenty) years as per Section 11 of the said Act. It was further decided in a case called G.S.H Jamal Vs Surraiya Jabeen & Others.
- ✔ There is a dedicated hotline phone number and a web page hosted by the Government for the general public to complain or report about any breach of consumer rights. People can call 16121 to report, place complaints or discuss anti-consumer rights pertaining to products, goods and services or fill up an online form at <http://dnrcrp.com/>. The complaint/reporting procedure is usually free and, on top, if the accused is found guilty, 25% of the realized fine is promised to the complainant, amongst others.

NEW IMPORTANT LEGISLATIONS (JULY 2023-SEPTEMBER 2023):

- ✓ The Development Boards Act, (Repeal) Act, 2023 [উন্নয়ন বোর্ড আইনসমূহ (রহিতকরণ) আইন, ২০২৩];
- ✓ Representation of the People (Amendment) Act, 2023;
- ✓ Government Services (Amendment) Act, 2023 [সরকারি চাকরি (সংশোধন) আইন, ২০২৩];
- ✓ Bangladesh Public-Private Partnership (Amendment) Act, 2023 [বাংলাদেশ সরকারি-বেসরকারি অংশীদারিত্ব (সংশোধন) আইন, ২০২৩];
- ✓ Agency to Innovate (A2I) Act, 2023 [এজেন্সি টু ইনোভেট (এটুআই) আইন, ২০২৩];
- ✓ Production, Storage, Transfer, Transport, Supply, Distribution and Marketing of Foodstuffs (Prevention of Harmful Activities) Act, 2023 [খাদ্যদ্রব্য উৎপাদন, মজুত, স্থানান্তর, পরিবহন, সরবরাহ, বিতরণ ও বিপণন (ক্ষতিকর কার্যক্রম প্রতিরোধ) আইন, ২০২৩];
- ✓ Bangladesh Industrial Design Act, 2023 [বাংলাদেশ শিল্প-নকশা আইন, ২০২৩];
- ✓ Sheikh Russell Rural Development Academy, Rangpur Act, 2023 [শেখ রাসেল পল্লী উন্নয়ন একাডেমি, রংপুর আইন, ২০২৩];
- ✓ State Acquisition and Tenancy (Amendment) Act, 2023;
- ✓ Cyber Security Act, 2023 [সাইবার নিরাপত্তা আইন ২০২৩];
- ✓ National Assembly (Reserved Seats for Women) Election (Amendment) Act, 2023 [জাতীয় সংসদ (সংরক্ষিত মহিলা আসন) নির্বাচন (সংশোধন) আইন ২০২৩];
- ✓ Land Reforms Act, 2023 [ভূমি সংস্কার আইন ২০২৩];
- ✓ Land Crime Prevention and Remedy Act, 2023 [ভূমি অপরাধ প্রতিরোধ ও প্রতিকার আইন ২০২৩];
- ✓ Balumhal and Soil Management (Amendment) Act, 2023 [বালুমহাল ও মাটি ব্যবস্থাপনা (সংশোধন) আইন ২০২৩];
- ✓ Bangladesh Biman (Repeal and Amendment of Bangladesh Biman Order, 1972) Act, 2023 [বাংলাদেশ বিমান (Bangladesh Biman) (রহিত Bangladesh Biman Order, 1972 পুনর্বহাল এবং সংশোধন) আইন, ২০২৩];
- ✓ Bangladesh Public Procurement Authority Act, 2023 [বাংলাদেশ পাবলিক প্রকিউরমেন্ট অথরিটি আইন ২০২৩];
- ✓ Land Development Tax Act, 2023 [ভূমি উন্নয়ন কর আইন ২০২৩];
- ✓ Bangladesh Medical Education Accreditation Act, 2023 [বাংলাদেশ চিকিৎসা শিক্ষা অ্যাক্রেডিটেশন আইন ২০২৩];
- ✓ Medicines and Cosmetics Act, 2023 [ঔষধ ও কসমেটিকস আইন ২০২৩];
- ✓ Primary School Teachers Welfare Trust Act, 2023 [প্রাথমিক বিদ্যালয় শিক্ষক কল্যাণ ট্রাস্ট আইন ২০২৩];
- ✓ Sheikh Hasina Rural Development Academy Jampur Act, 2023 [শেইখ হাসিনা পল্লী উন্নয়ন একাডেমী জামপুর আইন ২০২৩];
- ✓ Family Courts Act, 2023 [পারিবারিক আদালত আইন ২০২৩];
- ✓ Bangladesh Small and Cottage Industries Corporation Act, 2023 [বাংলাদেশ ক্ষুদ্র ও কুটির শিল্প কর্পোরেশন আইন ২০২৩];
- ✓ Bangladesh Trade Organization (Amendment) Act, 2023 [বাংলাদেশ বাণিজ্য সংগঠন (সংশোধন) আইন ২০২৩];
- ✓ Foreign Employment and Immigration (Amendment) Act, 2023 [বৈদেশিক কর্মসংস্থান ও অভিবাসী (সংশোধন) আইন ২০২৩];
- ✓ Copyright Act, 2023 [কপিরাইট আইন ২০২৩]; and
- ✓ National Identity Registration Act, 2023 [জাতীয় পরিচয় নিবন্ধন আইন ২০২৩].

LEGAL COUNSEL NEWS



CORPORATE TRAININGS: With the end of COVID-19 situation, corporate houses have shifted from online training to face-to-face training. Over the last few months, Legal Counsel has facilitated a large number of in-person training sessions at its clients' premises as well as at Chambers, covering a wide range of laws at various. Such training, being half-day or full-day long, has interactive case studies, quizzes and Q&A sessions that help not just the clients but also us in gathering valuable real-life stories and experiences.

PRO-BONO WORKS: PUBLICATIONS AND TV SHOWS (JULY 2023-SEPTEMBER 2023)

PUBLICATIONS AND INTERVIEWS

- ✓ Disowning children's right from property | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | July 05, 2023; <https://legalcounselbd.com/child-abandoned-law/>
- ✓ Compensation receivable upon divorcing husband | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | August 02, 2023; <https://legalcounselbd.com/how-much-compensation-will-i-get-divorce/>
- ✓ Hero Alam's defamation claim: 50 crores: why? | Barrister Miti Sanjana, Partner of Legal Counsel | BBC | August 08, 2023; <https://legalcounselbd.com/hero-alams-price-of-defamation/>
- ✓ Property distribution of deceased amongst current and divorced wives | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | August 16, 2023; <https://legalcounselbd.com/husbands-property-be-distributed>
- ✓ Procedures of Divorce | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | August 02, 2023; <https://legalcounselbd.com/if-you-want-to-divorce>
- ✓ When husband neither contacts wife/children from abroad nor divorces | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | September 06, 2023; <https://legalcounselbd.com/when-husband-neither-contacts-wife/>

TV SHOWS AND INTERVIEWS

- ▶ Father financially liable for children until adult | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | July 09, 2023; <https://bit.ly/3tfZ2Xz>
- ▶ Cyber Security Act | Barrister Miti Sanjana, Partner of Legal Counsel | Channel i | August 10, 2023; https://fb.watch/njTNU5_-c8/
- ▶ Cyber Security Act: fear of everyone | Barrister Miti Sanjana, Partner of Legal Counsel | Channel i | August 11, 2023; <https://fb.watch/mA17FDZnMH/>
- ▶ Differences between Cyber Security Act & Digital Security Act | Barrister Miti Sanjana, Partner of Legal Counsel | BBC | August 22, 2023; <https://youtu.be/jbIJsS5vTIs>
- ▶ What to do if someone harasses impersonating law enforcement agent | Barrister Miti Sanjana, Partner of Legal Counsel | Prothom Alo | August 22, 2023; <https://bit.ly/468v86c>

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