

INTERNATIONAL LABOUR OFFICE GENEVA

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# REPORT FORM

## FOR THE

# TERMINATION OF EMPLOYMENT CONVENTION, 1982 (No. 158)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."

The Government may deem it useful to consult the appended text of the Termination of Employment Recommendation, 1982 (No. 166), the provisions of which supplement the present Convention and can contribute to a better understanding of its requirements and facilitate its application.

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### PRACTICAL GUIDANCE FOR DRAWING UP REPORTS

#### *First reports*

If this is your Government's first report following the entry into force of the Convention in your country, full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

#### *Subsequent reports*

In subsequent reports, information need normally be given only:

- (a) on any new legislative or other measures affecting the application of the Convention;

- (b) in reply to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations;

- (c) **in reply to comments by the supervisory bodies:** the report must contain replies to any comments regarding the application of the Convention in your country which have been made by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards.
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## Article 22 of the Constitution of the ILO

Report for the period \_\_\_\_\_ to \_\_\_\_\_

made by the Government of \_\_\_\_\_

on the

### TERMINATION OF EMPLOYMENT CONVENTION, 1982 (No. 158)

(ratification registered on \_\_\_\_\_)

- I. Please give a list of the legislation and administrative regulations, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of the said legislation, etc., to the International Labour Office with this report.**

**Please indicate whether there exist other measures or methods which are relevant to the implementation of the Convention, such as collective agreements, arbitral awards or court decisions (see Article 1 of the Convention). If so, please provide the texts of sample agreements or awards and of leading court decisions.**

**Please give any available information concerning the extent to which the laws or regulations have been enacted or modified to permit ratification or as a result of ratification.**

- II. Please indicate in detail *for each of the following Articles of the Convention* the provisions of the abovementioned legislation and administrative regulations, etc., or the other measures or methods, under which each Article is applied. Please also give the information specifically requested below under each Article.**

**If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps for its implementation, such as measures to define its exact scope and the extent to which advantage may be taken of permissive exceptions provided for in it and measures to draw the attention of the parties concerned to its provisions.**

**If the Committee of Experts or the Conference Committee on the Application of Standards has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.**

#### PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

##### *Article 1*

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

##### *Article 2*

1. This Convention applies to all branches of economic activity and to all employed persons.
2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
  - (a) workers engaged under a contract of employment for a specified period of time or a specified task;
  - (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
  - (c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which, as a whole, provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

*Paragraph 2. Please indicate whether any categories of employed persons have been excluded under this paragraph from the application of this Convention or any of its provisions.*

*Paragraph 3. Please indicate what safeguards have been provided against recourse to contracts of employment for a specified period of time, the aim of which is to avoid the protection resulting from this Convention. (See in this connection Paragraph 3 of the Termination of Employment Recommendation.)*

*Paragraphs 4-6. In so far as it may have been found necessary to exclude certain categories of employed persons from the application of the Convention under paragraphs 4-5:*

- (a) please list the categories so excluded and give the reasons for such exclusion (paragraph 6);*
- (b) please indicate whether the organizations of employers and workers concerned – where such exist – were consulted (paragraphs 4-5);*
- (c) please provide, if such categories have been excluded under paragraph 4, information on the special arrangements which, as a whole, provide protection at least equivalent to that afforded under the Convention;*
- (d) please indicate, in the second and subsequent reports, the position of law and practice regarding the excluded categories (paragraph 6);*
- (e) please indicate, in the second and subsequent reports, any changes that may have occurred regarding the extent to which effect has been given or is to be given to the Convention in respect of the excluded categories.*

### *Article 3*

For the purpose of this Convention the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

## PART II. STANDARDS OF GENERAL APPLICATION

### DIVISION A. JUSTIFICATION FOR TERMINATION

### *Article 4*

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

*Please indicate how effect is given to this Article. In particular, please indicate how the reasons considered to be valid reasons for termination are defined and whether such definition is specified by laws or regulations or by other methods of implementation, such as court decisions, supplying copies of the leading decisions in this regard.*

#### Article 5

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

*Please indicate how effect is given to this Article.*

#### Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

*Paragraph 1. Please indicate how effect is given to this paragraph.*

*Paragraph 2. Please indicate how "temporary absence from work" is defined and the extent to which medical certification is required, for the purpose of paragraph 1, and what limitations, if any, have been placed on the application of that paragraph.*

### DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

#### Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

*Please indicate how effect is given to this Article.*

### DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

#### Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

*Paragraph 1. Please indicate how effect is given to this paragraph.*

*Paragraph 2. If termination of employment is subject to prior authorization by a competent authority, please indicate whether the application of paragraph 1 is varied where termination is authorized by the authority.*

*Paragraph 3. Please indicate within which time limits, if such exist, a worker must exercise his right to appeal against the termination of his employment.*

### Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

*Paragraph 1. Please indicate how effect is given to this paragraph.*

*Paragraph 2. Please indicate whether effect is given to this paragraph by subparagraphs (a) or (b) or both. If it is applied by subparagraph (b), please indicate how the rules and procedures governing evidence ensure that the worker does not have to bear alone the burden of proving that the termination was not justified.*

*Paragraph 3. Where termination is stated to be for reasons based on the operational requirements of the undertaking, establishment or service, please indicate whether the bodies referred to in Article 8 are empowered in case of appeal to determine whether the termination was indeed for these reasons and the extent to which these bodies are also empowered to decide whether these reasons are sufficient to justify the termination.*

### Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

*Please indicate whether the bodies referred to in Article 8 are empowered, if they find that a termination is unjustified, to declare the termination invalid and/or order or propose reinstatement. Please indicate the consequences of failure to reinstate a worker after the competent body has declared the termination invalid and/or ordered or proposed his reinstatement.*

*If the bodies referred to in Article 8 are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement, please indicate whether they are empowered to order payment of adequate compensation (indicating how such compensation is determined) or such other relief as may be deemed appropriate (indicating what such relief consists of).*

## DIVISION D. PERIOD OF NOTICE

### Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

*Please indicate how effect is given to this Article. If a reasonable period of notice or compensation in lieu thereof is not required, where the worker is guilty of serious misconduct, please indicate how “serious misconduct” is defined for this purpose.*

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

*Article 12*

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to:

- (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

*Paragraph 1. Please indicate whether effect is given to this paragraph by subparagraphs (a) or (b) or by a combination thereof.*

*Paragraph 3. If paragraph 1 is applied by subparagraph (a) thereof, please indicate whether provision is made for the loss of entitlement to the allowances or benefits referred to therein in the event of termination for serious misconduct, and, if so, indicate how serious misconduct is defined for this purpose.*

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT  
FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

*Article 13*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

*Paragraph 1. Please indicate how effect is given to subparagraph (a). In particular, please indicate what information the employer must provide to the workers' representatives concerned, and how far before the contemplated terminations such information must be provided.*

*Please indicate how subparagraph (b) is applied and, in particular, in what manner provision is made for an opportunity for consultation, how far before the contemplated terminations such opportunity must be given and the objects of such consultation.*

*Paragraph 2. Please indicate whether the applicability of paragraph 1 is limited to terminations of a specific number or percentage of the workforce and, if so, in what manner.*

*Paragraph 3. Please indicate which workers' representatives must, in accordance with paragraph 1 of this Article, be provided relevant information and be given an opportunity for consultation.*



DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

*Article 14*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

*Paragraph 1. Please indicate how effect is given to this paragraph. In particular, please indicate which authority is competent for the purpose of this paragraph and what information must be provided to this authority.*

*Paragraph 2. Please indicate whether the applicability of paragraph 1 is limited to terminations of a specified number or percentage of the workforce and, if so, in what manner.*

*Paragraph 3. Please indicate how national laws or regulations specify the minimum period of time referred to in this paragraph.*

**III. Please state to what authority or authorities the application of the abovementioned legislation and administrative regulations, etc., is entrusted and by what methods application is supervised and enforced.**

**IV. If this information has not already been given in reply to earlier questions, please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.**

**V. Please provide general information on the manner in which the Convention is applied in practice, including, for example, available statistics on the activities of the bodies of appeal (such as the number of appeals against unjustified termination, the outcome of such appeals, the nature of the remedy awarded and the average time taken for an appeal to be decided) and on the number of terminations for economic or similar reasons. Please indicate any practical difficulties encountered in the implementation of the Convention.**

**VI. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.<sup>1</sup> If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.**

**Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate a copy of the observations received, together with any comments that you consider useful.**

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<sup>1</sup> Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."

## APPENDIX

### TERMINATION OF EMPLOYMENT RECOMMENDATION, 1982 (No. 166)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982, adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

#### I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2. (1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3. (1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
- (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

#### II. STANDARDS OF GENERAL APPLICATION

##### *Justification for Termination*

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

- (a) age, subject to national law and practice regarding retirement;
- (b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6. (1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

##### *Procedure Prior to or at the Time of Termination*

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to



perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

12. The employer should notify a worker in writing of a decision to terminate his employment.

13. (1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

#### *Procedure of Appeal against Termination*

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

#### *Time Off from Work during the Period of Notice*

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

#### *Certificate of Employment*

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

#### *Severance Allowance and Other Income Protection*

18. (1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to:

- (a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1)(a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1)(b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1)(a) of this Paragraph in the event of termination for serious misconduct.

### **III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS**

19. (1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

#### *Consultations on Major Changes in the Undertaking*

20. (1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

#### *Measures to Avert or Minimise Termination*

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

#### *Criteria for Selection for Termination*

23. (1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

#### *Priority of Rehiring*

24. (1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights – particularly seniority rights – in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

#### *Mitigating the Effects of Termination*

25. (1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

26. (1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

#### IV. EFFECT ON EARLIER RECOMMENDATION

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.