

**BOTH THE DOCTRINE AND THE JURISPRUDENCE OF OUR COURTS TODAY AGREE THAT A CIVIL ACTION CORRESPONDS FOR MORAL DAMAGE IF CERTAIN GROUNDS INVOKED TO DISMISS A DEPENDENT WORKER ARE NOT EVIDENCED.**

WHEN A WORKER IS DISMISSED INVOKING GROUNDS SUCH AS DISHONESTY, SEXUAL HARASSMENT, SLANDER DIRECTED AGAINST THE EMPLOYER, IMMORAL CONDUCT AND PHYSICAL DETRIMENT CAUSED WILLFULLY TO THE ENTERPRISE, THE EMPLOYER MUST DULY EVIDENCE THEM BEFORE THE LABOR COURTS, OTHERWISE IT MAY BE SUED BEFORE A CIVIL COURT FOR THE MORAL DAMAGES THAT SUCH ALLEGATIONS MAY HAVE CAUSED TO THE FORMER WORKER.

**Synthesis.-** A labor relationship may be terminated due to different reasons. Among these are the ones contemplated in section 160 of our Labor Code, such as the lack of probity of the worker in the performance of his/her functions, the conducts related to sexual harassment, slander committed by the worker against the employer, immoral conduct of the worker affecting the enterprise where it provides his/her services, and the physical damage wilfully caused to the installations, machinery, tools, working appliances, products or goods. The undue or unjustified invocation of any of the above-indicated grounds could give origin to a civil action against the employer for the moral damage caused to the worker. Such actions have been upheld each time more frequently by our higher courts of law and, on occasions, for substantial sums of money.

**Indemnifications before the labor courts; years of service plus surcharge.** Labor law provisions set forth that at the time of the dismissal of a dependent worker he/she must be indemnified for the years of service spent with the enterprise (one month per year with a ceiling of 11 years, or 90 *Unidades de Fomento*, approximately US\$4.195).

Now, when a worker is dismissed for any of the reasons already indicated –and in attention to the seriousness of the same- he/she, in accordance with the wording of the statute, would not be entitled to receive any indemnification whatsoever.

Notwithstanding the foregoing, if the labor court finds that the dismissal has been unjustified due to lack of evidence of the causes, or the undue or negligent invocation of them (which may not be ruled out that it occurs in attention to the procedure involved and the standards of evidence existing in that respect), the employer may be condemned to pay the indemnification for years of service with a surcharge or penalty of up to one hundred per cent.

**Indemnification before the civil courts; moral damage.-** In addition to what has already been indicated, both the doctrine and the jurisprudence of our higher courts of law have accepted that the worker that has been dismissed without justification upon the invocation of any of the grounds referred to above, has a right of action to seek, before the civil courts, indemnification for the moral damage sustained, each time the erroneous invocation of those motives affects the honor, discredits and /or offends the worker. Accordingly, it could be interpreted (connecting all of the foregoing) that the worker that institutes the action before the civil court only shall prove the value of the psychological damage that has suffered, since: (i) other Chilean court -the labor court- has already resolved that the dismissal lacked a justification, and (ii) the jurisprudence of our civil courts, in turn, has indicated in connection with other cases that the unjustified invocation of these grounds actually affects the honor of the workers.

**Conclusion.-** The improper use of section 160 of the Labor Code may bring about –in addition to the other indemnifications established in the labor law rules- a civil indemnification founded in the moral damage. Extremely important results, in consequence, to conduct a previous analysis of the situation, evaluating whether it will be possible to evidence and justify the facts that are imputed to the dependent worker or not.

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