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# The lack of protection against unjustified dismissal in the workplace and the effectiveness of the administration of justice in Peru

*La desprotección laboral frente al despido incausado y la eficacia de la administración de justicia en el Perú*

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## Abstract

The main objective of this research is to identify the reasons why local governments dismiss blue-collar workers and to evaluate whether the State implements the necessary actions to guarantee the emotional, economic, and familial well-being of these workers after dismissal. To this end, a qualitative methodology with an interpretive design was used, which included a review of regulations to analyze the effectiveness of current legislation as response mechanisms. Three legal professionals specializing in labor law and with judicial experience also participated, providing relevant information through focus group interviews. The results reveal a clear violation of the right to work and the absence of effective state actions to protect and support workers facing unjustified dismissal. In conclusion, the study highlights the importance of implementing mental health programs to support workers during the unemployment process. Although severance pay may be granted in the future, psychological support is essential for individuals to face this situation as an opportunity for change and personal growth.

**Keywords**: dismissal, employer, employee.

## Resumen

La investigación tiene como objetivo principal identificar las razones por las cuales los Gobiernos Locales despiden a los trabajadores obreros y evaluar si el Estado implementa las acciones necesarias para garantizar el bienestar emocional, económico y familiar de estos trabajadores tras el despido. Para ello, se utilizó una metodología cualitativa con un diseño interpretativo, que incluyó una revisión normativa para analizar la efectividad de las normativas vigentes como mecanismos de respuesta. Asimismo, se contó con la participación de tres profesionales en derecho, especializados en materia laboral y con experiencia judicial, quienes aportaron información relevante mediante entrevistas de grupo focal. Los resultados revelan una clara vulneración del derecho al trabajo y la ausencia de acciones estatales efectivas que protejan y apoyen al trabajador frente al despido incausado. En conclusión, el estudio resalta la importancia de implementar programas de salud mental que acompañen a los trabajadores en el proceso de desempleo. Aunque la indemnización por despido puede ser otorgada en el futuro, el apoyo psicológico resulta fundamental para que la persona pueda enfrentar esta situación como una oportunidad de cambio y crecimiento personal.

**Palabras clave**: despido, empleador, trabajador.

## Introduction

The right to freely chosen work was first recognized in the French Constitution of 1793, as noted by Scotto (2024). According to Ramis and Scotto (2023), this recognition arose in the aftermath of the 1789 Revolution. Consequently, Bueno (2021) argues that the right to work has been reflected in various legal sources until it was acknowledged as a human right, present in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights—as highlighted by Aguilera (2019)—and in the jurisprudence of the case Lagos del Campo v. Peru (Pérez, 2023). It is important to emphasize that the right to work has been recognized internationally; in this regard, Espino et al. (2023) draw attention to the challenges related to access to formal

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employment. Furthermore, Flores (2021) mentions that the Inter-American Court of Human Rights has reinforced the protection of workers concerning this right.

Villavicencio (2013) asserts that the right to work is a fundamental right recognized in the Political Constitution of Peru, and it is also acknowledged under international law, according to Suárez (2021). This right was established as a result of historical labor struggles, as noted by Ramírez and Trelles (2023). Its purpose is to shield workers from the vulnerabilities associated with involuntary unemployment. Branco (2019) considers unemployment to be more than an economic issue; it constitutes a violation of human rights, evidenced by the infringement of workers' constitutional rights, as discussed by Rodríguez and Vargas (2023). However, Zetter and Ruaudel (2018) emphasize that a restrictive approach to this right prevails in most countries.

It is necessary to highlight that over time, laws protecting workers have been implemented and reinforced. Within the Peruvian context, such regulations are characterized by their protective nature, as noted by Guaman and Stoessel (2022). They establish that every individual not only has the right to employment, but it must also be dignified and decent work, as asserted by Castro et al. (2024). Likewise, the Constitution of Peru enshrines special protections against unjust dismissal. According to Suárez (2019), the employment contract involves reciprocal rights and obligations: the worker offers their labor, while the employer provides appropriate remuneration, yielding benefits for both parties and society at large.

Nevertheless, local governments frequently engage in arbitrary actions regarding job stability, which constitutes an inherent conflict within social coexistence, manifesting in the principle of continuity, as indicated by Balestero (2020). In Peru, various types of employment contracts coexist; however, it is pertinent to focus on administrative services contracts (CAS) and service contracts, under which workers lack labor benefits that employees regulated by Legislative Decree 728 (D.L. 728) receive. Despite the existence of laws protecting workers, Campoverde (2022) points out that employers often violate these rights. Nonetheless, Bustos (2021) maintains that labor law guarantees more favorable working conditions for employees.

In practice, it is evident that workers under CAS and service contracts, due to the nature of their work, should be employed under private labor law, as determined by various judicial rulings. However, local governments frequently terminate these workers en masse, citing contract expiration, even when they have maintained employment for over five years. This raises a critical question: does the cause for contract termination legally correspond to a dismissal? Are governments flagrantly undermining the universally recognized right to work? If so, what measures is the state implementing to ensure the emotional, economic, and familial well-being of these workers?

In cases of dismissal, employers must adhere to a series of legal procedures, as indicated by Catacora (2016); Navarro (2013) mentions that these procedures consist of three phases: initial, intermediate, and final. However, in Latin America, labor markets are facing new challenges stemming from increased inequality and precariousness, as noted by Miranda and Merino (2025). In this context, Berrones-Santander and Pachano-Zurita (2023) indicate that unjust dismissal is a daily reality for many workers.

Consequently, this research focuses on determining: the primary reasons employers have for dismissing workers under conditions of subordination; the consequences of such dismissals on the workers' lives; and the actions taken by the state to address emotional well-being during unemployment. To this end, an interview guide was applied to experts in labor law, whose responses contributed to the obtained results.

This research is essential for establishing corrective and punitive measures against unjust dismissals that violate legal justifications, particularly regarding issues related to the capacity or conduct of the worker. Furthermore, it is necessary to adopt mechanisms that oversee the right to job stability, which is protected internationally.

In Peru, a dismissed worker—understood as a contractual breach according to Masache (2020)—often faces difficulties reintegrating into the labor market due to scarce and deteriorating demand, as stated by Alegría (2023). While this situation particularly impacts young people, Rodríguez (2023) points out that individuals over fifty years old or those with disabilities face even greater barriers. Florez-Vaquiro and Hincapié-Aldana (2025) describe labor scarcity as a multidimensional phenomenon, leading Gil (2019) to highlight the necessity of incorporating gender equality into access to employment. Consequently, the state, through the Ministry of Labor and Employment Promotion, must implement mechanisms that ensure the emotional and economic health of workers until their reintegration.

The worker is, in general, the most vulnerable party in the labor relationship, confronting various causes of dismissal that compromise their stability. Armijo and Vicent (2023) indicate that temporary employment generates mental health issues, exacerbated when the dismissal affects the sole provider of a family. Pulla-Castillo et al. (2020) argue that unjustified termination constitutes an arbitrary and illicit act that requires redress. In this


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context, Vinueza et al. (2021) advocate for the necessity of legal security that guarantees worker stability and the right to remain in their position unless there is just cause, as posited by Liza (2021).

The legislator also anticipated compensation for unjustified dismissal and the effective reinstatement of the worker. However, López (2023) warns that judicial and administrative processes to resolve these cases often take years, potentially leading to a final ruling. Moreover, many workers are unaware of their rights or refrain from seeking judicial recourse, further exacerbating their situation.

This prolonged process raises concerns about how workers emotionally cope with unemployment. Chan (2000) explains that dismissal leads to psychological distress and a recovery phase rooted in optimism, where the individual does not fully assume their unemployed status.

Thus, it is vital for the state to implement mental health programs to support workers during the challenging experience of unemployment. While compensation may be granted later, Campos (2019) underscores that psychological support during this period is crucial. Not everyone possesses the same resilience to adapt to job loss, so special protection and security must be provided to those who lose their employment.

In summary, this research aims to identify the causes of dismissal within contexts of subordination, the resulting consequences for the worker, and the state actions designed to mitigate the impact. Ultimately, the goal is to contribute to better protection and promotion of the right to work.

## Methodology

The research was conducted using a qualitative approach aimed at revealing and analyzing data through descriptive and narrative methods, enabling a profound understanding of the studied phenomenon. In this context, Yoma (2025) highlights that qualitative indicators can be grounded in facts or judgments; however, he warns that those based on judgments should be handled with care to avoid biases that could affect the reliability of the gathered information.

To ensure the validity and credibility of the investigative process, the study adopted an interpretative design, which, according to Cruz-Aburto (2021), provides robustness to both the methodological procedure and the generation of knowledge. Within this framework, a detailed normative review concerning unjust dismissal was incorporated, with the intention of assessing the effectiveness of the legislation as a mechanism to respond to this labor issue.

Moreover, the research involved the active participation of three legal professionals, specialized judges in labor matters, who contributed expert insights into the situation under study. To gather their input, a focus group interview technique was implemented, defined by Hernández and Duana (2020) as a process in which collected data is examined and transformed to identify the most relevant and significant information. Throughout this process, the judges were guided by a moderator who facilitated dialogue based on five semi-structured questions designed to delve into the central aspects of the issue.

Thanks to this methodology, rich and pertinent data were obtained, directly addressing the outlined objectives and allowing for the identification of findings coherent with the study's focus and scope, as noted by Arispe et al. (2020).

Finally, it is emphasized that the development of the study was always framed by ethical considerations, respecting the principles of justice that guided each phase of the investigative process, thereby ensuring the integrity and legitimacy of the results obtained.

## Results and discussion

### Unjust dismissal

The right to work is enshrined in Article 22 of the Peruvian Constitution. Within this framework, its primary essence is to guarantee access to employment and ensure that dismissal occurs only for just cause. Unjust dismissal, whether expressed verbally or in writing, is characterized by the absence of a valid reason justifying the termination of the relationship, whether due to the worker's conduct or capacity.

Given that this act is arbitrary, the regulations foresee compensation and reinstatement of the employee in their position, due to the employer's failure to fulfill their obligations within the employment relationship. It is important to note that, in Peru, unjust dismissal is not expressly regulated by law; rather, it has developed through the jurisprudence of the highest constitutional interpreter, acquiring a distinct nature that differentiates it from other types of dismissal.

However, in practice, local governments commit serious violations of the right to work by employing workers under inappropriate labor regimes, such as the CAS regime, when the nature of their functions warrants


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protection under Legislative Decree 728. Additionally, these governments mass-dismiss workers, citing the sole reason of contract expiration, a justification not recognized in the law as a valid cause for dismissal.

**Negative impact of dismissal**

Dismissal fundamentally involves the unilateral decision of the employer to terminate the employment relationship without requiring the employee's consent. As this decision rests solely with the individual who wields power and control over the employee, its impact tends to be profoundly negative on the worker's life, affecting emotional, economic, and familial aspects.

From an emotional perspective, dismissal generates stress, anxiety, worry, depression, and low self-esteem, adversely affecting the worker's overall well-being. The loss of employment not only creates uncertainty about the future but also hampers the ability to adapt to a devastating situation, which can induce pain. While some individuals manage their emotions better during difficult times, the majority experience a significant psychological impact.

Economically, work represents the primary source of income necessary to meet basic needs, pursue personal development, and support one's family. Therefore, job loss implies a loss of income, generating uncertainty regarding the ability to maintain a dignified life and cover essential services.

At the family level, if the dismissed worker is the primary breadwinner, the situation becomes even more alarming. The lack of income affects not only their well-being but also that of all family members, whose lifestyles and regular activities have to be altered—such as weekend plans or family gatherings—in an effort to economize in response to the financial loss.

Different demographic groups, such as young individuals and those over fifty years of age, face additional challenges in adapting to labor market demands. In Peru, many professionals do not practice their usual professions; instead, they occupy positions suited to different skill sets to secure employment. According to Martínez et al. (2024), today's workers seek more than just a job; they seek opportunities that allow them to balance family and work life while also pursuing professional growth.

This scenario reveals that labor competition is fierce. When an employer posts a vacancy, they expect a productive individual who can adapt from day one. Although advanced experience can be an asset, there are roles linked to age that further complicate labor integration for individuals over fifty or those with disabilities. While labor market integration is not impossible, it is often delayed, considering these groups' qualities, knowledge, and productivity.

Furthermore, during the interval between dismissal and eventual reentry into the labor market, the state does not implement concrete measures to safeguard the worker's mental health. While, in judicial cases, if the lawsuit succeeds, the judge may order the employer to pay compensation for moral damages, this only partially remedies emotional suffering. However, not all dismissals undergo judicial review due to a lack of awareness, high costs, time constraints, and distrust in the judicial system. Moreover, the legislator has not sufficiently considered the emotional and psychological impact of this type of dismissal, leaving the worker to fend for themselves.

In summary, the legislator has not adequately grasped the severity of the psychological and economic impact generated by unjust dismissal, particularly when the cause is unrelated to the worker's conduct or capacity. This kind of dismissal profoundly affects the worker's life project and economic stability, aspects that the state and legislation appear to deprioritize.

Consequently, this research proposes that the state provide free psychological support from the first day a worker faces unjust dismissal until their recovery or return to work. Additionally, Mina and Tréllez (2022) assert that a comprehensive reformulation of public policy in this area is essential to reduce the scarcity of job opportunities.

**Labor regimes**

In the Peruvian labor system, various hiring regimes exist, which differ based on their scope of application, whether in the public or private sector, and each regime grants different rights to workers.

In this context, local governments often hire workers under service contracts, even though, due to the nature of their functions, the appropriate regime should be that established by Legislative Decree 728 (D.L. 728). The latter offers numerous labor benefits that other modalities lack. Consequently, by contracting under inappropriate regimes, municipalities commit arbitrariness that undermines workers' labor rights: first, they cut workers' rights to remuneration appropriate to their actual regime; second, they deprive workers of access to benefits and job stability that they should have.

It is noteworthy that the Supreme Court has issued various rulings clearly establishing that municipal workers should be governed by the D.L. 728 regime, in accordance with Article 37 of the Organic Law of

Municipalities. Thus, it would not be legitimate to hire them under service contracts. However, municipalities, fully aware of this restriction, continue to violate these regulatory provisions.

As Nolazco et al. (2021) point out, labor action has undergone significant changes from its inception to the present. Nevertheless, violations of rights do not resolve within weeks or months; rather, they extend over years, during which municipalities opt for contractual regimes that minimize their costs, despite the fact that, as Nuñez (2022) states, Peru is a middle-income country.

Moreover, there is a notable absence of a supervisory body that acts ex officio or at the request of parties to oversee and direct municipalities in hiring under the corresponding labor regime. Therefore, workers must initiate labor lawsuits seeking to nullify the contract and secure social benefits and compensations so that the jurisdictional body can determine the validity of the claim. If favorable, an order for hiring under the appropriate labor regime is issued.

In summary, workers find themselves at the mercy of judicial decisions and, as the most vulnerable party in the employment relationship, must allocate a substantial portion of their meager wages to cover the costs of judicial proceedings initiated due to their employer's arbitrary actions.

**Administration of justice**

In recent years, specialized labor courts have been established across various Superior Courts of Justice. Previously, these cases were handled by mixed judges who dealt with various matters. The creation of these specialized courts responds to the need to improve efficiency and specialization in addressing labor issues.

Nevertheless, it is undeniable that the justice system continues to face considerable workload overexertion. Despite the introduction of these specialized courts, the accumulation of lawsuits still exceeds the system's capacity to process them adequately. This backlog creates delays in the process, from the qualification of the claim to the issuance of the verdict. This situation is exacerbated by a shortage of judicial staff and the reality that existing personnel are prone to make mistakes due to pressure and excessive workloads.

As a result, the quality of justice services deteriorates, leading to exhaustion and frustration among users who turn to the judicial system. Thus, the justice that users anticipate is hampered by long delays in the proceedings before certain jurisdictional bodies, which require patience until the final verdict is issued.

For this reason, it is imperative to create more specialized courts to facilitate a more efficient justice system, genuinely reducing the workload. This will enable quicker responses to the demands of those seeking justice. Additionally, the specialization of judges ensures that disputes are resolved by professionals with deep knowledge in specific areas, contributing to higher-quality judicial decisions in the application of law.

**Perspective of judicial experts from practical field**

Through the focus group interview technique, the moderator stimulated discussion regarding the outlined issues among the three expert judges in labor matters from the Labor Courts, yielding the following results:

**Table 1**

*Results collected from expert interviews*

| Categories | Results |
|---|---|
| **Unjust dismissal** | **Interviewee 1:** It is the termination of the employment relationship without any cause related to the worker's conduct or capacity.<br>**Interviewee 2:** It encompasses dismissals made verbally or in writing, where the employer does not establish any of the causes provided by law.<br>**Interviewee 3:** It refers to dismissals where the employer cannot justify the reason for their unilateral decision, often arising from the expiration of the contract. |
| **Termination of employment** | **Interviewee 1**: It materializes through the unilateral decision of the employer, ending the employment relationship.<br>**Interviewee 2**: In local governments, the two most common reasons are, firstly, a change in management that results in the new mayor bringing in their own staff, and secondly, the expiration of the contract.<br>**Interviewee 3**: Typically arises from the contract's expiration. |

| | |
|---|---|
| **Job stability** | **Interviewee 1:** CAS workers do not have this right, as they are initially hired for a limited time and are subsequently renewed**.**<br>**Interviewee 2:** The CAS regime has shown changes recently; initially, it was a regime where contracts were only for limited periods, subject to renewal. Later, a law recognized certain workers as having indefinite contracts, but this regime reverted to one based on temporary necessity, meaning that workers are still hired for limited periods**.**<br>**Interviewee 3:** The nature of CAS does not ensure continuity of employment, nor does it guarantee that dismissals will occur for the causes established in the regulations. |
| **Emotional well-being of workers** | **Interviewee 1:** Dismissal generates a negative impact on the employee's mental health, requiring financial resources to cover the costs of their emotional recovery**.**<br>**Interviewee 2:** The psychological impact of dismissal is addressed through compensation for moral damages, but the worker must wait for the issuance of the ruling that recognizes this**.**<br>**Interviewee 3:** While the damage caused by dismissal is compensated in a judicial process, the legislator has not considered the necessity of providing psychological support. |
| **Adequate justice system** | **Interviewee 1:** It is undeniable that the justice system experiences a workload overload, but like any system, it faces numerous challenges**.**<br>**Interviewee 2:** As with all branches of government, there are both good and bad professionals who confront significant challenges daily**.**<br>**Interviewee 3:** The modernization of the judicial system allows for faster processing and improves the efficiency and quality of justice, particularly with the creation of electronic files, which has been a significant advancement for the system. |

**Note.** The above table represents the responses obtained from expert interviews

Based on the interviews conducted with three expert judges in labor matters from the Labor Courts, it was found that unjust dismissal is understood as the unilateral termination of the employment relationship, typically by the employer, who, exercising their supervisory authority, ends the relationship without a valid reason stipulated by regulations. In this regard, both Interviewee 2 (E2) and Interviewee 3 (E3) concurred that local governments frequently terminate employment with workers under the pretext of contract expiration; these workers, in addition to being employed under the CAS regime, lack job stability.

In light of this situation, the judges indicated that dismissal has a negative impact on the worker's mental health, as this decision creates psychological harm that can potentially be compensated in legal proceedings. However, in Peru, there is no state entity responsible for providing psychological support to workers in this condition, nor is there a multidisciplinary team to assist them in this difficult phase, unless the worker chooses to independently access professional psychological services.

Finally, the judges highlighted that while the justice system has faced deficiencies over time, it has also shown significant advancements in the management and processing of labor cases. In particular, the implementation of electronic case files has contributed to the modernization of the system, reducing costs, eliminating paper use, and improving access to information and case reviews.

## Conclusions

Unjust dismissal is an arbitrary act commonly perpetrated by local governments, which often choose to dismiss workers by alleging contract expiration, a cause not recognized in existing regulations, which only acknowledge causes linked to the conduct and capacity of the worker. This practice clearly undermines workers' labor rights, particularly the right to work and job stability, both protected by the Political Constitution of Peru.

In this context, unjust dismissal immediately impacts the worker's mental health, generating significant psychological harm. Moreover, this situation is aggravated by personal and family issues that the worker may be

facing. As a result, overcoming this difficult circumstance is neither instant nor straightforward; rather, it requires a variable amount of time, depending on each individual's capacity for resilience. During this period, workers often lack professional support to help them regain their emotional well-being.

It is essential to highlight that the legislative power has failed to establish regulations ensuring psychological support for workers who are unjustly dismissed. This assistance should be provided from the moment of dismissal until the effective reinstatement of the worker or until they secure new employment.

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