

Dear Clients,

Object: dismissal for poor performance

If the worker in any given moment is not able to achieve the goals pre-established or if his /her service results are inferior to those obtained by the average of his/ her colleagues given the same task, he/ she risks dismissal from service for poor performance.

For “poor service performance “of the dependent, it is meant a working service which does not meet the expectation and needs of the employer, resulting little useful to satisfy the pre-determined interest of the Company. Therefore, the dismissal shall be legitimized in case in which the performance of the worker results insufficient and the performance does not satisfy the interests of the employer.

The issue largely debated regards the nature of the dismissal and whether itself has to be resorted in the scope of subjective or objective mood: the dismissal for poor performance; in fact, presents common characters of the two hypothesis, intertwined to its intern with both aspects.

The subjective insufficient performance

In the scope of subordinate working relationship, the insufficient work performance results when the output agreed on or pretended falls within the average possibility of the worker and there is a clear disproportion between the output served and the expected one. This happens when the working performance is carried out with inexperience, disinterest, and excessive slowness.

Many cases examined by the jurisprudence, concern the hypothesis in which are based the scanty service performance and it has been noted that workers are absent repeatedly with forewarning given at the very last minute, often close by days of rest or festivities. By so doing, the working performance is not of any validity for the employer, for he won't be able to programming or guarantee the service or production of the Company.

In relation to the insufficient working performance, the employer that means to refer to it for valid motive of dismissal, can not limit him/ herself to prove the lack of the achievement of an expected result, he/ she is also to demonstrate the strong failure of the obligations of the worker by

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contract. Therefore, it is clear that to determine the strong failure is necessary to evaluate a unity of considerable time.

The insufficient objective performance

The insufficient work performance can be included in the scope of the justified objective motive when one refers to the economic sustainability of the post of work; therefore, to the interest of the employer and to the work service performed by his/ her own dependent; with so, the employer can dismiss the worker, to the sole purpose of searching economies and produce savings in the Company or to guarantee a major margin on the budget of the Company.

The scanty service performance cause of motive of dismissal must be treated as any other dismissal practices for justified objective motive, the employer has to demonstrate; however, that the working service of the dependent is so poor to the point of no generating any profit.

Return Clause

When referring to making profit it is necessary to establish the criterias on basis of which it can be evaluated either in a positive sense or negative sense for the sanctioning interventions, of objective/ organizative nature or subjective/ disciplinary.

Evaluating the diligence of the average worker or carrying out a comparison among all the dependents to understand which is the “minimum” not subject of dispute can be quite complex, risking to create even forms of discriminations not wanted.

In occasion of the subscription of the individual working contract, first thing first, it is important to pay attention to the content of the clause, which can not establish the unattainable goals because so will lead to the invalidity of the contract.

In addition, one thing is to establish the minium output, under which one presumes that the output of the workers is scanty or insufficient, extremely different thing to establish is the award to be given in case of the achivement of a goal, encouraging the dependent to a major productivity.

Within the intern of this scope could come useful the procedure of certification of the working contracts, for the correct evaluation of the clauses of output, even if evidently, it is not always possible. In any case, the lack of any kind of agreement or clause of output productivity, the employer can unilaterally fixed the criterias and activate him/ herself with sanctioning measures.

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