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Labor disciplinary sanctions

According to the Labor Law, the employer has the basic right to impose labor disciplinary sanction and liability of property on employees in conformity with legislation. According to Article 123 of the law, "disciplinary violation" means wrongful actions or omissions of an employee that violates labor laws, employment contract, internal labor norms, or job descriptions^[1]. The legal concepts of "labor disciplinary liability" and "disciplinary violation" occupy an important place in labor relations. An employee who is participating in labor relations that bears disciplinary liability for violating established standards of compliance with labor relations. However, the basis for disciplinary action is the employee committing a disciplinary violation.

In the Labor Law of 1999, there were three types of disciplinary sanctions: *warning, reduction of the employee's base salary up to 20 percent for a period of up to 3 months and dismissal*, and in the revised edition of Labor Law of 2022, there are 5 types of disciplinary sanctions. This includes:

Closed warning the employee individually	Open warning as announcement to all employees	Reduction of the employee's base salary by up to 20 percent for a period of up to 3 months	Demotion	Termination of employment relations at an employer's initiative
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Prominent among these arrangements are open and closed warning provisions. A closed warning is an individual warning assigned only to the employee who has committed a disciplinary violation, and an open warning under disciplinary action refers to a public warning to the employee who committed labor disciplinary violation. The peculiarity of this scheme is that the five types of disciplinary sanctions by the employer must correspond to the nature and consequences of the employee's guilt and violations, and sequential imposition of sanctions is not required.

Time limit for imposition of a disciplinary sanction:

Labor disciplinary sanction shall only be imposed within 6 months from the date of disciplinary violation or from the last day if the violation continues, and within 1 month from the employer's discovery thereof, and this period shall be suspended for the period where the employee has medical verifications, is on annual leave or personal leave, or the disciplinary violation is investigated by legal, audit or other competent organizations. Labor disciplinary actions to the employee who will be subject to full property liability shall only be imposed within one year from the date of disciplinary violation occurrence or from the last day if the violation continues.

According to the recommendations of the Supreme Court of Mongolia dated June 15, 2012, "Some issues to be considered in the handling of disputed cases arising from labor legal relations", when the employer imposes disciplinary sanction on the employee must comply with the law, the form of punishment should be appropriate to the nature and consequences of the employee's guilt and disciplinary violation. Disciplinary sanctions shall not be imposed if six months have passed since the employee committed a disciplinary violation or one month from the moment it was discovered, and multiple forms of labor disciplinary actions shall not be imposed on one violation^[2].

Upon the expiration of a period of one year from the imposition of a labor disciplinary sanction, the employee shall be deemed as not having record of labor disciplinary sanctions, and if the employee shall be notified in writing if considered as not having a record of disciplinary sanctions prior to this term.

The period between repeated violations does not exceed 1 year if disciplinary action was imposed for the previous violation, and, if not, 6 months.

Imposition of labor disciplinary sanctions:

Disciplinary sanctions shall be imposed by an employer or its authorized manager. An employer shall notify the labor disciplinary sanction to the employee prior to imposing it to receive explanations, and shall selectively use the labor disciplinary sanctions, in consideration of the nature and consequences of the disciplinary violation. A decision on imposing labor disciplinary sanctions shall be issued in writing.

Also, the person authorized to impose disciplinary sanctions is the employer who signed the employment contract with the employee, while the person who conducted the disciplinary violation is the employee working in the employer's workplace according to the employment contract.

As stated in Article 7.6 of the Labor Law, the person who perpetrated harassment, violence, or sexual harassment in the employment and labor relations shall be subject to liabilities specified in the Law on Violations and the Criminal Code, and the imposition of such liability shall not be grounds for exemption from labor disciplinary sanction.

It is prohibited to impose labor disciplinary sanction on the following grounds:

1. Employee refused to work in the circumstance that could harm the life or health of the employee or a third party;
2. The employee refused to work on rotation;
3. Employees and employee representatives participated in the strike.

It is also prohibited to impose labor disciplinary sanctions and terminate the employment relationship of trade union employees, elected persons, and employee representatives for their participation in collective negotiations.

No multiple forms of labor disciplinary sanctions shall be imposed on one violation of the discipline.

Pursuant to Article 80.1.4 of the Law, the employment relationship may be terminated at the initiative of the employer on the grounds that the employee repeated a labor disciplinary violation (twice or more) or made a serious violation for which the employment relations must be terminated immediately as outlined expressly in an employment contract.

Under the Resolution No. 33 of the Supreme Court of Mongolia dated July 3, 2006, on the Interpretation of Certain Articles and Provisions of the Labor Law, a serious violation of labor discipline is defined as any act or omission that is contrary to the employee's obligations under the employment contract, causing negative consequences to the employer's rights and interests by causing property damage, discrediting the business and business reputation^[3]. The parties to the contract shall determine by mutual agreement what violations are considered serious in relation to the specifics of the workplace, position, and performance duties, and each case of such violation should be specified in the employment contract.

Serious violation of rules, regulations and instructions by an employee cannot be considered as a violation of the employment contract, however, the employment contract may state that violation of certain provisions of the above rules, regulations and instructions will be considered a "serious violation".

In the absence of an employment contract between the employer and the employee, the serious violation of labor discipline mentioned above does not apply to the ground for "immediate termination of the employment relationship" stipulated in Article 80, Clause 80.1.4 of the Labor Law.

The decision to reduce an employee's position and hire him to another position is considered as dismissal of the employee. Also, "repeated violations of labor discipline by an employee" means that violations of labor discipline were committed 2 or more times, and each violation must be established separately, but the imposition of a disciplinary sanction for each of them is not necessary.

It is common in practice that the employee file a claim against the employer if the employee consider that the disciplinary sanction is not legitimately imposed and we have prepared below summary of court decision as example.

The Court's decision related to the disciplinary sanction

Decision No. 102/ШШ2023/03479 dated October 2, 2023 of the Court of First Instance of Civil Affairs of Bayangol District^[4].

Content of the dispute:

By order of the Head of Roads TZ (Defendant), B.G. (Plaintiff) was appointed to the position of Deputy Head of the Trade Department on July 1, 2021. On October 21, 2022, after discussing the report of the unplanned inspection conducted by the Internal Audit and Inspection Office at the Trade Office, it was decided to submit a proposal to the Road Management to undertake a measure of individual closed warning against B.G. as stipulated in Article 123, Clause 123.2.1 of the Labor Law. Head of Roads considered that disciplinary sanction should be imposed on the basis of "B.G., Deputy Head of the Trade Department on basis of auditing for performed duties insufficiently, provided wrong information to the management, and seriously violated the duties specified in the job description", and the matter of providing a new job was transferred to the Trade Department. The Plaintiff filed a complaint to the Labor Rights Dispute Settlement Committee that the above order violated the Labor Law, and the complaint was discussed at a meeting on November 22, 2022. The Labor Rights Dispute Settlement Committee found that it is reasonable to meet the complaint's requirements, annul the employer's order, and re-appoint him to the position of Deputy Head of the Trade Department.

The judge of the Civil Court of First Instance of the Bayangol district held that " the employer's order is not in accordance with the law because it was not determined by the employer whether the violation was considered as a disciplinary violation specified in the internal regulations, employment contract, or job description; inadequate fulfillment of the duties mentioned in the order, providing wrong information to the management, and serious violation of duties specified in the job description have not been documented; violation of the obligation to notify the employee and obtain an explanation before imposing labor disciplinary sanctions, as stipulated in Article 123, Clause 123.3 of the Labor Law; violation of the requirement to get a description, get an explanation, and get the necessary information from the employee in connection with violations committed as specified in the Clauses 8.1.3, 8.1.7 of the internal regulations, Clause 3.2.3 of the employment contract; the basis of the order was not established by the facts; the violation that is the basis for the order was not identified by an unplanned inspection conducted by the Internal Audit and Inspection Office" made a decision to cancel the disciplinary sanction, to reinstate the employee at work, compensate for the period of unemployment, and also reimburse social and health insurance of the employee.

In this dispute, the employer's order did not indicate when the employee violated the labor discipline, the reason for the disciplinary sanction, and the employer did not receive a written explanation of the disciplinary violation by the employee. Therefore, if the employer does not provide evidence that is important to the case, such as the materials on the investigation of the violation specified in the order, the minutes of the discussed meeting, and the explanation of the violator, it is considered that the defendant's explanation does not fully prove the basis of the order.

Source:

- ▶ Labor Law of Mongolia /revised edition/ (2021) - <https://legalinfo.mn/mn/detail?lawId=16230709635751>
- ▶ Resolution No. 33 of the Supreme Court of Mongolia dated July 3, 2006 "On interpretation of some articles and clauses on labor" - <https://legalinfo.mn/mn/detail?lawId=16468108163631>
- ▶ Recommendation of the Supreme Court of Mongolia dated June 15, 2012 "Some issues to be considered in handling controversial cases arising from labor law relations" - <https://legalinfo.mn/mn/detail?lawId=11157>
- ▶ Labor Law of Mongolia (1999) - <https://legalinfo.mn/mn/detail/565>
- ▶ https://shuukh.mn/single_case/129413?daterange=2023-01-01%20-%202024-02-06&id=1&court_cat=1&bb=1

^[1] Labor Law of Mongolia /revised edition/ - <https://legalinfo.mn/mn/detail?lawId=16230709635751>

^[2] Recommendation of the Supreme Court of Mongolia dated June 15, 2012 "Some issues to be considered in handling controversial cases arising from labor law relations" - <https://legalinfo.mn/mn/detail?lawId=11157>

^[3] Resolution No. 33 of the Supreme Court of Mongolia dated July 3, 2006 "On interpretation of some articles and clauses on labor" - <https://legalinfo.mn/mn/detail?lawId=16468108163631>

^[4] https://shuukh.mn/single_case/129413?daterange=2023-01-01%20-%202024-02-06&id=1&court_cat=1&bb=1

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