

Information Note: Obligation of prior hearing in disciplinary dismissals

The Supreme Court, in its ruling of 18 November 2024, has modified its criteria on the processing of disciplinary dismissals, strengthening procedural guarantees for workers. This new obligation, not included in article 55.1 of the Workers' Statute, is based on article 7 of ILO Convention 158, in force in Spain since 1986.

General Obligation	As of 18 November 2024 , all companies must give the employee a prior hearing before disciplinary dismissal.
Exception	Article 7 of Convention 158 mentions that the prior hearing may not be required when " <i>the employer cannot reasonably be requested to grant this possibility</i> ": • The judgement does not develop concrete examples or clear conditions for applying this exception. Some authors suggest that it could be justified in situations such as: imminent risk to workers' safety, immediate and significant financial damage to the company, urgent need for action (e.g. in cases of workplace violence or sexual harassment). • It will be necessary to wait for more concrete jurisprudence in the future. • As a general principle, any exceptions should be interpreted restrictively and be expressly and objectively justified.
Preliminary Hearing	Although the judgment does not detail a specific procedure (specific formalities, nor that it be in writing, or deadlines), pending pronouncements in this regard, it could be understood as: • A procedure in which the worker is made aware of the facts alleged against him/her. • The possibility for the employee to present his or her version of the facts before the dismissal is adopted. • This would not amount to a "contradictory dossier", but it must be effective. • Paid leave could be considered for the duration of this procedure.
Non-compliance	As long as the Courts and Tribunals do not rule on the matter, in the event of non-compliance with this requirement: • The dismissal could be declared unfair. • Additional compensation may be payable.
Practical Recommendations	Pending future rulings, it would be appropriate: • <u>Offer</u> the possibility to present allegations before formalising the dismissal. • <u>Document</u> all proceedings related to the prior hearing and, if applicable, the reasons for a possible exception. • Review collective agreement on possible contradictory dossier.

We remain at your disposal for any questions you may have. Yours faithfully,

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 Labour Partner

