



NATIONAL UNIVERSITY OF LESOTHO

# CRITICAL DISCUSSION OF THE SEVERANCE PAY LEGAL FRAMEWORK IN LESOTHO: COMPARATIVE ANALYSIS

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## DECLARATION

I, Motlatsi Thejane, solemnly declare that this mini-dissertation has not been submitted for qualification in any other institution of higher learning, nor in any journal, text book or other media. The contents of this dissertation entirely reflect my own original research, save where the work of contributions of others has been accordingly acknowledged.

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## **ABSTRACT**

This Dissertation critically examines the legal framework governing severance pay in Lesotho, with a comparative focus on Austria's reformed severance pay model. The study explores the historical development of severance compensation in Lesotho, the statutory provisions under the Labour Act 2024, and the system's compliance with international labour standards, particularly ILO Convention No. 158 and Recommendation No. 166. Through legal and comparative analysis, the paper identifies significant weaknesses in Lesotho's current system, including its financial burden on employers, lack of portability, and limited protection for employees in cases of liquidation or insolvency. In contrast, Austria's pre-funded severance scheme offers a sustainable, equitable, and mobile model. The study recommends that Lesotho adopt similar structural reforms to enhance the fairness, efficiency, and sustainability of its severance pay system, ensuring better protection for both employers and employees within an evolving labour market.

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## CHAPTER 1: INTRODUCTION

### 1. Introduction

Severance compensation is one of the most common yet contentious social programs.<sup>1</sup> Created through legislation or collective bargaining, it requires businesses to furnish a lump-sum payment to qualified employees whose employment contracts have been terminated, generally determined by their tenure and recent salary.<sup>2</sup> These programs cover a wide range of intricate goals, such as compensating for lost wages, maintaining employment stability, preventing unemployment by deterring layoffs, and cultivating enduring relationships to keep valuable staff members while lowering turnover-related transaction costs.<sup>3</sup>

An employee whose employment has been terminated is unquestionably entitled to severance compensation or other separation benefits commensurate with their length of service and wage level, according to the Termination of Employment Convention, which was adopted by the International Labour Organization (ILO) in 1982.<sup>4</sup> According to the Convention, an employee may receive unemployment insurance, assistance, different types of social security, or a mix of these benefits and allowances.<sup>5</sup> According to the Convention, workers who lose their jobs must be eligible for unemployment insurance, assistance, or other social security benefits. This suggests that an employee should be given financial support to help them during their unemployment period after being fired.

According to Article 12(1)(a) of the Termination of Employment Convention, an employee who does not meet the requirements for unemployment insurance or assistance under a widely applicable program is not eligible for severance pay or other separation benefits because they are ineligible for unemployment benefits under Article 12(1)(b).<sup>6</sup> The Convention specifies that if an employee fails to satisfy the eligibility conditions for unemployment benefits within a general framework, they are not inherently entitled to severance compensation or other separation benefits. This signifies that qualifying for unemployment benefits is a condition for obtaining supplementary compensation following termination. The Convention permits

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<sup>1</sup> R Holzmann and M Vodopivec (eds), *Reforming Severance Pay: An International Perspective* (The International Bank for Reconstruction and Development/World Bank 2012).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> International Labour Organization (ILO), Termination of Employment Convention (No 158); Relebohile Lesholu, 'Resignation (with immediate effect) and forfeiture of severance pay in Lesotho: possible lessons from South Africa' (2023) LLM Dissertation, National University of Lesotho.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid art 12(a) and (b).

national regulations to limit the aforementioned rights for employees whose employment has been terminated for misconduct.<sup>7</sup> It permits national legislation to put limitations on these benefits where an employee's termination results from serious misconduct.<sup>8</sup> This clause recognizes that certain conduct may warrant the withholding of benefits usually afforded to the dismissed employees. Lesotho ratified the Termination of Employment Convention in 2001.<sup>9</sup> Lesotho's acceptance of this Convention in 2001 denotes its dedication to adhering to these principles within its national labour legislation and social security frameworks. By ratifying the Convention, Lesotho commits to enacting measures that conform to the standards established by the ILO concerning employment termination and related benefits.

The Wages and Conditions of Employment Order (subsequently referred to as 'WCEO') was established in 1978.<sup>10</sup> This Order established severance pay in Lesotho.<sup>11</sup> When an employee's employment contract is terminated by their employer for a reason other than summary dismissal after they have worked for the same company for more than four years, they were entitled to severance compensation, which is equivalent to two weeks' wages for each year of continuous service.<sup>12</sup> According to this order, employees who have been with the same company for more than four years were entitled to severance pay when their employment was terminated by the company, with the exception of summary dismissal.<sup>13</sup> The term "summary dismissal" describes the immediate termination of an employee's employment due to egregious misconduct or other serious conduct violations.<sup>14</sup> Given that severance pay requires that the company, not the employee, initiate the termination of employment, it is evident from the information above that employees who retired or resigned were not eligible for it.

The Order also gave employers who oversee pension funds, provident funds, or gratuity schemes that offer workers better benefits than severance pay the option to submit a written request to the Minister to be exempted from the severance pay requirements.<sup>15</sup> A certified copy of the relevant regulations must be included with the application, along with details about the

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Wages and Conditions of Employment Order 1978.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Holzmann and Vodopivec (n 1).

<sup>15</sup> Wages and Conditions of Employment Order, 1978 (n 10).

employer-managed pension fund, provident fund, or gratuity scheme.<sup>16</sup> The Minister of Labour will exempt the employer from having to give severance pay to its workers if, after reviewing the aforementioned application, the Minister finds that the employer's pension, provident fund, and/or gratuity plan offer better benefits to the workers than severance pay.<sup>17</sup> If the Minister of Labour determines, upon evaluating the aforementioned application, that the pension or provident fund and, or gratuity scheme administered by the employer provides superior benefits to the employees compared to severance pay, the Minister will exempt the employer from the requirement to pay severance pay to their employees.<sup>18</sup> This Order indicates that if a company successfully secures this exemption, employees may forfeit severance compensation in favour of possibly more advantageous long-term benefits from their pension or other funds. Nonetheless, the Order did not specifically stipulate, as it does with severance pay, that a fired employee would be ineligible for benefits from an alternative separation package that the employer may choose.

With the Wages and Conditions of Employment (Amendment) Order, Lesotho modified the Wages and Conditions of Employment Order (WCEO) in 1991.<sup>19</sup> A clause stating that an employee who resigns shall be entitled to severance pay equivalent to two weeks' wages for each completed year of continuous service with the same employer was added in place of section 10(1) of the principal Order, which required severance pay upon termination of employment.<sup>20</sup> Although the original Order stated that termination by the employer was the sole basis for severance pay, the Amendment Order specifically lists resignation as a requirement for receiving such benefits. An employee must have worked continuously for the same company for one year instead of four years in order to be eligible for severance pay, according to the amendment order.<sup>21</sup> The matter of dismissal continued unchanged. Dismissal for misconduct rendered the employee ineligible for severance compensation, and there is no supplementary provision to preclude employees terminated for misconduct from a separate termination payment.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Wages and Conditions of Employment (Amendment) Order 1991.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

The Labour Code Order 1992 was enacted in 1992, with severance pay specified in section 79.<sup>22</sup> When an employee leaves a company after more than a year of continuous employment, they are entitled to severance pay, which is equivalent to two weeks' wages for every year of service.<sup>23</sup> An employee justifiably fired for misconduct shall not qualify for severance compensation.<sup>24</sup> Consequently, employees deemed culpable of misconduct and subsequently justly terminated are ineligible for severance compensation. An employee terminated for valid reasons for misconduct is ineligible for severance compensation. This clause acts as a safeguard for employers against employees whose conduct justifies termination. The phrase "fairly dismissed" indicates that the termination adhered to legal and procedural norms, signifying that the employer has legitimate reasons for ending the employee's contract owing to misconduct.<sup>25</sup> The Labour Code (Amendment) Act of 1997 amended section 79 of the Labour Code Order, adding three new subsections that state that an employer may request in writing from the Labour Commissioner to be exempt from paying severance pay if the employer offers an alternative separation benefits plan that offers an employee more benefits than severance pay.<sup>26</sup>

The Code includes stipulations for severance compensation, applicable when an employee resigns, when an employer terminates employment, or upon the expiration of a fixed-term contract.<sup>27</sup> When an employee is terminated for misconduct, they are no longer eligible.<sup>28</sup> While one can contend that this forfeiture discourages employees from engaging in serious misconduct, it can equally be asserted that it is inequitable for an employee to forfeit all benefits accumulated over a long tenure due to a solitary act of wrongdoing following an extended time of exemplary performance. Given that the employee has already been terminated for misconduct, the legislature must reassess this issue. A further problematic matter is summary dismissal. By denying an employee the severance pay seems to constitute an unfairness akin to

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<sup>22</sup> The labour Code Order 1992 s 79.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> The Labour Appeal Court clarified this in the *Unitrans Zululand (Pty) Ltd v Cebekhulu* (DA28/01) [2003] ZALAC 5, [2003] 7 BLLR 688 (LAC) stating that substantive fairness focuses on the evidence presented in court to justify the dismissal, while procedural fairness concerns whether the employer followed a fair process before the dismissal. If both fairness requirements are satisfied, the dismissed employee is not entitled to severance pay. In such cases, the law recognizes that the termination was justified due to the employee's actions, thus negating their entitlement to severance benefits.

<sup>26</sup> Labour Code Amendment Act 1997 s 8.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

double jeopardy.<sup>29</sup> Upon summary dismissal, an employee experiences a significant loss, specifically their employment and associated income. Withholding severance compensation in addition to this may be viewed as punitive and inequitable, particularly if the reasons for termination are inadequately supported or if extenuating circumstances exist.

A worker who has worked for the same company for more than a year is entitled to severance pay equal to two weeks' wages for each full year of continuous service upon termination of employment, according to Section 136 (1) of the Labour Act 2024.<sup>30</sup> A worker who has been fired for misconduct is not entitled to severance pay.<sup>31</sup> The two weeks' pay mentioned in subsection (1) will be computed using the rate in effect following the services provided.<sup>32</sup> The date this Part is enacted will mark the beginning of the right to severance under this section.<sup>33</sup> Businesses must decide to offer the superior separation benefit in lieu of severance pay if an employer manages an alternative separation benefit plan that offers an employee more favourable benefits.<sup>34</sup> An employee may not simultaneously claim severance payment and alternative separation benefits unless the employer agrees to provide both. The sanction for failure to remit severance pay.<sup>35</sup> An employer that fails to provide severance pay as mandated by section 136 commits an offense and upon conviction may face a penalty of up to five thousand Maloti or imprisonment for a period not exceeding thirty Months.<sup>36</sup> The Act compels the observation and compliance with its provisions by the employer, and failure to adhere will attract penalties.

The legal instruments in place have outlined the parameters, qualifications, and exceptions related to severance pay. However, although the law establishes a systematic framework, it also exposes uncertainties and disparities, particularly regarding dismissals due to misconduct, conflicting advantages from employer-administered schemes, and the dual punishments resulting from the denial of severance. These issues indicate that, in spite of the current regulations, there are still gaps in providing fair and equitable access to severance compensation, especially for long-term employees dismissed under disputed conditions. This study conducts a thorough analysis of the legal framework surrounding severance pay in

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<sup>29</sup> KE Mosito, *A Panoramic view of the social security and social protection provisioning in Lesotho* (2014).

<sup>30</sup> Labour Act 2024 (n 10) s 136.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

Lesotho to pinpoint these gaps and suggest feasible reforms that reconcile legal adherence with social justice.

## **2. Problem statement**

Severance compensation in Lesotho, as outlined by the Labour Act of 2024, is intended to lessen the financial burden of unemployment and provide compensation for involuntary job loss resulting from resignation, the conclusion of fixed-term contracts, or terminations initiated by employers.<sup>37</sup> While the legal framework broadly aligns with international labour standards, its practical implementation faces significant legal uncertainties, particularly regarding how employees dismissed for misconduct are treated and the management of alternative separation benefits.

A major concern is the lack of explicit statutory guidance on whether employers can deny alternative benefits in cases of "just cause" terminations. This issue is particularly troubling since the Pension Fund Act of 2019 specifically restricts deductions for misconduct to amounts that lead directly to a loss for the employer. The misalignment between these laws creates a legal void, allowing employer discretion that could compromise the principles of legal equity and consistency.

The extensive scope of employer discretion, when combined with exclusions based on misconduct, brings into question Lesotho's adherence to international labour obligations. The absence of clear legal protections for similarly situated employees can lead to inconsistent treatment and unequal legal safeguarding. This study, therefore, thoroughly investigates whether the severance compensation system in Lesotho upholds principles of legal equity and uniformity, particularly in relation to discretionary benefits, misconduct-related exclusions, and the wider framework of international labour standards.

## **3. Literature review**

Article 12 of the ILO Convention No. 158 states that workers who have their employment terminated are entitled to severance pay or other separation benefits, unemployment insurance, or social security benefits, or a combination of these options.<sup>38</sup> International Labour Organization (ILO) clarifies that a worker's ineligibility for unemployment insurance does not

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<sup>37</sup> Labour Act 2024 s 136.

<sup>38</sup> ILO Convention No. 158(n 3) art 12.

justify the denial of severance pay.<sup>39</sup> ILO permits national laws to limit these entitlements in cases of serious misconduct.<sup>40</sup> The ILO Committee of Experts highlights that this Article provides flexibility to align with the various legal and economic frameworks of different nations.<sup>41</sup> It acknowledges that developing nations might depend solely on severance pay in the absence of more comprehensive social protection systems. The Tripartite Declaration encourages governments and businesses to guarantee some form of financial protection for workers who are terminated.<sup>42</sup> Many scholars have examined the conditions under which employees may be denied their severance pay rights. This review emphasizes those viewpoints while identifying significant gaps, particularly concerning employer discretion, the management of misconduct, and the denial of benefits, which are especially pertinent within the framework of Lesotho’s Labour Act 2024.

McGregor contends that although severance pay is a legal entitlement, it is not an unconditional right. She states that if an employee unreasonably refuses a job offer for alternative employment, whether from the same employer or a different one, they may lose their right to severance pay.<sup>43</sup> This argument is bolstered by the case of *Astrapak Manufacturing Holdings (Pty) Ltd t/a East Rand Plastics v CEPPAWU*,<sup>44</sup> in which employees rejected offers for alternative work at the same or higher salaries.<sup>45</sup> The court deemed this refusal unreasonable and denied severance pay.<sup>46</sup> Nevertheless, McGregor highlights an important distinction: employees who turn down alternative offers that come with a pay reduction are not automatically acting unreasonably and should not lose their severance benefits.<sup>47</sup>

In his article “the entitlement of severance pay revisited,” DW De Villiers identifies three scenarios that arise when an employer has arranged alternative job opportunities for a laid-off worker and when an ancillary task is outsourced: the worker unjustifiably turns down such employment and loses the right to severance compensation; the employee justifiably refuses

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<sup>39</sup> Ibid art 2.

<sup>40</sup> Ibid art 3.

<sup>41</sup> International Labour Conference, Committee of Experts on the Application of Conventions and Recommendations, General Observation on the Termination of Employment Convention, 1982 (No. 158).

<sup>42</sup> International Labour Office, *Guide on Employment Policy and International Labour Standards* (International Labour Standards Department, Employment Policy Department, Geneva 2013)

<sup>43</sup> Lesholu (n 3).

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

the offered role and remains eligible for termination compensation; the employee accepts the alternative position, forfeiting the right to termination compensation.<sup>48</sup>

Although the reasonability assessment may not directly apply to the final decision, it seems sensible that the terms and conditions of the new position should not deviate significantly from those of the previous one.<sup>49</sup> What would constitute a significant and unacceptable change is not clearly defined. Nonetheless, it is clear that a worker could reject such a proposal as unreasonable.<sup>50</sup> If there is a dispute over whether this rejection is justified, it must be resolved by an external authority (*Sayles v Tartan Steel CC (1999) 20 ILJ 647 (LC)*).<sup>51</sup> The precedent established by Zondo JP in *Irvin & Johnson Ltd v CCMA*,<sup>52</sup> may have wider implications moving forward. Accepting alternative employment will also nullify the right to severance pay. Grogan similarly highlights that severance pay is contingent upon certain conditions.<sup>53</sup> He points out that a break in an employee's service can nullify their entitlement to severance, as demonstrated in *Rogers v Exactocraft*,<sup>54</sup> where a retired employee who was rehired on a fixed-term arrangement was not eligible for severance when the contract ended. Grogan further asserts that employees terminated for failing to adapt to new processes are not entitled to severance unless they can demonstrate that the dismissal was due to operational needs. He cites the case of *North-West v Van Eck*,<sup>55</sup> where the court awarded severance pay after concluding that the dismissal was due to operational factors rather than incapacity. Additionally, Grogan cautions against misrepresenting unfair dismissals as operational retrenchments to evade severance obligations.<sup>56</sup> If such a dismissal is deemed automatically unfair, the remedy would be compensation under the unfair dismissal regulations rather than severance pay.

Regarding the issue of rejecting alternative employment, Grogan aligns with McGregor but builds upon the argument by criticizing the Labour Court's ruling in *Purefresh Foods (Pty) Ltd v Dayal*,<sup>57</sup> wherein an employee who declined reasonable employment with another employer was still awarded severance pay.<sup>58</sup> Grogan believes that the refusal was unwarranted since the

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<sup>48</sup> DW de Villiers, 'The Entitlement to Severance Pay Revisited' (2010) 22(1) SA Mercantile Law Journal 114-126 <https://repository.up.ac.za/handle/2263/20170> accessed on the 08/08/2025.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> *Irvin & Johnson Ltd v CCMA* ([2006] 7 BLLR 613 in par 46).

<sup>52</sup> DW de Villiers, 'The Entitlement to Severance Pay Revisited' (2010) 22(1) SA Mercantile Law Journal 114-126 <https://repository.up.ac.za/handle/2263/20170> accessed on the 08/08/2025.

<sup>53</sup> Ibid.

<sup>54</sup> *Rogers v Exactocraft* [2015] ZALC 12

<sup>55</sup> *North-West v Van Eck* [2006] ZALAC 23

<sup>56</sup> Ibid.

<sup>57</sup> *Purefresh Foods (Pty) Ltd v Dayal* (2014) 35 ILJ 123 (LC)

<sup>58</sup> Ibid.

original employer had arranged the offer.<sup>59</sup> He reinforces this viewpoint with the Labour Appeal Court decision in *Irvin & Johnson Ltd v CCMA*,<sup>60</sup> where employees transitioned to a contractor (along with part of their employer's operations) sought severance from their former employer.<sup>61</sup> The court decided that they had not lost their employment or benefits and therefore were not entitled to severance pay.<sup>62</sup> The court reasoned that mandating severance payments in such circumstances would dissuade employers from seeking alternative jobs for retrenched employees.<sup>63</sup> Grogan concludes that when contracts are transferred without employee consent, yet the undertaking continues to operate without significant changes to terms or benefits, severance is not justified.<sup>64</sup> Honeyball supports these perspectives, emphasizing that reasonableness is essential. He argues that even if an alternative position does not align exactly with the employee's original contractual duties or is temporary, severance could still be forfeited if the refusal lacks adequate justification. He references *Purdy v Willowbrook International*,<sup>65</sup> where the court affirmed that the alternative employment need not precisely correspond to the original duties for it to be considered reasonable.

While the viewpoints expressed by McGregor, Grogan, De Villiers, and Honeyball demonstrate a detailed and conditional outlook on severance forfeiture, they are based on legal systems that possess clearly defined protections, established dispute resolution mechanisms, and social security options. In contrast to South African laws, Lesotho's legislation does not establish clear boundaries on an employer's discretion regarding the granting or denial of alternative separation benefits.<sup>66</sup> Unlike the South African legal framework, which evaluates the reasonableness of offers made by employers and the refusals by employees, Lesotho's laws lack any legal criteria to assess this balance, heightening the risk of arbitrary employer actions.<sup>67</sup> The severance framework in Lesotho permits complete forfeiture due to misconduct without specifying what constitutes "serious misconduct" or differentiating it from lesser violations.<sup>68</sup> The international case law mentioned earlier adheres to a proportionality-based approach, while Lesotho's system enforces total forfeiture without any procedural safeguards

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<sup>59</sup> Lesholu (n 3).

<sup>60</sup> *Irvin & Johnson Ltd v CCMA* ([2006] 7 BLLR 613 in par 46).

<sup>61</sup> *Ibid.*

<sup>62</sup> Lesholu (n 3).

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Purdy v Willowbrook International* (2010) 31 ILJ 567 (LC)

<sup>66</sup> Lesholu (n 3).

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

in place. Unlike jurisdictions where courts consider severance entitlements alongside available unemployment insurance or pension schemes, Lesotho does not have such systems. Consequently, when severance is denied, terminated workers are often left without any source of income, infringing upon the minimum protections intended by ILO Convention No. 158.<sup>69</sup> The analyzed cases illustrate the essential function of courts in evaluating the fairness of dismissals and refusals. Lesotho lacks similar judicial precedents and mechanisms that are accessible, rendering employees susceptible to unchallengeable decisions made by employers. In conclusion, the literature examined offers comprehensive insights into the situations that may lead to forfeiture of severance pay. Nevertheless, these insights presuppose the presence of clear legal guidelines, organized appeal processes, and alternative protections all of which are not sufficiently developed in Lesotho. As a consequence, the existing framework in Lesotho is prone to an excessive dependence on employer discretion, enforcing strict exclusions based on misconduct, and providing no safety net protections, thereby creating both legal and practical weaknesses that demand immediate reform. In the case of *Mahamo v Nedbank*,<sup>70</sup> Lesotho Limited, the appellant, Ms. Mahamo, submitted her resignation while under suspension due to pending disciplinary action related to a financial irregularity. The employer rejected her resignation and went ahead with a disciplinary hearing in her absence, which ultimately led to her dismissal. The appellant contended.

#### **4. Hypotheses**

Lesotho's severance compensation system, rooted in the Labour Act of 2024, faces considerable legal and structural challenges. These challenges include unclear guidelines for employees terminated for misconduct, inconsistent application of alternative benefits upon separation, and an overdependence on employer judgment, all of which jeopardize legal fairness and diminish employee safeguards. The existing framework, which relies on lump-sum pay-outs funded by employers at the time of termination, lacks the necessary protections to ensure consistent and dependable benefit provision, especially during times of economic hardship or bankruptcy. On the other hand, pre-funded severance plans, where employer contributions are pooled into managed funds, provide greater predictability, portability, and security for employees. This study posits that shifting to a fund-based severance compensation

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<sup>69</sup> Ibid.

<sup>70</sup> *Mahamo v Nedbank Lesotho Limited* (LAC/CIV 4 of 11) [2011] LSLAC 9 (4 July 2011).

approach could resolve legal uncertainties, lessen financial instability for employers, and improve both the fairness and sustainability of Lesotho's labour protection system.

## **5. Aim of the study**

This study intends to carry out a comparative legal analysis of Lesotho's severance compensation framework as detailed in the Labour Act 2024, alongside Austria's updated fund-based severance pay system. By investigating the historical development, legal frameworks, and international labour standards such as ILO Conventions—the research aims to determine whether Lesotho's present severance pay system fosters fairness, legal transparency, and sustainability. The study will also examine the impact of the existing system on employees (in terms of justice and protection), employers (regarding financial viability and compliance challenges), and policymakers (in relation to reform efforts and alignment with global standards). Ultimately, the research seeks to suggest data-driven legal reforms that safeguard employee rights, ensure employer adherence, and enhance labour market stability in Lesotho.

## **6. Study Objectives**

The objective of this study is:

- a) To explore the historical and legal development of severance compensation in Lesotho and globally, in order to provide a backdrop for current policy and legislative changes that are significant for labour historians, legal scholars, and policy analysts.
- b) To thoroughly examine the legal stipulations within the Labour Act 2024 regarding severance compensation, emphasizing their effects on employees' rights and employer responsibilities.
- c) To analyze international severance frameworks, especially ILO standards and the severance systems in countries such as Austria, Brazil, Chile, Germany, South Korea, Indonesia, and Greece, in order to identify global best practices that could guide legal reform efforts in Lesotho and ensure adherence to international standards.
- d) To perform a comparative study of the severance pay systems in Lesotho and Austria, emphasizing the advantages and disadvantages of each system and providing insights valuable to legal reformers and policymakers in Lesotho.
- e) To pinpoint legal and structural shortcomings in Lesotho's existing severance framework including issues related to employer discretion, exclusions for misconduct, and lack of portability and suggest reforms that foster greater legal equity for workers,

financial viability for employers, and uniformity in judicial and administrative decision-making.

## **7. Research Questions**

The primary inquiry of the research is whether Lesotho's severance payment structure, as defined by the Labour Act 2024, fosters legal fairness, sustainability, and adherence to international labour standards. Additionally, the research will examine:

- 1) How has the concept of severance pay evolved over time in Lesotho and globally?
- 2) What are the framework and provisions of the severance pay laws under the Labour Act 2024 in Lesotho?
- 3) What are the parallels or discrepancies between Lesotho's severance pay system and international standards, specifically ILO Convention No.158 and Recommendation No. 166?
- 4) How does Austria's severance pay scheme compare to Lesotho's regarding worker protection, sustainability, and fairness?
- 5) In what ways might Lesotho's severance pay system be enhanced to align more closely with international labour standards?

## **8. Methodology of Research**

This research utilizes a qualitative legal research approach, combining comparative analysis with doctrinal legal research to critically assess the fairness and legal consistency of severance pay provisions outlined in Lesotho's Labour Act 2024. The goal of this research is to determine if the existing framework aligns with the principles of fairness, legal certainty, and international standards, especially concerning employee rights, employer responsibilities, and the handling of dismissals related to misconduct.

Primary sources for this study include the Labour Act 2024, the Pension Fund Act 2019, pertinent case law (such as *Mahamo v Nedbank*),<sup>71</sup> and ILO Conventions. Secondary sources consist of textbooks, legal analyses, academic journal articles, as well as decisions made by the Labour Court and Labour Appeal Court of Lesotho. This aspect facilitated a thorough legal interpretation of the current statutory provisions and judicial reasoning in Lesotho.

A comparative methodology is pivotal to this research. The study examines Lesotho's severance pay framework against those of Austria and, to a lesser extent, Brazil, Chile,

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<sup>71</sup> *Mahamo v Nedbank Lesotho Limited* (LAC/CIV 4 of 11) [2011] LSLAC 9 (4 July 2011).

Germany, South Korea, and Greece. These nations were chosen for particular reasons: Austria serves as the primary point of comparison due to its historical use of a lump-sum, employer-funded severance system akin to Lesotho's present model, and its successful shift to a pre-funded, portable system (*Abfertigung neu*) in 2003.<sup>72</sup> This makes Austria a relevant model for contemplating structural reform in Lesotho. Austria has been selected as a crucial comparator in this analysis because of its structural parallels to Lesotho's earlier severance system and its later legal transformation.<sup>73</sup> Like Lesotho, Austria once relied on an employer-funded, lump-sum severance payment system.<sup>74</sup> However, in 2003, Austria enacted a major reform, introducing a pre-funded, portable severance pay scheme that addressed issues of legal uncertainty, financial instability, and employee vulnerability.<sup>75</sup> This shift is particularly pertinent to Lesotho, where similar issues exist under the Labour Act 2024. Austria's model has gained international recognition, including endorsement by the ILO, as a standard for modernizing severance systems.<sup>76</sup> Although economic conditions may differ, the comparative focus is on legal design, policy reasoning, and structural outcomes, making Austria an exemplary comparator for investigating feasible and context-sensitive legal reforms.

The study examines severance pay frameworks from various jurisdictions including Brazil, Chile, Germany, South Korea, and Greece not to establish standardized benchmarks, but to investigate diverse legal and structural methodologies concerning employee termination benefits. These countries provide pertinent insights. Brazil and South Korea illustrate transitions to funded, portable systems; Chile and Greece highlight challenges in reconciling statutory protections with economic viability; and Germany represents a robust legal framework that emphasizes employee rights and procedural fairness. Collectively, these cases offer comparative value for identifying viable reform options in Lesotho that respect legal fairness, institutional capacity, and economic limitations.

The comparative analysis will identify both legal and structural similarities and differences, evaluate the balance between employer sustainability and worker protection in these regimes, and assess how international models might inform reforms within Lesotho's labour laws. The

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<sup>72</sup> Robert Holzmann, Yann Pouget, Milan Vodopivec and Michael Weber, 'Severance Pay Programs Around the World: History, Rationale, Status, and Reforms' (IZA Discussion Paper No 5731, 31 May 2011, last revised 8 May 2025) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1852225](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1852225) accessed 8 August 2025.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

research also employs a normative framework based on International Labour Standards, particularly ILO Convention No. 158. This normative perspective assists in determining whether Lesotho's framework is consistent with international best practices and constitutional labour rights.

To implement this research, specific methods will be utilized, including document analysis through close reading and interpretation of legislative texts, judicial rulings, and policy documents. A review of landmark cases (such as *Mahamo v Nedbank*,<sup>77</sup> and *Department of Education v Van Eck*,<sup>78</sup>) will be conducted to comprehend the interpretation of severance pay rights and exclusions. Thematic comparisons of legislative and policy frameworks across different jurisdictions will also be performed. The study will assess the lack of procedural protections, the absence of portability, and the potential misuse of employer discretion under Lesotho's current legal framework. Based on these findings, legal and policy recommendations will be formulated to enhance fairness and sustainability in Lesotho's severance pay system.

## **9. Chapter Overview**

### **Chapter 1. Introduction**

This chapter's introduction will encompass the study's background, problem, objectives, and methods.

### **Chapter 2: Review of Literature and Historical Context**

The global history of severance pay, its evolution in Lesotho, and the theoretical foundations of employment equality.

### **Chapter 3. International Severance Compensation Legislation Framework**

Comparative examination of severance pay frameworks in Austria, Brazil, Chile, Germany, and other nations, alongside an evaluation of ILO norms.

### **Chapter 4. The Legal Framework for Severance Compensation in Lesotho: A Comparative Analysis of Austria and Lesotho**

Examination of the severance compensation stipulations within the Lesotho Labour Act 2024, including jurisprudence and compliance with international standards. A comparative analysis

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<sup>77</sup> *Mahamo v Nedbank Lesotho Limited* (LAC/CIV 4 of 11) [2011] LSLAC 9 (4 July 2011), 4 July 2011.

<sup>78</sup> *North-West v Van Eck* [2006] ZALAC 23

of Austria's severance compensation system and Lesotho's framework, highlighting excellent practices and identifying deficiencies.

## **Chapter 5. Conclusion and Recommendations**

The summing up of the finding and the recommending possible solutions to align Lesotho's severance pay system with international best practices.

## **CHAPTER 2: HISTORY AND EVOLUTION OF SEVERANCE PAY**

### **1. Introduction**

Severance pay has its origins in labour regulations, corporate restructuring, and welfare state expansion.<sup>79</sup> Historically, it originated to provide financial compensation to employees who were dismissed due to economic changes, organizational restructuring, or unfair dismissal.<sup>80</sup> Briefly, severance pay is a form of financial cushion rooted in worker protection laws and the idea of social welfare, the goal is to help the dismissed employees financially while they search for new employment. As a result of worker rights, industrial restructuring, and economic developments, severance compensation has become increasingly relevant in labour markets around the world.<sup>81</sup> Severance pay, which was first offered by companies as a voluntary perk, has progressively grown into a legally required compensation package to aid dismissed workers.<sup>82</sup> It was first employed in Germany and France in the late 19th century.<sup>83</sup>

Globally, countries have attempted to codify severance compensation programs over time, impacted by state labour reforms and the International Labour Organisation (ILO). This chapter covers the history, problems, and policy changes associated with severance pay, stressing important developments in various nations and looking at how severance pay schemes have been incorporated into wider social security frameworks.

### **2. Origins and Evolution of Severance Pay**

#### **2.1. Early Industrialization and Legal Foundations (19th Century)**

The earliest reported incidence of severance pay was in 1889 at the Carl Zeiss Foundation in Germany.<sup>84</sup> This organization realized the need to maintain qualified staff amidst a competitive climate.<sup>85</sup> By adding severance pay, pensions, and social benefits, the foundation hoped to build a more stable staff and reduce turnover caused by competitors wanting to acquire their expertise.<sup>86</sup> This strategic move not only benefited employees but also helped the firm maintain its competitive edge.<sup>87</sup> The introduction of severance pay is part of retention was part of

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<sup>79</sup> D Vodopivec 'Severance Pay Programs Around the World: History, Rationale, Status and Reforms' (2011) IZA Discussion Paper No 5731 <http://ftp.iza.org/dp5731.pdf> accessed 20 March 2025.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Holzmann and Vodopivec (n 1); Volopivec (n 79).

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

Foundation retention strategy to remain competitive in the market. In France, throughout the 1870s and 1880s, court battles involving railroad workers led to legal verdicts that defined severance compensation standards.<sup>88</sup> These decisions set precedents that affected larger labour protections.<sup>89</sup> These cases resulted in legal verdicts that established standards for severance pay, which set key precedents for labour protections.<sup>90</sup> The outcomes of these court cases underscored the necessity for legislative acknowledgment of workers' rights when it came to termination and compensation.<sup>91</sup> Courts began providing increased notice periods and indemnities to fired workers, showing a rising acceptance of employees' rights following termination.<sup>92</sup> These innovations were crucial in laying down a framework for labour laws that would evolve to provide better protection for workers across diverse sectors. This period marked the emergence of severance pay as both a legal and strategic concept. It initiated the legal and institutional evolution of worker protections.

## **2.2. Interwar Era (1919 1940s)**

After World War I, the foundation of the International Labour Organization (ILO) in 1919 led to additional employment safeguards, including severance compensation, in several European countries.<sup>93</sup> The founding of the International Labour Organization (ILO) in 1919 marked a crucial turning point in labour rights and safeguards globally, particularly in Europe.<sup>94</sup> The ILO was founded as part of the Treaty of Versailles that ended World War 1, to promote social justice and equitable labour standards throughout member states.<sup>95</sup> One of its primary objectives was to improve working conditions, which included pushing for severance pay among other labour protections.<sup>96</sup> This movement pushed numerous European countries to implement new labour laws that offered workers severance compensation, ensuring financial help during transitions between jobs or after layoffs.<sup>97</sup>

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<sup>88</sup> Steven L Kaplan, 'The Distinctiveness of the Nineteenth-Century French Labour Movement' (1985) 48(3) *The Journal of Economic History* 721 <https://www.jstor.org/stable/2124902> accessed [date].

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Holzmann and Vodopivec (n 1).

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

In the United States, severance compensation arose as a response to industry consolidation and mechanization.<sup>98</sup> The Delaware and Hudson Railroad (1922), the Chicago textile business (1926), and the San Francisco ferry crew (1936) were early users.<sup>99</sup> In the United States, severance compensation concept started to take shape in response to industrial consolidation and mechanization throughout the early 20th century.<sup>100</sup> As industries grew larger and more computerized, job security became increasingly problematic for many individuals.<sup>101</sup> In this environment, numerous businesses began to establish severance pay as a measure to give some financial cushion for employees who were laid off due to economic upheavals or technical improvements.<sup>102</sup> Notable instances include the Delaware and Hudson Railroad in 1922, which established severance benefits as part of its employment policies.<sup>103</sup> Similarly, the Chicago Clothing Industry implemented severance compensation regulations in 1926, demonstrating a growing understanding of workers' rights within changing economic landscapes.<sup>104</sup> By 1936, San Francisco ferry workers also benefited from severance compensation arrangements, suggesting a broader trend towards formalizing such benefits across other sectors.<sup>105</sup>

Japan followed suit by establishing severance compensation in 1936, primarily focused on protecting workers within its booming industrial and mining sectors.<sup>106</sup> This move was symbolic of Japan's fast industrialization during this period and its acknowledgment of the necessity for worker rights amidst huge economic shifts.<sup>107</sup> The implementation of severance pay in Japan provided not only a safety net for displaced workers but also a measure to stabilize labour relations within an increasingly competitive economic climate. Overall, the evolution of severance pay across different countries mirrors broader socio-economic patterns and illustrates the priority put on worker wellbeing following key historical events like World War I and periods of industrial transition. The period transformed severance pay into a recognized element of international labour protection, reinforced by international institutions, sectoral adoption, and legal developments. It changed severance pay from a company-level benefit into a

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<sup>98</sup> Volopivec (n 79).

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Holzmann and Vodopivec (n 1). Volopivec (n 79).

<sup>107</sup> Ibid.

structural response to economic change, laying the groundwork for its inclusion in the post WWII welfare system.

### **2.3. Post-WWII Expansion and Welfare State Influence (1940s-1960s)**

The UK approved the Redundancy Payments Act (1965), institutionalizing severance pay to facilitate workers transferring between falling and rising industries.<sup>108</sup> Developing countries, notably those in Latin America and Africa, implemented severance pay rules by mimicking European labour codes.<sup>109</sup> After World War II, many industrialized nations increased severance compensation schemes alongside unemployment benefits and pensions.<sup>110</sup> The years following World War II represented a tremendous upheaval in the socio-economic environment of many industrialized nations, particularly in Europe and North America.<sup>111</sup> The war had wrecked economies, disturbed labour markets, and generated a compelling need for social safety nets that would protect the workers during transitions between jobs.<sup>112</sup> This era saw the rise of welfare state policies, which included the establishment of severance compensation programs alongside unemployment benefits and pensions.<sup>113</sup> Countries such as Sweden, Germany, and France began establishing extensive labour laws that included provisions for severance pay.<sup>114</sup> These policies were aimed not just to ease immediate financial suffering but also to encourage smoother transitions for people migrating from declining industries into developing sectors.<sup>115</sup>

The logic for these measures was built on the notion that giving financial support would help preserve consumer spending and stabilize the economy during periods of industrial upheaval.<sup>116</sup> Severance pay is a sort of compensation paid to employees who are involuntarily terminated from their positions.<sup>117</sup> This payment can take the shape of a flat sum or ongoing instalments over a predetermined period.<sup>118</sup> The fundamental goal of severance compensation is to aid workers throughout their transition between jobs, thereby easing the financial misery

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<sup>108</sup> Jasmien Van Daele, 'The International Labour Organization (ILO) in Past and Present Research' (2008)53(3) *International Review of Social History* 485.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> Antony Ferner and Richard Hyman, 'Changing Industrial Relations in Europe' (2<sup>nd</sup> ed, Blackwell 1998).

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

that commonly accompanies job loss.<sup>119</sup> By providing this financial assistance, severance pay played a significant part in sustaining economic stability, as it ensured that individuals had spare money even after losing their employment.<sup>120</sup>

The implementation of new labour regulations substantially increased the rights of workers regarding severance pay and termination processes.<sup>121</sup> These regulations traditionally required employers to provide advance notice or cash compensation in place of notice when dismissing an employee.<sup>122</sup> This provision helped prevent rapid income loss, enabling workers time to prepare for their job search and financial adjustments.<sup>123</sup> Additionally, workers obtained the right to challenge dismissals in labour courts.<sup>124</sup> This legal alternative ensures that employees are treated properly and justly during the termination process, allowing them to fight any unjust or unlawful dismissals they may face.<sup>125</sup> Severance pay is a sort of financial compensation paid to employees upon termination of their job, often due to layoffs or downsizing.<sup>126</sup> The provision of severance pay gives immediate financial support to displaced workers, aids their transfer into other employment prospects, and enhances the general stability of the labour market.

In nations like Germany and Sweden, severance pay is typically coupled with government-sponsored retraining schemes.<sup>127</sup> These programs aim to equip workers with new skills that are useful in emerging sectors, hence enhancing their employability.<sup>128</sup> The combination of severance pay and retraining initiatives established a safety net for workers, allowing them to pursue new career choices without the immediate strain of financial instability.<sup>129</sup> Moreover, severance pay clauses have historically empowered labour unions by increasing worker protections.<sup>130</sup> Unions argue for reasonable compensation packages that include severance pay as part of collective bargaining agreements.<sup>131</sup> The post-World War II period showed a major growth in such collective agreements across numerous industries, leading to standardized

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Volopivec (n 79).

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Holzmann and Vodopivec (n 1).

<sup>128</sup> Ibid.

<sup>129</sup> *ibid*

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

severance pay standards.<sup>132</sup> This standardization not only protects individual workers but also leads to a more equitable labour market.<sup>133</sup>

The psychological impact of job loss cannot be underestimated since severance pay alleviates part of this load by providing financial security during a hard transition phase.<sup>134</sup> When employees receive severance packages, they can leave their positions with a sense of stability rather than facing an abrupt financial disaster.<sup>135</sup> This security helps individuals focus on obtaining new employment prospects without the extra worry of imminent economic difficulties.<sup>136</sup> This era formalized severance pay as a right, embedded it within the architecture of the modern welfare state, and linked it to broader goals of economic adaptability, worker protection, and social justice, it shifted the view of severance pay from discretionary benefit to the critical public policy tool for managing labour market transitions.

### **2.3.1. The Redundancy Payments Act (1965) in the UK**

A key milestone in this regard was the passing of the Redundancy Payments Act in 1965 by the United Kingdom.<sup>137</sup> This act institutionalized severance pay within the context of British labour law, establishing a formal procedure through which workers may obtain compensation when they were made redundant.<sup>138</sup> The Act aimed to protect employees who were displaced due to economic upheavals and technological improvements.<sup>139</sup> Under this Act, qualifying employees were entitled to redundancy benefits based on their length of service with an employer.<sup>140</sup> This effort not only provided immediate financial help but also served as an admission by the government that economic transitions might have substantial repercussions on individuals' livelihoods.<sup>141</sup> By institutionalizing severance compensation, the UK tried to improve fairness and stability within its labour market.<sup>142</sup> Employees who lost their jobs due to redundancy were compensated with a lump-sum severance payment, alleviating the immediate economic impact of unemployment.<sup>143</sup> The severance pay was determined on the

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Simon Deakin and Gillian Morris, *Labour Law* (7th edn, Hart Publishing 2021) Douglas Brodie, *A History of British Labour Law: Change and Continuity* (Cambridge University Press 2003). Volopivec (n 79).

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

length of service, age, and weekly earnings, guaranteeing that long-term employees earned better remuneration.<sup>144</sup>

The Act established the right to redundancy compensation, indicating a shift in labour law that accepted employment loss due to economic developments.<sup>145</sup> It introduced legislative criteria that compelled employers to compensate workers equitably in circumstances of widespread layoffs or industry downturns.<sup>146</sup> The Act deterred arbitrary dismissals by making redundancies costly for companies.<sup>147</sup> It encouraged firms to plan labour reductions more prudently, preventing sudden mass layoffs.<sup>148</sup> Workers received better work security, knowing that redundancy would come with cash recompense.<sup>149</sup> Trade unions used the Act to secure fairer severance conditions and ensure fair treatment of workers facing redundancy.<sup>150</sup> The importance of this Act the evolution of severance pay was setting up the precedent for other countries to adopt statutory severance pay systems as it formalized the idea that employers had a financial obligation to employees whose contracts have been terminated due to reasons beyond their control and therefore laying the groundwork for similar protections in labour law globally.

### **2.3.2. Influence on Developing Countries**

The influence of post-WWII welfare state programs expanded beyond Europe and North America; developing countries in Latin America and Africa began adopting comparable frameworks inspired by European labour rules.<sup>151</sup> As these nations sought to modernize their economy and improve labour conditions, they looked towards established models from Western nations.<sup>152</sup> For instance, some Latin American countries implemented rules that resembled European standards for severance pay.<sup>153</sup> These laws were typically part of broader labour reforms aiming at protecting workers' rights amidst increasing industrialization and urbanization processes occurring throughout the region.<sup>154</sup> Similarly, numerous African nations enacted severance pay rules as part of their efforts to build legal labour markets

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<sup>144</sup> Ibid.

<sup>145</sup> Holzmann and Vodopivec (n 1).

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Volopivec (n 79).Holzmann and Vodopivec (n 1).

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

following independence from colonial authority.<sup>155</sup> This global diffusion of welfare state ideals emphasized a shared realization among governments that economic expansion must be accompanied by social protections for workers.<sup>156</sup> By introducing severance pay laws, developing countries aspired not only to safeguard their labour but also to build a more equal economic climate favourable to sustainable growth.<sup>157</sup>

As developing nations in Latin America and Africa implemented severance pay rules inspired by post-WWII European labour codes, these policies greatly impacted workers facing dismissal.<sup>158</sup> Severance pay became a key component of social protection systems, particularly in nations with limited unemployment benefits and inadequate social safety nets.<sup>159</sup> Many developing countries lacked unemployment insurance policies, making severance pay the principal source of financial support for fired workers.<sup>160</sup> Severance compensation helped bridge income gaps, minimizing immediate economic hardship after job loss.<sup>161</sup>

Severance pay legislation avoided arbitrary dismissals and provided that workers had some compensation upon losing their employment.<sup>162</sup> Laws in countries like Brazil, Argentina, and South Africa enacted required severance compensation, enhancing worker rights.<sup>163</sup> Severance pay laws empowered workers and trade unions, allowing for greater collective bargaining agreements.<sup>164</sup> Employers had to justify layoffs and offer financial compensation, resulting in better job security.<sup>165</sup> Some severance compensation arrangements permitted fired workers to fund skills development or entrepreneurial initiatives, helping them transition into new jobs.<sup>166</sup> In many Latin American nations, severance funds were tied to training programs to help workers reskill.<sup>167</sup> Severance pay rules encouraged formal labour market participation, as workers in the informal sector lacked such protections.<sup>168</sup> However, in some circumstances, large severance fees inhibited firms from hiring formal personnel, boosting informal

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<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Volopivec (n 79).

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Holzmann and Vodopivec (n 1).

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

employment.<sup>169</sup> Severance compensation acted as a social stability mechanism, averting widespread economic misery due to huge layoffs.<sup>170</sup> It helped sustain consumer spending and economic stability during industrialization and urbanization.<sup>171</sup>

### **3. Late 20th and Early 21st Century Reforms**

Late 20th and Early 21st Century Reforms in Severance Pay Systems. In the late 20th and early 21st centuries, numerous countries launched significant improvements to their severance compensation regimes.<sup>172</sup> These measures were primarily aimed at harmonizing severance compensation with broader social security frameworks, including pension schemes and unemployment benefits.<sup>173</sup> The revisions reflected an increasing realisation of the need for financial sustainability in social welfare programs, as well as an effort to provide stronger support for people transitioning between employment.<sup>174</sup>

#### **3.1. Italy's Reforms (2004 and 2007)**

Italy's labour market underwent major restructuring throughout the early 2000s, particularly with the implementation of laws in 2004 and 2007 that turned traditional severance compensation into an individual savings scheme.<sup>175</sup> Under these reforms, contributions that would have previously gone into a lump-sum severance payment were channelled into government-managed accounts.<sup>176</sup> This change attempted to develop a more sustainable model for worker compensation upon termination of employment while also encouraging savings among employees.<sup>177</sup> The individual savings accounts allowed workers to amass funds over time, which could be retrieved upon leaving a job or retiring.<sup>178</sup> Unlike the old approach, the new model ensured fund availability, even if the employer encountered financial difficulties.<sup>179</sup>

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<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> International Labour Organization Severance Pay Programmes Around the World (2010)

<https://www.ilo.org/global/publications> accessed 4 June 2025; International Labour Organization *World Social Protection Report 2021–22: Social Protection at the Crossroads – in Pursuit of a Better Future* (2021)

<https://www.ilo.org/global/research/global-reports> accessed 4 June 2025; Holzmann and Vodopivec (n 1);

Organisation for Economic Co-operation and Development Employment Outlook 2018: Severance Pay and Labour Market Adjustments <https://www.oecd.org/employment> accessed 4 June 2025.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Holzmann and Vodopivec (n 1).

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

Employees could transfer their earned severance funds when switching jobs, ensuring that their benefits were not tied to a particular employer.<sup>180</sup> The accounts might also be utilized for retirement savings, giving workers long-term financial planning alternatives.<sup>181</sup> Under the former arrangement, workers faced the danger of non-payment if their firm went bankrupt.<sup>182</sup> The new government-managed fund ensured that severance savings were secured and available regardless of the employer's financial state.<sup>183</sup> The revisions decreased the cost of dismissals for employers, as severance compensation was now pre-funded rather than paid out as a flat amount.<sup>184</sup> This made it easier for businesses to alter their personnel, potentially leading to more dynamic hiring and firing practices.<sup>185</sup>

Since severance compensation was built over time, dismissed employees can get lesser lump-sum benefits compared to the prior method, depending on their length of service. Short-tenured employees might not amass enough resources to give meaningful compensation upon separation.<sup>186</sup> Employees might leave their severance monies in the system to grow over time, providing additional help in retirement.<sup>187</sup> The concept offered an alternative pension savings mechanism, increasing financial security in old age.<sup>188</sup>

### **3.2.South Korea's Transition (2005)**

In South Korea, a key reform occurred in 2005 when the government shifted from a system of lump-sum severance pay-outs to corporate pension systems.<sup>189</sup> This adjustment was part of a broader attempt to expand the social safety net for workers and ensure that they had access to retirement benefits that were more predictable and stable than one-time severance pay-outs.<sup>190</sup> By shifting towards corporate pension systems, South Korea wanted to offer employees continued financial support throughout their retirement years rather than depending primarily on severance compensation as a source of income replacement after job loss.<sup>191</sup> This change was aimed at expanding the social safety net and ensuring that severance compensation was

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<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Volopivec (n 79).

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

not simply a short-term relief measure, but a sustained source of retirement income.<sup>192</sup> Instead of receiving a one-time severance payment, employees accumulated pension benefits that may support them throughout retirement.<sup>193</sup> This change lowered the likelihood of financial insecurity in old age, particularly for long-tenured employees.<sup>194</sup> Unlike lump-sum severance pay, which might be depleted fast, corporate pension systems provide scheduled benefits over time.<sup>195</sup> Employees had better security about their financial future, as pension funds were administered properly.<sup>196</sup>

Under the former arrangement, if a company went bankrupt, employees could lose their severance money.<sup>197</sup> The corporate pension system ensured that money was securely handled, lowering the chance of workers losing their benefits.<sup>198</sup> Employees no longer received significant lump-sum payments upon dismissal, which could be an advantage for individuals who required rapid financial relief.<sup>199</sup> Some workers preferred the old system, especially younger employees who prioritized immediate severance over long-term retirement security.<sup>200</sup> The pension system rewarded longer tenure, as workers collected bigger retirement benefits the longer they remained working.<sup>201</sup> It integrated severance pay with broader pension reforms, encouraging a culture of financial preparation and savings.<sup>202</sup> Employees who had already relied on lump-sum severance had to change their financial planning tactics. Employers had to adapt to increased pension contribution requirements, leading to short-term administrative issues.<sup>203</sup>

### **3.3.Austria's Restructuring (2003)**

Austria introduced significant revisions to its severance benefits in 2003, concentrating on increasing long-term financial sustainability.<sup>204</sup> The Austrian model tried to balance the needs of workers with the economic realities faced by businesses.<sup>205</sup> By reforming severance

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<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> Holzmann and Vodopivec (n 1).

<sup>205</sup> Ibid.

payments, Austria wanted not only to safeguard employees but also to ensure that firms could stay viable without being burdened by excessive financial commitments linked to severance compensation.<sup>206</sup> In 2003, Austria reformed its severance pay system, shifting from a lump-sum employer-funded approach to an individual savings account scheme.<sup>207</sup> This legislation aims to establish a more sustainable and predictable severance benefit while minimising the financial impact on employers.<sup>208</sup>

Under the old system, employees were only eligible for severance pay if removed involuntarily after three years of service.<sup>209</sup> The new mechanism assured that all workers accumulated severance savings, even if they resigned voluntarily.<sup>210</sup> Employees could continue their severance savings across several workplaces, ensuring that severance benefits were not lost when moving employers.<sup>211</sup> This increased labour mobility by minimizing job lock, where people stayed in positions primarily to preserve severance eligibility.<sup>212</sup> Previously, severance pay-outs depended on the employer's financial condition, meaning that workers may lose their benefits if a company went bankrupt.<sup>213</sup> The new method sent severance monies to external financial institutions, guaranteeing that employees' savings remained protected.<sup>214</sup> The change to individual savings accounts meant that fired employees no longer got significant lump-sum severance pay.<sup>215</sup> Instead, severance payments were spread over time, potentially harming workers who relied on severance for quick financial assistance.<sup>216</sup>

Employers no longer faced abrupt, substantial severance pay-out obligations, making it easier for them to manage personnel cutbacks.<sup>217</sup> This lowered the possibility of layoffs due to large severance liabilities, potentially providing a more stable job market.<sup>218</sup> Employees had the option to leave their severance funds in their accounts until retirement, boosting long-term

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<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid,

<sup>217</sup> ibid

<sup>218</sup> Ibid.

financial security.<sup>219</sup> This adjustment matched severance compensation with broader social security and pension reforms, creating a culture of long-term savings<sup>220</sup>

### **3.4. Chile's Reforms (2002 and 2008)**

Chile has been at the front of the labour market reforms since the late 20th century.<sup>221</sup> In particular, reforms adopted in 2002 and again in 2008 focused on restructuring severance payments within the framework of broader economic policies aimed at boosting labour market flexibility while preserving worker protection.<sup>222</sup> These reforms included steps meant to promote long-term financial sustainability by connecting severance compensation more closely with pension systems and unemployment insurance programs.<sup>223</sup> The goal was not just to give immediate support to displaced workers but also to facilitate their reintegration into the labour market.

Chile's 2002 and 2008 labour market reforms changed severance pay by merging it with unemployment insurance and pension systems.<sup>224</sup> These amendments attempted to balance worker protection with labour market flexibility, ensuring that fired employees received financial support while simultaneously fostering long-term economic sustainability.<sup>225</sup>

Before the revisions, severance pay was generally only accessible to employees with long service, leaving many fired workers without compensation.<sup>226</sup> The reforms expanded eligibility, ensuring more workers received financial aid after job loss.<sup>227</sup> Instead of relying simply on severance pay, workers could now access unemployment benefits via individual savings accounts and a government-backed solidarity fund.<sup>228</sup> This provided more reliable income support while fired employees searched for new jobs.<sup>229</sup> Severance pay contributions were linked to pension funds, ensuring that workers built savings for retirement. This reduced the danger of financial insecurity in old age, particularly for people with variable job histories.

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Volopivec (n 79).

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

The reforms shifted away from hefty severance pay-outs, so workers no longer got big lump sums upon dismissal. While this enhanced financial stability in the long term, it decreased immediate cash availability for workers who relied on severance for short-term expenses.<sup>230</sup> By integrating severance pay with unemployment insurance and job placement services, the reforms encouraged rapid reemployment.<sup>231</sup> Workers were incentivized to pursue new jobs rather than rely primarily on severance pay, enhancing overall labour market efficiency.<sup>232</sup> The former approach left severance pay decisions to companies, leading to inconsistency and financial insecurity for workers.<sup>233</sup> The new system standardized payments and ensured funds were protected, lowering the danger of employer non-compliance.<sup>234</sup>

#### **4. Conclusion**

From an employer-based voluntary perk to a legally mandatory worker protection tool that is crucial during economic downturns, severance pay has altered over time. In order to maintain financial stability and worker security, many nations have merged severance pay with unemployment insurance and pension programs as they have updated their severance pay schemes. Severance compensation offers terminated workers critical support, but it has also brought issues, such as managing company commitments and keeping labour market flexibility. A drive towards sustainable severance pay models that complement more comprehensive social welfare programs is seen in the continuous reforms taking place throughout the world, such as those in Italy, Korea, Austria, and Chile. In the end, severance pay remains a crucial aspect of labour market laws, assuring workers' financial security while reacting to changing market conditions.

The next chapter analyzes the international legal framework for severance pay.

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<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

## **CHAPTER 3: INTERNATIONAL LEGAL FRAMEWORK FOR SEVERANCE PAY**

### **1. Introduction**

A major component of job protection is severance compensation, which guarantees workers financial stability in the event that their employment is terminated.<sup>235</sup> Severance pay systems vary widely between countries, reflecting disparities in social protection programs, economic policies, and labour market dynamics.<sup>236</sup> Through Convention No. 158(1982) on Termination of Employment and its associated Recommendation No. 166 (1982), the International Labour Organization (ILO) established essential principles governing severance pay.<sup>237</sup> These principles specify workers' entitlements to severance compensation or equivalent financial protections.<sup>238</sup>

This chapter covers the global severance pay system, highlighting its legal underpinnings, cross-national application, and adherence to international best practices. Austria, Brazil, Chile, Germany, Greece, Indonesia, South Africa, and South Korea are among the nations that have devised distinctive severance pay plans that take into account worker protection concerns, legal norms, and economic realities. To provide insights into how various countries find a balance between employee rights and employer flexibility, this study will assess these systems to discover trends, strengths, and issues in severance compensation rules.

### **2. International Instruments**

International labour law, mainly developed under the International Labour Organization (ILO), sets forth minimum global standards concerning severance benefits.<sup>239</sup> These guidelines are outlined in Convention No. 158 on the Termination of Employment (1982) along with the accompanying Recommendation No. 166, which represent a shared agreement on how employees ought to be safeguarded upon involuntary dismissal.<sup>240</sup> Convention No. 158 establishes essential rights for workers facing termination and details principles regarding severance pay as follows article 12 states that a worker whose employment has been terminated

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<sup>235</sup> *International Labour Office. Employment protection Legislation: Summery Indicators in the Area of Terminating Regular Contracts (Individual Dismissals) Geneva: ILO, 2015. (print)*

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> *Ibid.*

<sup>239</sup> ILO Convention No 158 (n 3)

<sup>240</sup> *Ibid*; ILO Recommendation No 166 (1982) – Termination of Employment Recommendation.

shall be entitled to a severance allowance or other separation benefits, unemployment insurance, or assistance, or a combination thereof.<sup>241</sup> This provision is crucial in ensuring financial security for workers after termination. The mention of "other separation benefits" allows for flexibility, recognizing that various national contexts may have different systems to support dismissed workers.<sup>242</sup> Nevertheless, this flexibility can also lead to confusion, as the convention does not specify what qualifies as an "other separation benefit," making it open to interpretation by member states.

Article 12(3) permits member states to restrict severance benefits in instances of serious misconduct but does not provide a definition, leaving it to national legislation to define the scope and procedure.<sup>243</sup> This aspect might be one of the most debated areas within the convention. The notion of "serious misconduct" is inherently subjective and culturally specific.<sup>244</sup> What one legal system or cultural setting considers serious misconduct may be viewed differently in another.<sup>245</sup> By allowing national legislation to entirely determine the definition, the convention risks creating a mosaic of interpretations that could compromise the principle of equitable treatment.

The lack of an international definition or even guiding principles for "serious misconduct" may lead to various issues.<sup>246</sup> First, it could be misused by employers to evade severance payments, particularly in jurisdictions where labour protections are weak or the judiciary lacks independence.<sup>247</sup> An employer might broadly interpret "serious misconduct" to include minor violations, consequently denying workers their due entitlements. Second, it generates uncertainty for both employers and employees.<sup>248</sup> Workers may not have a clear understanding of the limits of acceptable behaviour, while employers may find it challenging to apply disciplinary actions consistently. Third, it can lead to a lack of consistency in international labour standards.<sup>249</sup> A worker engaging in the same behaviour in two different signatory countries could encounter vastly different outcomes regarding their severance entitlements, based on the national definition of serious misconduct.

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<sup>241</sup> ILO Convention No 158 (n 3) art 2.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

Article 4 stipulates that terminations must be grounded in legitimate reasons, such as capacity, conduct, or operational needs, rather than arbitrary or discriminatory factors.<sup>250</sup> The mention of "capacity, conduct, or operational needs" delineates clear and internationally accepted categories for justifiable termination.<sup>251</sup> This serves to deter dismissals motivated by personal hostility, bias, or other unjustified reasons. Nevertheless, the article's effectiveness also stems from its broadness. While "capacity, conduct, or operational needs" cover wide-ranging categories, the convention does not explore the specifics of what valid reasons entail within each category. The particulars are left to national legislation and practices, which, although essential for practical application, can result in discrepancies in the level of protection provided to employees.

Article 13 underscores that severance procedures may be established by law, collective agreements, or employer practices, urging member states to solidify protections.<sup>252</sup> This article recognizes the varying industrial relations frameworks worldwide and advocates for a diverse approach to formulating severance protections. The inclusion of collective agreements is particularly significant since it acknowledges the importance of social dialogue and negotiations between employers and workers' representatives in defining employment conditions.<sup>253</sup> Such arrangements can foster more customized and effective solutions that align with the distinct needs and economic situations of different sectors and industries. However, depending on employer practices as a criterion for severance mechanisms can pose a potential risk. While some employer practices may be generous and well-established, others could be informal, inconsistent, or even absent. If severance is predominantly dictated by employer practices without being codified in law or through collective agreements, workers may find themselves without clear entitlements and recourse in the event of disputes. This situation could result in workers in organizations with less compassionate practices receiving far less protection than their counterparts in businesses with more established and formal procedures. The push to "formalize protections" is a constructive measure, but the convention fails to define the extent of formalization necessary or the repercussions of not achieving formalization.

Recommendation No. 166 (1982) – Supplementary Guidance is a non-binding guideline serves as a complement to the Convention, providing comprehensive best practices for the

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<sup>250</sup> Ibid art 4.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid art 13.

<sup>253</sup> Ibid.

implementation of severance protections.<sup>254</sup> Article 22 suggests that severance benefits should be correlated with an employee's length of service and salary, ensuring fairness and proportionality.<sup>255</sup> The principle of connecting severance to tenure acknowledges the accumulated human capital and opportunity costs faced by employees throughout their employment. Extended service generally indicates a greater investment in skills that are specific to the firm and may result in a more challenging reintegration into the job market, which justifies augmented compensation. Likewise, relating severance to remuneration reflects the economic implications of job loss for individuals with higher earning potential, who are likely facing more substantial financial responsibilities.

Article 23 recommends that severance or alternative benefits should be granted unless termination is due to serious misconduct.<sup>256</sup> By stating that benefits are to be given "unless termination results from serious misconduct," the recommendation effectively shifts the onus of proof onto the employer to establish just cause for dismissal without compensation. This is in line with principles of natural justice and the right to a fair hearing. The term "serious misconduct" generally denotes a significant threshold, such as gross negligence, insubordination, or criminal behaviour, thereby preventing employers from easily evading their severance responsibilities. The mention of "alternative benefits" allows states the flexibility to develop systems that do not rely exclusively on a lump-sum payment. Such alternatives may encompass extended notice periods, outplacement services, retraining opportunities, or unemployment insurance benefits.

Article 24 highlights the necessity of prompt payment, recommending mechanisms for enforcement and financial support systems.<sup>257</sup> The emphasis on "timely payment" is crucial for ensuring that severance benefits fulfil their intended role: to provide urgent financial assistance to workers who have lost their jobs. Delays in disbursement can worsen financial strain, causing distress and undermining the primary goal of severance. Immediate payment is critical for enabling workers to cover essential living expenses and transition into new employment.

The call for "mechanisms for enforcement" is equally important. This could involve labour courts, administrative tribunals, arbitration entities, or other forms of dispute resolution

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<sup>254</sup> ILO Recommendation No. 166 (n 240).

<sup>255</sup> Ibid art 22.

<sup>256</sup> Ibid art 23.

<sup>257</sup> Ibid art 24.

systems. Effective enforcement mechanisms are essential for any legal entitlement, guaranteeing that obligations are fulfilled, and remedies are accessible when they are not. In the absence of solid enforcement, severance provisions risk becoming nothing more than theoretical rights. Recommendation No. 166 allows states to create severance systems tailored to their specific legal and economic circumstances while emphasizing the importance of ensuring minimum protections for workers. Although it provides useful direction, Recommendation No. 166 is fundamentally restricted by its non-binding nature. As a "recommendation," it offers flexibility but lacks the enforceability of a convention. Consequently, states aren't legally required to adopt its provisions, resulting in notable differences in severance protections among various countries. While this flexibility enables adjustments to local situations, there is a risk of a "race to the bottom" where states may implement minimal protections to attract investment. The Recommendation highlights the necessity to "guarantee minimum protection for workers," yet it fails to specify what constitutes this "minimum." This lack of clarity permits states to establish very low standards, potentially compromising the intent of the Recommendation. A more defined approach, possibly with illustrative examples of minimum benefit standards or calculation methods, could have offered more robust guidance.

### **3. Severance pay regulations across countries**

Based on the information presented, the global legal stance is that severance or alternative income support is mandatory, serving as a basic standard for workers who have been terminated. Misconduct exclusions should be explicitly articulated and enforced with proper procedures. While states have the freedom to create their own systems, they must uphold fundamental principles of fairness, equity, and protection. In many jurisdictions, severance pay is not just a direct payment provided by employers upon termination, but can also comprise payments to specific accounts meant to support employees when their employment ends.

#### **3.1. Austria's severance pay system**

In Austria, businesses are required to contribute to a severance fund for each employee.<sup>258</sup> This fund accrues throughout the employment period and is disbursed upon termination under

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<sup>258</sup> Helmut Hofer, 'The Severance Pay Reform in Austria ("Abfertigung Neu")' (2007) 4 *CESifo DICE Report* 44

specific conditions.<sup>259</sup> The severance pay system in Austria, characterised by employer contributions to a specific severance fund (*Abfertigung Neu* system, established in 2003), is consistent with various provisions in international labour standards, notably ILO Convention No. 158 (Termination of Employment Convention, 1982) and ILO Employment Recommendation No. 166 (1982).<sup>260</sup> This article asserts that employees who are terminated should receive severance pay, alternative benefits, or unemployment protection as recompense for their job loss.<sup>261</sup> Austria's system achieves this by guaranteeing that severance pay accumulates over time and is accessible upon termination, irrespective of the cause of termination.<sup>262</sup> Severance or alternative protective measures necessitate severance payments or unemployment compensation contingent upon the employee's tenure and remuneration.<sup>263</sup> The severance fund model in Austria exemplifies this notion by correlating the total sum with the length of employment.

Pertinent Articles in ILO Recommendation No. 166 (1982) provide for severance compensation or alternative benefits. It advocates for severance pay, unemployment insurance, or reemployment aid for terminated employees. The Austrian fund guarantees that employees obtain severance benefits irrespective of the employer's financial condition. Article 23 sets the criteria for Severance Pay and indicates that severance compensation should be determined by variables such as duration of employment and remuneration.<sup>264</sup> Austria's system adheres to this idea, with employers contributing 1.53% of the employee's monthly gross income to the severance fund, which accumulates over time.<sup>265</sup> This aligns more comprehensively with international best practices, including the OECD Employment Protection Framework and EU directives regarding worker rights and protection. The Organization for Economic Cooperation and Development (OECD) advocates for pre-funded severance models.<sup>266</sup> This concept reconciles employer flexibility by mitigating substantial, abrupt severance expenses while providing employee security through financial assistance in the event of job loss.<sup>267</sup> EU

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<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> ILO Convention No. 158 (n 3) art 23.

<sup>265</sup> Hofer (n 257); Stefan Kühleubl and Martin Brandauer, 'Austria' in Erika C Collins (ed), *The Employment Law Review* (13th edn, Law Business Research 2022) ch 10.

<sup>266</sup> Danielle Venn, *Legislation, Collective Bargaining, and Enforcement: Updating the OECD Employment Protection Indicators* (OECD Social, Employment and Migration Working Papers No 89, 2009).

<sup>267</sup> Ibid.

Directives on Worker Rights and Protection do not mandate severance pay by law. Austria's system aligns with the overarching EU social security policy and standards for worker protection.<sup>268</sup> Austria guarantees worker rights and financial protection notwithstanding the absence of legal obligation under EU directives. Austria's severance system is closely linked with ILO Convention No. 158 and Recommendation No. 166, especially Articles 12, 13, 22, and 23. It guarantees income stability for employees while progressively allocating financial obligations to businesses, rendering it a sustainable and globally acknowledged strategy.

### **3.2. Severance pay system in Brazil and Chile**

In Brazil, the *Fundo de Garantia do Tempo de Servico* (FGTS) system permits employees to access cash accrued in their severance accounts for multiple uses, such as housing or retirement.<sup>269</sup> This system combines severance compensation with comprehensive financial security strategies.<sup>270</sup> Like Brazil, Chile has implemented a system wherein companies contribute to a severance fund accessible to employees upon termination or under particular conditions.<sup>271</sup> Brazil's FGTS (*Fundo de Garantia do Tempo de Servico*) and Chile's severance fund system conform to international labour standards, specifically those established by the International Labour Organization and the OECD. These methods ensure financial security for employees while alleviating the financial burden on companies upon termination, aligning with worldwide best practices. Both Brazil's and Chile's severance systems conform to the essential stipulations of ILO Convention No. 158(1982) and ILO Recommendation No. 166 (1982). Article 12 mandates severance compensation, unemployment assistance, or alternative income safeguards for dismissed employees.<sup>272</sup> The severance pay systems in Brazil and Chile guarantee the accumulation of severance money over time, offering financial security upon termination. Article 13 advocates for severance compensation or alternative income support systems, including employee savings accounts.<sup>273</sup> The FGTS in Brazil permits employees to utilize accrued severance monies for housing, retirement, or crises, so enhancing financial stability beyond unemployment. Chile's system also facilitates severance accumulation, guaranteeing assistance under particular conditions.

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<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

<sup>272</sup> ILO Convention No. 158 (n 3) art 12.

<sup>273</sup> Ibid art 13.

ILO Recommendation No. 166 (1982) advocates for workers to receive severance pay, unemployment benefits, or financial assistance upon termination.<sup>274</sup> The models of Brazil and Chile do this by providing employees with a financial safety net through employer-funded severance accounts. Article 23 stipulates that severance payments must correlate with tenure and salary, guaranteeing equitable remuneration upon termination.<sup>275</sup> Both nations adhere to this idea, as employer payments are determined by a percentage of employee remuneration.

The Austrian severance compensation system aligns with the broader International Best Practices, particularly the OECD Employment Protection Framework. The OECD advocates for pre-funded severance pay schemes, as they mitigate economic shocks for both workers and companies.<sup>276</sup> The severance systems of Brazil and Chile correspond with other Latin American and European models, including Italy's TFR system, which is a comparable severance accumulation framework. Austria (*Abfertigung Neu system*) is a fund-based severance compensation scheme.<sup>277</sup> The World Bank and IMF advocate for pre-funded severance schemes, such as Brazil's FGTS and Chile's system, which mitigate liquidity challenges for businesses while ensuring worker security.<sup>278</sup> The advantages of the systems in Brazil and Chile include employees' access to cash for housing, emergencies, or retirement. As severance is pre-funded, employers do not encounter abrupt, substantial disbursements.<sup>279</sup> In contrast to conventional severance pay, these alternatives are included in broader financial security schemes. The FGTS in Brazil and the severance fund system in Chile are fully compliant with ILO labour rules, including Convention No. 158 and Recommendation No. 166, in addition to OECD best practices. These strategies guarantee income protection for employees while fostering economic stability and employer adaptability, rendering them worldwide acknowledged and sustainable methodologies.

### **3.3. Greece's severance pay system**

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<sup>274</sup> ILO Recommendation No. 166 (n 240).

<sup>275</sup> ILO Convention No. 158(n 3) art 23.

<sup>276</sup> Danielle Venn, *Legislation, Collective Bargaining, and Enforcement: Updating the OECD Employment Protection Indicators* (OECD Social, Employment and Migration Working Papers No 89, 2009)

<sup>277</sup> Organisation for Economic Co-operation and Development (OECD), *Employment Protection and Labour Market Performance* (OECD 2004).

<sup>278</sup> EU Directives on Worker Rights & Protection: European Union, *Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-Term Work* [1999] OJ L175/43.

<sup>279</sup> Ana Luiza Neves de Holanda Barbosa, Miguel Nathan Foguel, and Charlotte BILO, *The Brazilian Government Severance Indemnity Fund for Employees (FGTS) and Unemployment Insurance Savings Accounts in Other Countries: A Comparative Analysis of Their Effects on the Labour Market* (Working Paper No 164, International Policy Centre for Inclusive Growth, 2022).

The legal framework governing severance compensation in Greece is defined by Law 4808/2021. This legislation not only pertains to severance payments but also establishes measures for supplementary compensation in instances of wrongful termination.<sup>280</sup> The legislation seeks to improve job security and furnish workers with a more substantial safety net during employment transitions. According to this legislation, the quantum of severance compensation is generally ascertained by the duration of employment and the stipulations of the employment agreement.<sup>281</sup> For example, employees with extended tenure qualify for increased severance payments, highlighting the concept that long-serving employees deserve enhanced protection. The provision for unfair dismissal compensation signifies recognition that terminations may frequently be unjust or baseless. The Greek legal system aims to prevent unjust dismissals and encourage equitable labour practices by offering supplementary financial assistance in such cases.

Greece's Law 4808/2021, governing severance pay and supplementary compensation for unjust termination, follows international labour standards, especially those established by the International Labour Organisation (ILO) and OECD employment protection principles. The stipulations in Greece's Law 4808/2021 embody fundamental tenets of ILO Convention No. 158(1982) regarding Termination of Employment and ILO Recommendation No. 166 (1982). Article 4 of the ILO Convention No. 158(1982), Termination of Employment, stipulates that an employer must possess a legitimate rationale for termination pertaining to employee conduct, capability, or operational requirements.<sup>282</sup> The legislation in Greece pertains to compensation for wrongful dismissal, deterring terminations without just cause. Article 10 provides that if a dismissal is considered unwarranted, the worker shall be entitled to either compensation or reinstatement.<sup>283</sup> The supplementary compensation for wrongful termination in Greece directly corresponds with this notion. Article 12 advocates for severance compensation, unemployment assistance, or analogous financial stability upon loss of employment.<sup>284</sup> The severance pay framework in Greece guarantees that employees get compensation commensurate with their length of service, in accordance with this stipulation.

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<sup>280</sup> Andersen Legal, 'Greece: Employment and Labour Law' in *Country Comparative Guides 2024* (Pistiolis – Triantafyllos & Associates Law Firm 2024).

<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

<sup>283</sup> OECD Employment Protection and Labour Market Performance (n 277).

<sup>284</sup> ILO Convention No. 158 (n 3) art 12.

ILO Recommendation No. 166 (1982) - Additional Guidelines on Termination Article 22 proposes that severance compensation be correlated with length of service and remuneration. Greece mandates that long-serving employees are entitled to enhanced severance payments.<sup>285</sup> Article 23 advocates for increased remuneration for unwarranted terminations.<sup>286</sup> The compensation for wrongful dismissal in Greece aligns with this notion, so reinforcing worker protections. The OECD's Employment Protection Legislation advocates for safeguards against unjust dismissals and guarantees equitable compensation upon termination.<sup>287</sup> The European Union's Charter of Fundamental Rights (Article 30) ensures protection against unjustified dismissal, consistent with Greek legislation.<sup>288</sup> Greece's framework similarly reflects other European severance systems, such as those in France and Germany, where wrongful termination may result in supplementary compensation or reinstatement.

The advantages of Greece's severance pay system include enhanced job security; by enforcing financial penalties for illegal dismissals, companies are deterred from unjustly terminating employees. Additionally, the equitable remuneration for long-term employees entails enhanced severance benefits, thereby guaranteeing proportional protection. The legislation in Greece strengthens employee rights while preserving a balance between company flexibility and job security. Greece's Law 4808/2021 is entirely consistent with ILO Convention No. 158, ILO Recommendation No. 166, OECD employment standards, and European Union labour regulations. By combining severance compensation with enhanced safeguards against wrongful termination, Greece bolsters employee security and fosters equitable labour practices, consistent with international standards.

### **3.4. The severance pay system in Germany**

Germany's methodology on severance pay is shaped by its extensive employment protection framework, which includes both legal statutes and judicial interpretations from labour tribunals.<sup>289</sup> The German Civil Code (BGB) delineates explicit regulations for severance benefits, especially in instances of termination without cause.<sup>290</sup> In practice, the actual disbursements can be substantially influenced by labour court decisions that interpret these

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<sup>285</sup> Ibid.

<sup>286</sup> Ibid art 23.

<sup>287</sup> OECD Employment Protection and Labour Market Performance (n 277).

<sup>288</sup> European Union's Charter of Fundamental Rights 2000 Art 30.

<sup>289</sup> László Goerke and Markus Pannenberg, *Severance Pay and the Shadow of the Law: Evidence for West Germany* (CESifo Working Paper No 1619, Category 4: Labour Markets, December 2005) presented at CESifo Area Conference on Employment and Social Protection, May 2005.

<sup>290</sup> Ibid.

statutes. German courts have set rules that dictate the calculation and awarding of severance pay.<sup>291</sup> Factors including an employee's age, tenure, and the conditions of their termination significantly influence the final severance payment. This case law establishes a dynamic landscape in which employers must manoeuvre between legal obligations and possible judicial results while contemplating layoffs.

The German model prioritizes negotiation between employers and employees or their representatives, such as unions, promoting a cooperative method for settling disagreements about severance compensation.<sup>292</sup> This framework safeguards employees while simultaneously driving companies to explore alternatives to layoffs wherever feasible. The severance pay system in Germany, influenced by legislative rules, judicial interpretations, and collective bargaining, is by international labour norms, especially those established by the International Labour Organization (ILO) and the OECD's Employment Protection Framework.

Compliance with ILO Conventions and Recommendations. Germany's strategy is consistent with the fundamental tenets of ILO Convention No. 158(1982) regarding the Termination of Employment and ILO Recommendation No. 166 (1982). ILO Convention No. 158(1982) – Termination of Employment. Article 4 mandates that employers must possess a legitimate justification for termination.<sup>293</sup> Germany's stringent labour regulations mandate just cause for termination, with judges routinely scrutinizing dismissals. Article 12 mandates severance compensation or alternative income security provisions for dismissed employees.<sup>294</sup> Germany offers severance pay in instances of termination without cause and incorporates social security benefits. Article 13 acknowledges that severance payments may be established via discussion, law provisions, or court decisions.<sup>295</sup> Germany's labour tribunals and collective agreements dictate severance results in accordance with this premise.

ILO Recommendation No. 166 (1982) - Supplementary Guidelines on Termination Article 8 advocates for employers to explore alternatives to dismissal, including retraining or redeployment.<sup>296</sup> Germany prioritizes dismissal as a final measure, advocating for negotiated resolutions and alternatives. Articles 22 and 23 facilitate the computation of severance pay

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<sup>291</sup> Ibid.

<sup>292</sup> Ibid.

<sup>293</sup> ILO, Convention (No 158) (n 3) art 4.

<sup>294</sup> Ibid art 12.

<sup>295</sup> Ibid art 13.

<sup>296</sup> ILO Recommendation No 166 (n 240) art 8.

predicated on tenure, age, and job conditions.<sup>297</sup> German courts consider these elements while assessing equitable severance pay-outs. The OECD advocates for frameworks that reconcile employee protection with employer adaptability.<sup>298</sup> Germany's framework, which depends on judicial processes, negotiation, and legislative safeguards, is consistent with other European employment protection systems. Like France and the Netherlands, Germany prioritizes mediation and judicial examination of terminations.

The advantages of Germany's severance pay include employee protection against unjust termination through stringent legislative stipulations and judicial supervision. The concept promotes collaborative labour dispute settlement, minimizing disagreements between employers and employees. It is adaptable, as judicial precedents guarantee that severance is equitably modified according to specific conditions. Germany's severance compensation and employment protection system is entirely consistent with ILO Convention No. 158, ILO Recommendation No. 166, and OECD labour norms. The amalgamation of statutory legislation, judicial interpretation, and negotiated settlements guarantees equitable severance procedures, preserving job security and business flexibility, establishing it as a paradigm in international labour law.

### **3.5. The severance pay system of South Korea and Indonesia**

The severance pay system in South Korea is exceptionally generous relative to international norms.<sup>299</sup> The legislation requires businesses to furnish severance compensation equal to a minimum of one month's salary every year of employment.<sup>300</sup> This indicates that an employee who has served a company for five years is entitled to a minimum of five months' remuneration upon termination.<sup>301</sup> This strategy offers financial security for employees while promoting long-term employment connections. The justification for this substantial severance package is grounded in the nation's historical setting of swift industrialization and the necessity to maintain social stability among the workforce.<sup>302</sup> The Korean Labour Standards Act regulates this clause, guaranteeing that employees obtain their benefits promptly and without hassle.<sup>303</sup> Moreover, several organizations may provide more substantial packages than the statutory

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<sup>297</sup> Ibid art 22 & 23

<sup>298</sup> OECD Employment Protection and Labour Market Performance (n 277).

<sup>299</sup> J J Hur, *Korean Severance Pay Reform: For Old-age Income Security or Coverage Expansion?* (Korea Labour Institute, Seoul & World Bank, Washington DC, October 2003).

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid.

minimum as an element of their corporate ethos or competitive strategy to recruit and retain talent.

Indonesia's policy on severance pay is organized according to tenure, incorporating supplementary benefits for long-serving employees.<sup>304</sup> Employers are legally obligated to furnish severance payments commensurate with the duration of an employee's tenure at the organization.<sup>305</sup> Employees with tenures exceeding three years may obtain a greater salary than their less experienced counterparts.<sup>306</sup> Additionally, Indonesia has established a compulsory employer-financed severance insurance program aimed at enhancing financial security for employees confronting dismissal.<sup>307</sup> This insurance fund serves as a safeguard, guaranteeing employees receive sufficient compensation despite enterprises encountering financial challenges or insolvency.

The severance pay systems of South Korea and Indonesia are in accordance with international labour norms, specifically those established by the International Labour Organization (ILO) and the and the OECD's Employment Protection Framework. Both nations prioritize financial security for dismissed employees, in accordance with ILO Convention No. 158(1982) regarding Termination of Employment and ILO Recommendation No. 166 (1982). South Korea and Indonesia adhere to the fundamental tenets of ILO Convention No. 158(1982) and ILO Recommendation No. 166 (1982). Article 12 of ILO Convention No. 158 mandates that employees who are terminated must receive severance pay, unemployment benefits, or alternative financial compensation.<sup>308</sup> In South Korea, employers are required to compensate one month salary for every year of service, thereby providing substantial financial security. In Indonesia, severance compensation is correlated with the duration of employment, offering greater advantages to long-serving employees. Article 13 acknowledges severance payments via statutory requirements or employer contributions to insurance programs.<sup>309</sup> Indonesia's employer-funded severance insurance program complies with this clause, guaranteeing payment regardless of the employer's insolvency.

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<sup>304</sup> I Tsuruga and E Wedarantia, *Rules, and Practices of Severance Pay in Indonesia – The Labour Law Number 13 of 2003* (International Labour Organization (ILO) Office for Indonesia and Timor Leste, 2003).

<sup>305</sup> Ibid.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> ILO Convention No 158 (n 3) art 12.

<sup>309</sup> Hur (n 299).

ILO Recommendation No. 166 (1982) – Supplementary Guidelines on Termination Articles 22 and 23 advocate for severance benefits that escalate with tenure, thereby providing enhanced protection for long-term employees.<sup>310</sup> South Korea and Indonesia adopted this strategy by providing increased remuneration for personnel with extended tenures.<sup>311</sup> Article 24 advocates for effective payment methods to guarantee timely disbursement of severance to workers.<sup>312</sup> The Labour Standards Act of South Korea mandates prompt severance pay-outs. The severance insurance fund in Indonesia ensures payments are made even in instances of employer insolvency.

The OECD endorses severance alternatives that strengthen worker protection while maintaining company flexibility. South Korea's substantial severance system parallels various Asian and European frameworks, such as Italy's TFR system and Brazil's FGTS. Indonesia's severance insurance system conforms to international trends favouring pre-funded severance systems (e.g., Austria, Chile, Colombia). The advantages of the systems in South Korea and Indonesia include enhanced worker protection. South Korea's annual one-month regulation guarantees significant disbursements. Indonesia's insurance-supported severance ensures financial stability. Both regimes incentivize tenure, deterring frequent employment transitions. Pre-funded systems, such as Indonesia's, guarantee that workers receive compensation regardless of employers' financial difficulties. The severance compensation arrangements of South Korea and Indonesia are entirely consistent with ILO regulations and OECD best practices. Their focus on tenure-based advantages, employer-sponsored programs, and financial security guarantees robust worker protection while preserving labour market stability.

#### **4. Adaptability and thoroughness of International Instruments**

The assessment of severance pay systems globally, taking into account the adaptability and thoroughness of international frameworks (such as ILO Conventions and Recommendations) alongside the autonomy of national governments in designing their severance pay structures, necessitates a reconciliation of international labour standards with the distinct socio-economic

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<sup>310</sup> ILO Recommendation No 166 (n 240) art 22 & 23.

<sup>311</sup> Tsuruga and Wedarantia (n 304).

<sup>312</sup> ILO Recommendation No 166 (n 240) art 24.

contexts of each nation.<sup>313</sup> The necessity to acquire knowledge from other nations is essential for enhancing national frameworks while preserving flexibility and sovereignty.

The ILO Conventions (No. 158 and No. 166) and OECD Employment Standards function as extensive international frameworks designed to guarantee worker protection while allowing company flexibility.<sup>314</sup> ILO Convention No. 158 delineates fundamental principles governing employment termination, with the objective of safeguarding workers against capricious dismissal, ensuring equitable procedures, and enhancing income security.<sup>315</sup> ILO Recommendation No. 166 supplements the Convention by offering directives on severance compensation, underscoring the necessity of safeguarding workers' financial stability upon job loss, while avoiding excessive financial strain on employers.<sup>316</sup> OECD standards provide optimal practices for reconciling business flexibility with employee protection, endorsing pre-funded severance schemes that can be tailored to various national settings.<sup>317</sup> These instruments are adaptable, enabling nations to implement and modify them in accordance with their respective legal systems, economic circumstances, and objectives. They offer comprehensive counsel on safeguarding worker income security while promoting economic stability through mechanisms that do not excessively tax firms.

National governments possess the sovereign ability to design their severance pay schemes based on their distinct economic frameworks, labour market realities, and cultural values.<sup>318</sup> Although international instruments provide normative frameworks, nations maintain the authority to customize their systems to address domestic requirements.<sup>319</sup> Austria incorporates ILO recommendations into its legal framework while retaining the flexibility to modify individual elements such as contribution rates or the incremental build-up of severance funds to align with local economic circumstances. Brazil and Chile possess distinct severance systems (FGTS in Brazil) that conform to ILO criteria while reflecting the specific socio-economic and labour market situations of their respective nations. These systems were developed in reaction to national economic issues and are geared for long-term sustainability. Greece's adherence to ILO norms and EU labour regulations demonstrates the compatibility of

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<sup>313</sup> International Labour Office, *Application of International Labour Standards 2023, Report III (Part A), International Labour Conference, 111th Session (ILO 2023)*.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> OECD Employment Protection and Labour Market Performance (n 277).

<sup>318</sup> International Labour Office (n 312).

<sup>319</sup> Ibid.

national sovereignty with regional economic integration within the EU. Greece integrates ILO norms while enhancing worker rights via national legislation, assuring equitable labour practices and worker safety. Although international principles offer a framework, states maintain the discretion to tailor and modify these systems to align with their own economic objectives.

Studying the systems of other nations is crucial for the ongoing enhancement and modification of severance pay models in countries like Lesotho. By examining global case studies, nations can get essential insights for effectively designing and executing systems that satisfy both international labour norms and domestic requirements. Germany's methodology, integrating statute legislation, judicial interpretation, and negotiated settlements, presents a formidable framework for reconciling company flexibility with employee protection. This system has been acknowledged as one of the most thorough, and other nations can gain from its combination of legislative and negotiated norms. South Korea and Indonesia possess severance regimes that prioritize tenure-based benefits and employer-funded mechanisms, hence guaranteeing long-term financial security for employees. Their methodology demonstrates the building of a balanced system that safeguards workers while promoting employer sustainability and labour market stability. Greece's incorporation of enhanced safeguards against wrongful termination and its conformity with EU regulations exemplify how national systems can integrate optimal practices from international standards and regional frameworks to establish a complete and adaptable severance compensation system.

## **5. Conclusion**

The global legal framework for severance pay, which is based on ILO Convention No. 158 (1982) and Recommendation No. 166 (1982), and which is supported by OECD employment protection regulations, offers a solid but adaptable basis for protecting workers' income security upon termination. These tools outline fundamental principles like fairness, proportionality, and procedural justice, while giving states the latitude to tailor implementation to their particular economic, legal, and social circumstances. A comparison study shows that nations have implemented a variety of successful models. In order to strike a balance between worker protection and manageable employer obligations, pre-funded severance programs are used in Austria, Brazil, and Chile to guarantee payment regardless of the employer's solvency. Germany and Greece have severance pay integrated with strong protections against unfair termination, demonstrating a dedication to due process and fair remuneration. In contrast,

Indonesia and South Korea provide tenure-based benefits that encourage workforce stability while guaranteeing significant pay-outs upon termination. Together, these methods emphasize that uniformity is not a prerequisite for alignment with international standards, but rather that it depends on customized adaptation backed by robust enforcement mechanisms.

The experiences of these jurisdictions highlight three important lessons: Pre-funded or insurance-based systems lessen the likelihood of unexpected financial hardship for companies and guarantee benefits for workers. Linking severance to tenure and compensation ensures fairness and recognizes accumulated service. The inclusion of severance rights in explicit, enforceable legal frameworks helps to build trust in labour relations and prevent arbitrary exclusion. Using these models, nations like Lesotho can develop a severance pay scheme that is in line with international labour norms and addresses local circumstances. By leveraging global best practices while protecting national flexibility, a system may be created that safeguards workers, promotes the long-term viability of employers, and fosters social and economic stability.

The subsequent chapter will address the legal structure governing severance pay in Lesotho and its adherence to international standards. A comparison analysis will be performed utilizing the Austrian severance pay scheme.

## **CHAPTER 4: COMPARATIVE ANALYSIS OF SEVERANCE PAY LEGAL FRAMEWORKS: A CRITICAL EXAMINATION OF LESOTHO AND AUSTRIA**

### **1. Introduction**

Employees significantly benefit from severance compensation, which provides financial security upon termination of employment.<sup>320</sup> Since its inception, this concept has experienced considerable transformation in Lesotho due to evolving labour market dynamics and legislative amendments. The Labour Act 2024, which replaces earlier legal frameworks with a more structured and enforceable system, embodies the current regime.<sup>321</sup> This chapter examines the historical evolution, legal framework, and practical application of severance compensation in Lesotho. It also evaluates the system's adherence to international standards and compares it with Austria's severance pay framework, highlighting its merits, drawbacks, and possible revisions.

### **2. Origin of severance compensation in Lesotho**

An important turning point in the development of severance pay in Lesotho was the 1978 promulgation and issuance of the Wages and Conditions of Employment Order (henceforth referred to as the "WCEO").<sup>322</sup> According to the order, if an employee has worked for the same company continuously for more than four years and their employment is terminated for a reason other than summary dismissal, they were eligible for severance pay.<sup>323</sup> Additionally, it stated that for every year of continuous employment with the same company, severance pay would be equivalent to two weeks' wages.<sup>324</sup> Severance pay was instituted in Lesotho by the Order, which stipulated that an employee could only be eligible for it after four years of employment with the same company and that the termination could not be the result of a summary dismissal.<sup>325</sup> The law clearly indicates that summary dismissals preclude the employee from receiving severance pay. This Order provided that only employees who have been with the same employer for more than four years were entitled to Severance pay equivalent to two weeks' wages if the employment is terminated by the employer but not due to misconduct. Resignation would not qualify the employees for severance pay.

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<sup>320</sup> Volopivec (n 79).

<sup>321</sup> Labour Act 2024.

<sup>322</sup> Wages and Conditions of Employment Order 1978 (n 10).

<sup>323</sup> Ibid s 10.

<sup>324</sup> Ibid.

<sup>325</sup> Ibid.

In 1991, Lesotho revised the WCEO with the Wages and Conditions of Employment (Amendment) Order.<sup>326</sup> It eliminated article 10 (1) from the original Order, which required severance pay at termination, and added a clause indicating that an employee who resigns voluntarily is also eligible for severance pay upon resignation, determined at two weeks' wages for each full year of uninterrupted service with the same employer.<sup>327</sup> The Amendment Order lowered the eligibility requirement from four years, as defined in the initial Order, to just one year of uninterrupted service with the same employer for an employee to be eligible for severance pay. Additionally, it broadened the circumstances under which severance pay is granted to include voluntary resignation. Therefore, both employer-initiated terminations and employee resignations now qualify the employee for severance pay.

In 1992, Lesotho introduced the Labour Code Order to replace the Wages and Conditions of Employment Order (WCEO).<sup>328</sup> Section 79 of the revised Labour Code established the legal foundation for severance compensation.<sup>329</sup> This section stipulated that employees who have been consistently employed for over one year with the same employer are eligible for severance pay upon termination of their employment.<sup>330</sup> This remuneration was computed as two weeks' salary for every full year of employment.<sup>331</sup> Employees who were dismissed fairly due to misconduct were not eligible for severance pay according to the order.<sup>332</sup> This provision served as a deterrence for misconduct. The ceiling was established and revised annually by the Minister following consultations with the Wages Advisory Board.<sup>333</sup> This enabled employers to foresee their financial responsibilities upon employee termination, facilitating appropriate budgeting and mitigating unforeseen expenses. A standardized cap guarantees equitable treatment of all employees, irrespective of their tenure or position within the organization. The severance payment is determined by the employee's wage rate at the time of termination.

When an employee decides to resign (meaning the employee initiates the termination), the employer has the choice to either distribute the severance right away or hold it in trust for a period of up to twelve months.<sup>334</sup> The severance, if retained, must accumulate interest at a fair

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<sup>326</sup> Wages and Conditions of Employment (Amendment) Order, 1991

<sup>327</sup> Ibid s 4.

<sup>328</sup> Labour Code Order 1992 s 79(1).

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid s 79(2)

<sup>333</sup> Ibid s 79(3)

<sup>334</sup> Ibid s 89.

market rate and be disbursed in its entirety following the twelve-month duration.<sup>335</sup> Employers gained flexibility in cash flow management by postponing severance payments, while still guaranteeing equitable remuneration for employees through accrued interest. Employees were guaranteed their severance, along with accrued interest if payment was delayed, offering financial certainty during their transition.<sup>336</sup> This setup must comply with Section 89 of the Labour Code concerning security held by the employer.<sup>337</sup> Employers were obligated to adhere to Section 89 regarding employer-held security, which guarantees that deferred payments were legally safeguarded and administered judiciously. The order only limited itself to the provision of severance pay maintaining the *status quo* under WCEO.

The Labour Code Amendment Act of 1997 established that employers can apply to the Labour Commissioner for an exemption from Section 79 if they propose an alternative separation benefit scheme that offers employees greater advantages than regular severance pay.<sup>338</sup> The Labour Code Order of 1992 had no specific provisions, prompting the Court in *Ntali Matete and Another v Lesotho Highlands Development Authority and Another LC 131/95 (unreported)* to refer to ILO Convention No. 158 on Termination of Employment to determine the applicants' rights to receive both gratuity and severance pay.<sup>339</sup> This gap was remedied by an amendment to the Labour Code, specifically the Labour Code (Amendment) Act of 1997. Sections (7), (8), and (9) were incorporated into Section 79 of the Code.<sup>340</sup> The application must encompass comprehensive details of the alternative benefits program and a certified copy of its regulations.<sup>341</sup> Organizations were allowed to customize separation rewards to reflect business values and address employee requirements, potentially enhancing employee satisfaction and retention during termination.<sup>342</sup> The government of Lesotho implemented the Labour Act 2024 to abrogate the Labour Code 1992, establishing a new legal framework for employment relations, including severance pay, although it did not include substantial modifications to the severance pay structure.

### **3. The severance pay Legal Framework in Lesotho**

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<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

<sup>338</sup> Labour Code Amendment Act 1997.

<sup>339</sup> *Ntali Matete and Another v Lesotho Highlands Development Authority and Another LC 131/95 (unreported)*

<sup>340</sup> Labour Code Amendment Act 1997.

<sup>341</sup> Ibid.

<sup>342</sup> Ibid.

### **3.1. Entitlement to severance pay**

The Labour Act of 2024 in Lesotho establishes a systematic framework for severance pay, essential for safeguarding workers' rights upon employment termination.<sup>343</sup> An employee is eligible for severance pay only if they have maintained continuous employment with the same employer for more than one year.<sup>344</sup> Section 136 (1) states that an employee who has provided continuous service with the same employer for more than one year is eligible for a severance payment upon termination, which equals two weeks' salary for every full year of uninterrupted employment with the organization.<sup>345</sup> This provision guarantees that only employees who have exhibited long-term dedication to their employer qualify for this financial benefit. This requirement aims to incentivize loyalty and offer financial assistance during transitions after job termination. Failure to comply with section 136 is considered a crime, as section 137(1) states that an employer who fails to provide a severance payment required by section 136 commits an offense. Upon conviction, this employer faces a fine of up to Five Thousand Maloti or imprisonment for a period not exceeding thirty months.<sup>346</sup>

Severance compensation is based on how long the employee has been with the company. It amounts to exactly two weeks of salary for each complete year of continuous service.<sup>347</sup> For the purposes of subsection (1), the two weeks' pay referred to will be calculated using the rate that is in effect at the time of the employee's termination.<sup>348</sup> If an employee has served for five years, their severance compensation would total 10 weeks' wages (2 weeks x 5 years).<sup>349</sup> This formula seeks to ensure equitable remuneration that corresponds to the employee's duration of service and contributions to the organization.

Although this provision seemingly encourages fairness and acknowledges long-standing commitment, a significant concern emerges regarding its criteria for eligibility, especially in relation to dismissal. The Act is ambiguous about whether any type of dismissal, including those resulting from misconduct or incapacity, disqualifies employees from receiving severance benefits. Consequently, this has led to uncertainty and uneven application, increasing the risk of unjust exclusion of at-risk workers. The primary aim of severance pay is to serve as

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<sup>343</sup> Labour Act 2024 s 136.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

<sup>346</sup> Ibid s 137.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

a social safety net for employees who lose their income through no fault of their own, such as in cases of redundancy, restructuring, or contract termination. Nevertheless, if a dismissal for misconduct automatically results in ineligibility, this presents serious issues. The Act presumes that all dismissals reflect employee fault. However, the reality is that some dismissals may be both procedurally and substantively unfair, and an automatic disqualification denies those workers the remedies to which they might be entitled. Even minor violations leading to dismissal could result in employees losing years of accrued severance benefits, even when the misconduct has no connection to their performance or loyalty. This scenario could be seen as punitive and contrary to the protective aims of labour law. A vague or overly inclusive definition of "dismissal" could be exploited by employers to evade severance responsibilities by constructively dismissing employees under questionable circumstances.

A comparison reveals that different jurisdictions handle severance eligibility in cases of dismissal with a more nuanced and equitable approach. In South Africa, the Basic Conditions of Employment Act provides severance pay mainly in cases of retrenchment, not for dismissals due to misconduct.<sup>350</sup> Nonetheless, the Labour Relations Act requires fair procedures for dismissal, and workers are entitled to seek compensation if procedural fairness is compromised, even if severance is not applicable.<sup>351</sup> In Namibia, severance pay under the Labour Act 11 of 2007 is applicable upon dismissal, except when the dismissal is lawful and based on employee misconduct.<sup>352</sup> However, such misconduct must be serious and substantiated, with proper procedures followed. The ILO Termination of Employment Convention, 1982 (No. 158), which Lesotho has not ratified, states that severance or termination benefits should be available unless the termination results from serious misconduct, indicating that only significant breaches should negate severance, not all types of dismissal.<sup>353</sup> This global trend advocates for a more equitable standard one that maintains severance eligibility unless the misconduct is severe and verified through due process. Such an approach balances the employer's need for discipline with the employee's right to compensation earned.

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<sup>350</sup> Cliffe Dekker Hofmeyr, *Labour Laws in Africa* (Cliffe Dekker Hofmeyr, 2025) <https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/labour-laws-in-africa> accessed 8 August 2025.

<sup>351</sup> Ibid.

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.

In *Labour Commissioner v M & C Construction International (Pty) Ltd*,<sup>354</sup> eligibility for severance pay is recognized.<sup>355</sup> Complainants 1–23 possessed more than one year of uninterrupted service.<sup>356</sup> They received severance pay, however it was computed at a reduced rate (M2.44/hour), and the amount applicable upon redeployment from the Highlands Water Project.<sup>357</sup> The court determined that despite earning a higher income during the Highlands Project (M4.52/hour), severance should be computed at the M2.44/hour rate, as this was the wage at the time of retrenchment, in accordance with section 79(4) of the Labour Code 1992.<sup>358</sup> The court’s decision demonstrates rigorous compliance with legislative regulations on severance calculations, highlighting the significance of current salary rates rather than historical profits from previous assignments or projects. This method guarantees uniformity and reliability in the implementation of labour regulations, although it may also reveal aspects where legislative reform could rectify observed disparities in remuneration practices.

Conversely, Complainants 24–27 possessed more than one year of service.<sup>359</sup> They received no severance pay because their salaries surpassed the limits established in Legal Notice No. 72 of 1991 (e.g., surpassing M1000 per month).<sup>360</sup> The court dismissed this exclusion, determining that Legal Notice No. 72 of 1991 was abrogated and incompatible with Section 79(1) of the Code.<sup>361</sup> Consequently, they qualified for severance benefits, akin to all other employees. The court determined that, pursuant to Section 79(1), they are entitled to two weeks remuneration for each completed year of service.<sup>362</sup> Utilize the salary rate at the conclusion of employment (as per Section 79(4)).<sup>363</sup> For hourly employees: Multiply the hourly wage by the average weekly hours, then by 2 (for a biweekly period), and finally by the number of completed years of service.<sup>364</sup> For monthly salaried workers use the last monthly wage to obtain a weekly rate and then calculate two weeks’ worth for each year.<sup>365</sup> It is essential to note from this case that

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<sup>354</sup> *Labour Commissioner v M&C Construction International (Pty) Ltd and Another* (LC 165 of 99) [2000] LSLC (24 May 2000).

<sup>355</sup> *Ibid.*

<sup>356</sup> *Ibid.*

<sup>357</sup> *Ibid.*

<sup>358</sup> *Ibid.*

<sup>359</sup> *Ibid.*

<sup>360</sup> *Ibid.*

<sup>361</sup> *Ibid.*

<sup>362</sup> *Ibid.*

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.*

<sup>365</sup> *Ibid.*

any employee who has worked continuously for over a year is eligible for severance pay calculated based on their final wage rate at the point of termination.

While the case confirms universal eligibility after one year, it does not clarify whether termination for cause affects entitlement. This lack of clarity indicates a legislative gap that could allow for discretion and potential misuse. The ruling in *Labour Commissioner v M & C Construction International (Pty) Ltd* provides significant judicial insight regarding the calculation of severance pay, especially when an employee's salary has fluctuated over time due to project-based reassignment. The Court dismissed the consideration of both wage rates, mainly because of the specific wording of Section 79(4) (which aligns with section 136(3) of Labour Act 2024), stating: "For calculating severance pay under this section, the remuneration rate shall be the one in effect immediately prior to the termination date." This provision does not allow any legal flexibility for averaging or combining multiple wage rates earned throughout employment. The requirement to use a single, last wage rate is legally compulsory, even if it leads to a reduced severance payout that fails to represent earlier higher earnings. This strict application, while legally justified, presents an equity dilemma: employees whose wages are temporarily lowered due to reassignment or factors unrelated to performance experience an undervaluation of their long-term contributions.

Although the Court's reasoning strictly follows the statutory language, it raises several practical and fairness related issues section 79(4) lacks the adaptability needed to accurately reflect the total economic worth of an employee's service, particularly when wages have varied. The decision inadvertently penalizes employees for taking on temporary or lower-paid roles, even when such assignments are made at the employer's request. Severance pay is intended to recognize long-term service, not merely the last salary conditions. Calculating severance solely based on the final wage does not adequately account for the entirety of an employee's service value. This method may result in unequal treatment of similarly situated employees based solely on the timing of their termination, rather than the substance of their contributions or duration of service.

### **3.2.Exemptions from severance pay eligibility**

A significant exception to receiving severance pay occurs when an employee is justly dismissed for misconduct. It has to be noted that the Act does not specify whether the misconduct has to be serious, rather states that such dismissal has to be fair. According to Section 136(2), an

employee who has been justly terminated due to misconduct is not eligible for severance pay.<sup>366</sup> In such circumstances, the dismissal must meet both procedural and substantive fairness standards to be declared lawful.<sup>367</sup> This means there must be a legitimate justification for the dismissal (substantive justice), and the necessary disciplinary process must have been followed (procedural fairness). The Labour Appeal Court emphasized this in the *Unitrans Zululand (Pty) Ltd v Cebekhulu* case, stating that substantive fairness focuses on the facts produced in court to justify the dismissal, while procedural fairness addresses whether the employer followed a fair process before the dismissal.<sup>368</sup> If all fairness standards are achieved, the fired employee is not entitled to severance compensation.<sup>369</sup> In such circumstances, the law recognizes that the termination was justifiable owing to the employee's activities, therefore invalidating their entitlement to severance benefits. The court in *Matjama v DDP and others* maintained this stance but also stated that where the employer has dismissed the employee with benefits stipulated in the letter of dismissal, the dismissed employee shall be entitled to severance compensation.<sup>370</sup> Although the dismissal for misconduct generally disqualifies the employee from benefiting from severance pay, where it has been stipulated in the letter of dismissal that the dismissed employee is dismissed with benefits could be seen as an exception to the rule.

Severance pay is a right established by law, rather than a benefit arising from a contract unless it is clearly stated in an employment or collective bargaining agreement. Section 136(2) specifically excludes severance in cases of proven misconduct.<sup>371</sup> The *Matjama* ruling seems to bypass this restriction, considering employer-initiated offers as binding, even if they violate the statute. The reasoning of the Court appears to mix statutory law with employer discretion. This could be seen as a form of judicial overreach, where the court alters the law through interpretation, legitimizing employer actions contrary to clear legislative restrictions. The mention of severance in a termination letter does not invalidate the statutory disqualification, unless the law allows for discretion, which Section 136(2) does not. If an employer offers severance, whether knowingly or by mistake, it may be seen as a goodwill gesture rather than a legal right that the dismissed employee can enforce. Conversely, the *Matjama* ruling may

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<sup>366</sup> Ibid s 136(2).

<sup>367</sup> Lesholu (n 3).

<sup>368</sup> *Unitrans Zululand (Pty) Ltd v Cebekhulu* (DA28/01) [2003] ZALAC 5, [2003] 7 BLLR 688 (LAC).

<sup>369</sup> *Matjama v DDP and other LC/REV/04/08*

<sup>370</sup> Ibid.

<sup>371</sup> Labour Act 2024 s 136.

expose a fundamental issue in the existing legal framework: it lacks mechanisms to handle settlements, ex gratia payments, or mutual separation agreements. It does not differentiate between mandatory severance and discretionary termination benefits, leading to inconsistent processes and unpredictable outcomes in court, especially when employers provide severance for practical, reputational, or risk management reasons.

Forfeiture of severance pay for dismissed employees for misconduct serves as a disincentive against misconduct and encourages employees to adhere to workplace standards. In the case of *Ralejoe v LHDA*,<sup>372</sup> The applicant began working for the respondent on July 1, 1988, as a permanent employee eligible for a pension.<sup>373</sup> On November 15, 2005, the applicant received a termination notice effective January 31, 2006, as a result of the LHDA's need for restructuring.<sup>374</sup> The proceedings occurred on February 8 and 9, 2006.<sup>375</sup> On February 10, the committee adjudicated him guilty as charged and resolved that he be summarily fired effective from 10/02/06.<sup>376</sup> The consequence of that finding was that the applicant forfeited his statutory severance pay under section 79(2) of the Labour Code Order 1992 and exceptional retrenchment compensation under clause 27.2.4(5) of the LHDA Human Resources Manual.<sup>377</sup>

The issue to be determined by this court is whether the respondent could impose disciplinary charges on the applicant as its employee and then terminate him after January 31, 2006.<sup>378</sup> The court determined that the applicant was dismissed due to retrenchment on January 31, 2006, and was not re-employed thereafter.<sup>379</sup> The LHDA could not legitimately impose disciplinary charges against him after January 31, 2006.<sup>380</sup> The applicant's inability to be exposed to the respondent's disciplinary process on February 8th and 9th precludes a finding of misconduct on February 10th, 2006.<sup>381</sup> This implies that he could not be fired without due process, as the respondent attempted to do on February 10, 2006.<sup>382</sup> The petitioner was indeed retrenched on January 31, 2006, and he was entitled to receive his terminal payments on that date in

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<sup>372</sup> *Relejoe v Lesotho Highland Development Authority* (LC36 of 6) [2006] LSLC 13.

<sup>373</sup> *Ibid.*

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.*

<sup>377</sup> *Ibid.*

<sup>378</sup> *Ibid.*

<sup>379</sup> *Ibid.*

<sup>380</sup> *Ibid.*

<sup>381</sup> *Ibid.*

<sup>382</sup> *Ibid.*

accordance with section 84 of the Code.<sup>383</sup> Consequently, his terminal benefits ought to have been disbursed on the final day of employment.<sup>384</sup> The case underscores that misconduct renders employees ineligible for severance pay. Nonetheless, the employees must undergo disciplinary procedures while remaining in the employ of the employer, the employee is entitled to severance pay upon resignation before the disciplinary hearing. This was emphasized in the case of *Mahamo v Nedbank*,<sup>385</sup> Lesotho, where an employee resigned before disciplinary hearings to save their severance money.<sup>386</sup> This, however, poses challenges for businesses, as employees may evade responsibility for malfeasance.<sup>387</sup>

### **3.3. Severance pay in the context of employer insolvency**

The issue of employee entitlement to severance pay during employer insolvency is not categorized as an exception to severance eligibility as contemplated under Section 136(2) of the Labour Act 2024. Rather, it constitutes a procedural limitation in enforcement rooted not in labour law itself, but in the structural framework of insolvency law. This distinction is critical to avoid conceptual confusion and to correctly locate the problem within the appropriate branch of legal doctrine.

In *Lesotho Amalgamated Clothing and Textile Workers Union v Lesotho Apparel (Pty) Ltd (in liquidation)*,<sup>388</sup> the High Court of Lesotho addressed the entitlement of employees to severance pay during their employer's liquidation.<sup>389</sup> The primary verdict determined that employees were ineligible for severance pay during liquidation upon the termination of their employment.<sup>390</sup> The court determined that severance compensation, although a legal entitlement under section 79(1) of the Labour Code Order 1992 did not constitute a "preferential claim" in insolvency proceedings.<sup>391</sup> The Insolvency Proclamation of 1957, particularly Sections 100–102, does not classify severance compensation as a protected or preferential debt, in contrast to wages, leave, or notice pay.<sup>392</sup> Severance compensation is not included under Section 90 of the Labour Code 1992, which safeguards earnings for a duration

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<sup>383</sup> Ibid.

<sup>384</sup> Ibid.

<sup>385</sup> *Mahamo v Nedbank Lesotho Limited (LAC/CIV 4 of 11) [2011] LSLAC 9 (4 July 2011), 4 July 2011.*

<sup>386</sup> Ibid.

<sup>387</sup> Lesholu (n 3).

<sup>388</sup> *Lesotho Amalgamated Clothing and Textile Workers Union v Lesotho Apparel (Pty) Ltd (CIV/APN 214 of 94) [1994] LSCA 154 (14 October 1994) (in liquidation)*

<sup>389</sup> Ibid.

<sup>390</sup> Ibid.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.

of up to four months during execution.<sup>393</sup> The judgment underscored that severance pay is not classified as “wages” but rather regarded as recompense for the forfeiture of accrued entitlements or support during periods of unemployment. The court referenced comparative viewpoints: English law regards severance as recompense for diminished employment stability.<sup>394</sup> South African legislation categorizes it as a social benefit rather than a salary.<sup>395</sup> Consequently, while severance pay is a legal right, it lacks specific safeguards in insolvency scenarios.<sup>396</sup> The court granted one month’s salary in place of notice according to section 63(1) of the Labour Code Order, as the employees had fulfilled more than a year of uninterrupted employment.<sup>397</sup> The implication is that in insolvency cases, employees may forfeit their claim to severance pay. The challenge lies in the lack of statutory protection mechanisms in insolvency proceedings an omission that must be corrected through legislative reform and harmonization to ensure that severance entitlements remain meaningful even in economic crisis contexts.

### **3.4. *Pro rata* severance pay-out**

According to Section 136(1) of the Labour Act in Lesotho, only employees with over one year of continuous service at the same company are eligible for severance pay when terminated. Severance is calculated as two weeks' wages for each complete year of service.<sup>398</sup> A strict interpretation of this effectively excludes employees dismissed before they reach the 12-month mark irrespective of how close they are to that period. However, this inflexible application raises important questions about the fairness of such a cut-off and whether there is room for a *pro rata* entitlement through a more equitable or purposeful interpretation. So far, the courts in Lesotho have not dealt with a case that necessitates an employer to grant *pro rata* severance to someone dismissed just prior to completing a year. Nevertheless, legal precedents from Botswana offer an intriguing framework for consideration.

In the case of *Gabaete v Pool Care (Pty) Ltd*,<sup>399</sup> the Botswana Industrial Court tackled a comparable issue under Botswana’s previous labour laws, which stipulated that severance pay was available only after five years (60 months) of continuous service. Often, employers would

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<sup>393</sup> Ibid.

<sup>394</sup> Ibid.

<sup>395</sup> Ibid.

<sup>396</sup> Ibid.

<sup>397</sup> Ibid.

<sup>398</sup> *Gabaete v Pool Care (Pty) Ltd* 2007 (1) BLR 325 (IC)

<sup>399</sup> Ibid.

terminate workers just before reaching the 60-month period to avoid their mandated obligations.<sup>400</sup> The Industrial Court stepped in, ruling that severance pay accumulates gradually with each month of service.<sup>401</sup> An employee who is dismissed before meeting the required duration is still entitled to a pro rata portion of severance pay for the time they have worked.<sup>402</sup> To rule otherwise would undermine the protective objective of severance provisions and encourage dishonest termination practices.<sup>403</sup> The Court effectively infused an implied equity principle into the severance pay framework, restricting manipulative employer actions and promoting substantial justice.<sup>404</sup>

While Lesotho's Labour Act 2024 does not explicitly mention pro rata severance pay, the logic presented in *Gabaete* prompts significant considerations: Should the courts in Lesotho embrace a purposive interpretation that acknowledges *pro rata* severance in cases where termination occurs just before the one-year milestone? Does the strict rule mandating a 12-month duration motivate employers to end contracts strategically, ultimately countering the protective goals of the law? These issues are not just theoretical. In reality, employers might intentionally let go of employees after 11 months to avoid paying severance, while still reaping the benefits of nearly a full year's work.

If such actions are not addressed, they could compromise the fairness goals of Lesotho's labour regulations. Severance is intended to ease the difficulties of unemployment after a sustained period of service. An employee who has worked for 11 months and 20 days is arguably entitled to partial compensation just as much as someone who has served a full 12 months. A legal framework that allows for *pro rata* accrual would eliminate the incentive for employers to fire workers pre-emptively to escape liability. Botswana currently acknowledges *pro rata* entitlements. Numerous ILO instruments, including Recommendation No. 166, advocate for fair treatment upon termination, although they do not specify exact thresholds. South Africa permits *pro rata* calculations for leave and bonuses, and similar logic can be applied to severance benefits, particularly within the context of collective bargaining agreements.

Section 136(1) is stated in absolute terms: severance is only applicable if the employee has served for more than a year. A judicial interpretation that accepts a *pro rata* principle would

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<sup>400</sup> Ibid.

<sup>401</sup> Ibid.

<sup>402</sup> Ibid.

<sup>403</sup> Ibid.

<sup>404</sup> Ibid.

require a departure from a literal reading. Without changes to the law, it could be argued that establishing *pro rata* payments through judicial interpretation would be an instance of judicial activism. Nevertheless, the *Gabaete* approach demonstrates how interpreting the law with a focus on its intent need not be viewed as improper overreach. The lack of explicit policy direction or case law in Lesotho results in legal ambiguity. Employees who are dismissed just before reaching the one-year mark have no options available to them, even in instances of employer malfeasance.

### **3.5. Alternative separation and severance pay**

Employers may choose to provide a more favourable separation benefit program rather than simply complying with severance compensation obligations. If an employer offers benefits surpassing legal requirements, they may opt for these options without incurring liability for normal severance payments.<sup>405</sup> If an employer administers an alternative separation benefit scheme that offers a more favourable benefit to an employee than those specified in subsection (1), the employer must opt to provide the superior separation benefit instead of severance pay.<sup>406</sup> This flexibility enables businesses to customize their severance pay under their corporate policies or financial resources. Moreover, employees are barred from receiving both severance pay and an alternative separation payment unless there is a consensual accord with the employer. An employee is not entitled to claim both severance and other separation benefits unless the employer is willing to pay both.<sup>407</sup> This provision prohibits double compensation and clarifies the expectations for an employee upon termination.

In *Econet Telecom Lesotho Pty Ltd v Ramonah and others*,<sup>408</sup> the Labour Court of Lesotho clarified an important statutory exclusion to severance pay under the Labour Code (Amendment) Act, 1997, particularly Section 79(7). Legal Exemption from Severance Compensation. Section 79(7) stipulates that an employer may be excused from disbursing severance pay if they maintain a separation benefit scheme (such as a pension or provident fund) that provides superior benefits compared to severance pay.<sup>409</sup> According to Section 79(7) of the Labour Code (Amendment) Act, 1997, if an employer provides a different separation benefit scheme that offers employees better advantages than those outlined in subsection (1),

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<sup>405</sup> Labour Act 2024 s 136(5).

<sup>406</sup> Ibid s 136

<sup>407</sup> Ibid s 236(6).

<sup>408</sup> *Econet Telecom Lesotho (Pty) Ltd v Ramonah and Others* (2012).

<sup>409</sup> Ibid.

the employer can make a written request for exemption to the Labour Commissioner.<sup>410</sup> The company acquired an exemption certificate from the Labour Commissioner in 2005.<sup>411</sup> In 2009, an employee with 28 years of service was retrenched and earned complete pension benefits (including both company and employee contributions), as well as full severance compensation granted by an arbitrator.

The employer was not obligated to offer both severance pay and contributions to the pension plan.<sup>412</sup> Due to the certification of the pension scheme to offer superior benefits, the company was relieved of severance duties according to Section 79(1).<sup>413</sup> The employee was entitled solely to her personal contributions to the pension fund and severance pay, provided they surpassed the pension benefits.<sup>414</sup> Double payment was prohibited to prevent undue enrichment.<sup>415</sup> If an exemption certificate is active and valid prior to termination, an employee is not entitled to both severance pay and the employer's pension payments; only the more advantageous choice is applicable.<sup>416</sup> An employer must maintain a recognized separation benefit scheme (e.g., pension/gratuity) to lawfully exclude severance compensation.<sup>417</sup> Apply in writing and obtain an exemption certificate from the Labour Commissioner.<sup>418</sup> Ensure the scheme offers better benefits than severance.<sup>419</sup> Apply the exemption only prospectively, not retroactively, after termination.

#### **4. Conformity with international instruments**

In terms of conformity to international standards, Lesotho's severance pay system aligns with the principles set out by the International Labour Organization (ILO).<sup>420</sup> The ILO advocates for fair and equitable treatment of workers, including adequate compensation in case of termination.<sup>421</sup> Lesotho's severance pay system meets these standards by ensuring that employees receive a reasonable amount of compensation based on their length of service. The Labour Act 2024 seems to align with international regulations governing severance pay,

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<sup>410</sup> Ibid.

<sup>411</sup> Ibid.

<sup>412</sup> Ibid.

<sup>413</sup> Ibid.

<sup>414</sup> Ibid.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> Ibid.

<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

<sup>420</sup> ILO Convention No. 158 (n 3) art 12.

<sup>421</sup> Ibid.

specifically, the standards set by the International Labour Organisation (ILO), including Convention No. 158(Termination of Employment Convention, 1982) and Recommendation No. 166, which offer directives on severance compensation and termination safeguards.

ILO Convention No. 158(1982) – Termination of Employment Article 12 requires severance pay or alternative financial security for terminated employees.<sup>422</sup> Lesotho’s Labour Act 2024 provides severance pay equal to two weeks’ wages per completed year of service. Article 13 allows severance pay to be replaced by other separation benefits (e.g., pension schemes).<sup>423</sup> Lesotho permits employers to provide a more advantageous pension or provident fund instead of severance pay. ILO Recommendation No. 166 (1982) – Supplementary Guidelines on Termination Articles 22 & 23 support severance payments that increase with tenure to ensure greater financial security for long-term employees.<sup>424</sup> Lesotho follows this principle by calculating severance pay based on years of service. Article 24 encourages fair and efficient severance payment procedures to prevent undue delays.<sup>425</sup> Lesotho mandates timely severance pay and allows employers to hold payments in trust only for a limited period (12 months).

Alignment with OECD Employment Protection Framework. The OECD supports severance pay systems that balance worker protection with employer flexibility.<sup>426</sup> Lesotho’s model is similar to countries such as South Africa and Indonesia, where severance pay is linked to tenure and fair dismissal policies. The exemption certificate system, allowing substitution with better pension benefits, aligns with practices in Germany and Austria, which integrate severance benefits with employer-funded social security schemes. The strength of the severance pay is that it is a clear severance pay entitlement (two weeks’ wages per year of service).<sup>427</sup> Only the fair dismissal provisions deny severance pay to employees dismissed for misconduct.<sup>428</sup> It also provides flexibility for employers through alternative pension/provident funds.<sup>429</sup> Despite the above strengths, there are potential loopholes where employees resign before disciplinary hearings to retain severance pay. Also, the enforcement challenges, as penalties for non-

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<sup>422</sup> Ibid.

<sup>423</sup> Ibid art 13.

<sup>424</sup> ILO Recommendation No. 166 (n 240) arts 22 & 23.

<sup>425</sup> Ibid art 24.

<sup>426</sup> Danielle Venn, *Legislation, Collective Bargaining, and Enforcement: Updating the OECD Employment Protection Indicators* (OECD Social, Employment and Migration Working Papers No 89, 2009) <<https://www.oecd.org/els/workingpapers/>> accessed 29 April 2025.

<sup>427</sup> Labour Act 2024 s 136.

<sup>428</sup> Ibid.

<sup>429</sup> Ibid.

compliance may not be strong enough to deter violations. Lesotho's severance pay system is broadly aligned with international labour standards, particularly ILO Convention No. 158 and Recommendation No. 166. The flexibility for alternative separation benefits, protection against unfair dismissal, and tenure-based severance calculation make it consistent with OECD and global best practices. However, closing legal loopholes and strengthening enforcement could further enhance the effectiveness of Lesotho's severance pay regime.

The Act grants a right to severance pay of two weeks' wages for every completed year of continuous service to workers who have served for more than one year, excluding those dismissed fairly for misconduct. This aligns with ILO Recommendation No. 166, which states that severance pay or other benefits should be provided in cases of termination not based on misconduct. The severance pay provisions of the Labour Act 2024 align with international labour standards by acknowledging the entitlement to severance pay based on tenure, safeguarding employees from unjust termination without remuneration, incorporating equitable exceptions (e.g., misconduct), offering enforcement mechanisms, and conforming to ILO conventions and recommendations.

## **5. Comparative analysis of severance pay: Austria**

### **5.1. Austria severance pay (old system)**

Austria introduced severance pay for white-collar workers in 1921 and extended it to all employees by 1979.<sup>430</sup> Under the previous legal framework, private sector employees became eligible for severance pay only after three uninterrupted years of service, provided the termination wasn't initiated by the employee.<sup>431</sup> Since the 1970s, workers who voluntarily retired after ten years of service also qualified.<sup>432</sup> The severance payment was based on the last gross monthly wage and the total number of years employed, beginning with two months' salary after three years and increasing to a full year's salary after 25 years.<sup>433</sup> This lump-sum payment was taxed at a reduced rate of 6%.<sup>434</sup> Employers paid severance directly from their cash flow and accounted for these payments as part of regular wage increases.<sup>435</sup> They were

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<sup>430</sup> Gerald Klec, *Flexicurity, and the Reform of the Austrian Severance-Pay System* (European Economic and Employment Policy Brief No 4, 2007) <<https://www.etui.org/publications/policy-briefs/european-economic-and-employment-policy/flexicurity-and-the-reform-of-the-austrian-severance-pay-system>> accessed 29 April 2025.

<sup>431</sup> Hofer (n 258).

<sup>432</sup> Ibid.

<sup>433</sup> Ibid.

<sup>434</sup> Ibid.

<sup>435</sup> Ibid.

required to set aside at least half of the potential severance liabilities as reserves, which also helped reduce their taxable income.<sup>436</sup> In 1997, such payments accounted for about 2.5% of the total wage bill.<sup>437</sup>

Efforts to reform this system sparked ongoing debate.<sup>438</sup> Critics highlighted two major flaws as it discouraged job mobility since employees forfeited severance rights when they resigned, and it limited eligibility.<sup>439</sup> Only about a third of workers qualified for severance, which labour unions sought to change by extending rights to those who resigned voluntarily or had seasonal jobs.<sup>440</sup> Businesses, especially smaller ones, also struggled under the old system due to potential liquidity issues when paying out severance in bulk.<sup>441</sup> Some policymakers advocated transforming severance pay into occupational pensions, aligning with the government's broader plan to strengthen Austria's three-pillar pension model.<sup>442</sup> Extensive research examined the impact of employment protection legislation (EPL) on the labour market.<sup>443</sup> While EPL tends to reduce layoffs and the rate of unemployment entry by raising firing costs, it also prolongs joblessness and may deter hiring, especially for groups like youth, women, and long-term unemployed individuals.<sup>444</sup> High compliance costs can also discourage firms from expanding.<sup>445</sup>

Research also revealed strategic behaviour by employers to avoid growing severance liabilities by terminating low-skilled workers before they accumulated significant entitlements. Industries prone to seasonal changes, like tourism, were particularly affected.<sup>446</sup> A notable study by Card, Chetty, and Weber (2006) used a regression discontinuity method to compare job-seeking behaviour around the 36-month eligibility threshold.<sup>447</sup> It found that eligible individuals had an 8–12% lower chance of finding a new job within the first 20 weeks of unemployment.<sup>448</sup> However, these extended unemployment periods didn't result in better job

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<sup>436</sup> Klec (n 430).

<sup>437</sup> Hofer (n 258).

<sup>438</sup> Ibid.

<sup>439</sup> Ibid.

<sup>440</sup> Klec (n 430).

<sup>441</sup> Ibid.

<sup>442</sup> Ibid.

<sup>443</sup> Ibid.

<sup>444</sup> Ibid.

<sup>445</sup> Hofer (n 258).

<sup>446</sup> Ibid.

<sup>447</sup> Ibid.

<sup>448</sup> Ibid.

quality later.<sup>449</sup> Their analysis suggested that the availability of severance pay reduced job search intensity due to a “wealth effect,” without impacting overall economic efficiency.<sup>450</sup> They also found no evidence that employers manipulated termination timing to avoid severance obligations.<sup>451</sup> The system discouraged job mobility, as employees forfeited severance rights upon resignation.<sup>452</sup> Only about a third of workers qualified, and businesses, especially SMEs, faced liquidity challenges when making lump-sum payments.<sup>453</sup> The old system resembles the current severance pay system in Lesotho, and the challenges suggest the improvement of the current system. Therefore, the focus will be put on the new system.

### **5.2. Austria severance pay (New System).**

The severance pay system in Austria was reformed by the *Betriebliches Mitarbeitervorsorgegesetz*, commonly known as the new severance pay law or “*Abfertigung Neu*”.<sup>454</sup> This law came into effect in January 2003 and applies to all employment contracts signed after December 2002. Contracts established before that date remain under the old rules unless the employee opts to switch to the new system.<sup>455</sup> Under the new system, severance claims are handled by employee provision funds (*Mitarbeitervorsorgekassen*), which operate independently from employers.<sup>456</sup> These funds are responsible for collecting contributions, investing them, and paying severance benefits when due.<sup>457</sup> Employers are required to contribute 1.53% of an employee’s gross monthly salary starting from the second month of employment until the end of the job.<sup>458</sup> These contributions are held in an account under the employee’s name and are preserved until retirement, unless the employer ends the contract in which case a cash pay may be made.<sup>459</sup> This is contrary to Lesotho Severance pay funding as the employers are responsible for paying severance directly. An employer, if he offers a more advantageous separation benefit scheme (e.g., pension or gratuity), may be exempted from statutory severance payments.

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<sup>449</sup> Ibid.

<sup>450</sup> Ibid.

<sup>451</sup> Ibid.

<sup>452</sup> Ibid.

<sup>453</sup> Ibid.

<sup>454</sup> Klec (n 430).

<sup>455</sup> Ibid.

<sup>456</sup> Hofer (n 258).

<sup>457</sup> Ibid.

<sup>458</sup> Ibid.

<sup>459</sup> Ibid.

The Austrian system provides security for employees in situations of liquidation.<sup>460</sup> Situations of employees losing their severance as it happened in the case of *Lesotho Amalgamated Clothing and Textile Workers Union v Lesotho Apparel (Pty) Ltd (in liquidation)* may be avoided. Contributions are held in the employee's name and follow them from job to job, meaning they don't lose their severance entitlements when changing employers.<sup>461</sup> Benefits are preserved until retirement or paid out early if the employer ends the contract, ensuring employees always receive what they're entitled to.<sup>462</sup> Since funds are managed independently, employees aren't at risk of losing severance due to an employer's financial troubles or non-compliance.<sup>463</sup> The fixed contribution rate (1.53% of gross salary) allows for easy budgeting without facing large lump-sum severance payments later.<sup>464</sup> Employers no longer manage severance themselves, reducing administrative burden and liability.<sup>465</sup> Since severance is funded externally, employers may face fewer legal and financial barriers when terminating contracts appropriately.<sup>466</sup>

Employees qualify for severance benefits under the same conditions as in the old system but must have had contributions made for at least three years.<sup>467</sup> In relation to the contributions from multiple employers combined employees that are eligible, can choose either cash-out, further investment in the same or a new fund, or transfer of the amount to a pension insurance fund.<sup>468</sup> At retirement, they can either receive a cash payment (taxed at 6%) or turn the balance into an annuity (which is tax-free).<sup>469</sup> Lesotho's model places the onus directly on employers to manage and disburse severance payments, without the intermediary of independent funds. This system lacks the portability and investment options available in Austria's approach.

In the case of a regular termination, an employee might, in addition to the notice period (as mentioned earlier), have the right to receive a severance payment (*Abfertigung*).<sup>470</sup> For any employment relationship established on or after January 1, 2003, the updated severance pay system is in effect, which mandates that the employer contribute 1.53 percent of each worker's

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<sup>460</sup> Ibid.

<sup>461</sup> Klec (n 430)

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

<sup>464</sup> Ibid.

<sup>465</sup> Ibid.

<sup>466</sup> Hofer (n 258).

<sup>467</sup> Ibid.

<sup>468</sup> Ibid.

<sup>469</sup> Ibid.

<sup>470</sup> Ibid.

gross earnings monthly to a designated fund (*Mitarbeitervorsorgekasse*).<sup>471</sup> Upon termination, the employee can choose to receive the accrued amounts from this fund as severance pay (if the employee has been employed for over 3 years) or to keep the amounts in the fund, allowing any new employer to make monthly contributions.<sup>472</sup> There is no responsibility for the employer to provide severance pay when employment ends.<sup>473</sup> The new employer assumes responsibility for contributions.<sup>474</sup>

Under the old system, an employee who has worked for over 3 years is eligible for a required severance payment upon termination of employment.<sup>475</sup> The severance payment amount varies based on the length of employment and can range from 2 to 12 months' worth of salaries.<sup>476</sup> This calculation is based on the employee's latest monthly salary, which includes all regularly awarded payments (such as prorated bonuses, etc.).<sup>477</sup> Concerning such longstanding employment contracts.<sup>478</sup> Austria's new system is modern, portable, and funded, reducing employer risk and supporting worker mobility. Austria's old system and Lesotho's current model are similar in that both require direct employer pay-out at termination but Austria's old system is more generous in amount and structured by years of service. Lesotho's system, while straightforward, places more financial strain on employers at the time of termination and offers less flexibility or security to employees, especially those who change jobs often.

## 6. Conclusion

According to the Labour Act 2024 and its supporting subsidiary laws, Lesotho's severance payment system, which provides a statutory guarantee of income upon termination for workers who have worked for at least a year continuously. The system is tenure-based, offering two weeks' pay for each year of service completed, and it is applied consistently across industries, with few exceptions. Although this system provides some level of equity and predictability, the majority of the funding comes from employers at the time of termination, with no pre-funding or insurance system to protect against unforeseen financial shocks or employer insolvency.

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<sup>471</sup> Ibid.

<sup>472</sup> Ibid.

<sup>473</sup> Ibid.

<sup>474</sup> Ibid.

<sup>475</sup> Ibid.

<sup>476</sup> Klec (n 430)

<sup>477</sup> Ibid.

<sup>478</sup> Ibid.

The analysis in the chapter demonstrates that, despite Lesotho's framework largely adhering to the concept of severance pay under ILO Convention No. 158, it differs in several important ways from developing international best practices. Specifically, the lack of a national severance fund or pre-funded plan puts workers at risk of not being paid if their employers are unable to meet their financial obligations. Furthermore, the system's inclusiveness is restricted, and its goal of protection is weakened by the exclusion of specific groups of employees and the lack of *pro-rata* benefits for those who are terminated before finishing a full year of work and enforcement delays caused by the Labour Court and the Directorate of Dispute Prevention and Resolution's (DDPR) limited resources. Furthermore, the fact that the general public is not well informed about severance rights leads to under-claims and inconsistent applications.

When compared to the comparative models covered in Chapter 3, Lesotho's strategy shows that it is strong in legislated entitlement and that its calculation method is simple. But it lacks the comprehensive financial security and procedural safeguards found in systems like Germany's integrated dismissal protections, Brazil's FGTS scheme, or Austria's pre-funded model. All things considered, Lesotho's severance pay system is reactive and contingent upon the employer's financial capacity at the time of termination. Structural changes, such as considering a funded or insurance-based model, extending coverage, strengthening enforcement procedures, and incorporating public awareness initiatives, would be necessary to bring it more in line with international best practices. These measures would enhance the system's fairness and sustainability, while simultaneously boosting Lesotho's adherence to global Labour norms.

The chapter that follows will synthesize the results of the national evaluation and the international/comparative review, providing practical suggestions for changing Lesotho's severance pay system in order to strike a balance between protecting workers and maintaining economic viability.

## CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

### 1. Introduction

Severance pay is an essential component of employment protection systems around the world, safeguarding workers' financial stability during times of unemployment.<sup>479</sup> However, severance pay frameworks' efficacy and design differ greatly between nations, affecting employer flexibility as well as employee welfare.<sup>480</sup> The main legal framework governing Lesotho's severance pay system requires employers to make lump-sum payments to employees upon termination.<sup>481</sup> The system has significant problems, such as worker financial instability, enforcement issues, and vulnerability during employer insolvencies, even though it complies with international minimum standards like the ILO Convention No. 158. By contrast, Austria has modernized its approach to severance pay through the "*Abfertigung Neu*" reform, creating a system of pre-funded, portable, and independently managed severance funds that encourage labour market mobility and provide increased financial security.<sup>482</sup> Using Austria as a model, this study critically analyses Lesotho's severance pay system, pointing out its advantages, disadvantages, and possible changes to bring it into line with global best practices.

### 2. Summary and findings

Austria's severance pay system underwent significant reform with the introduction of the "*Abfertigung Neu*" in 2003.<sup>483</sup> Before this reform, the system was characterized by a traditional model where severance pay was contingent upon the length of service and was paid directly by employers at the end of employment.<sup>484</sup> This model posed challenges related to employer liquidity and financial planning.<sup>485</sup> The "*Abfertigung Neu*" reform transformed this system into a more sustainable and flexible model.<sup>486</sup> Under this new framework, employers contribute a fixed percentage (1.53%) of each employee's monthly salary into an individual account managed by external funds.<sup>487</sup> This approach ensures that severance pay is pre-funded

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<sup>479</sup> International Labour Organization (ILO), 'Termination of Employment Digest' (2000) <https://www.ILO.org>; Robert Holzmann et al., 'Severance Pay Programs around the World: History, Rationale, Status, and Reforms' (2011) IZA Discussion Paper No. 5731; Daele (n 91); Anthony Ferner and Richard Hyman (eds.), 'Changing Industrial Relations in Europe' (2nd ed, Blackwell 1998)

<sup>480</sup> Ibid.

<sup>481</sup> Labour Act, 2024 s 136.

<sup>482</sup> Klec (n 429)

<sup>483</sup> Ibid.

<sup>484</sup> Ibid.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

<sup>487</sup> Ibid.

throughout the employee's tenure, reducing the financial burden on employers at termination.<sup>488</sup>

The reformed system is implemented through collaboration between employers, employees, and authorized severance funds.<sup>489</sup> Employees gain access to their accumulated funds upon termination after three years of continuous service or can opt to transfer them to a new employer's fund if they change jobs before this period.<sup>490</sup> Austria's system aligns well with international labour standards as outlined by organizations such as the International Labour Organization (ILO). The pre-funding mechanism enhances worker security while maintaining employer affordability. The flexibility offered by allowing portability of funds also supports workforce mobility without sacrificing accrued benefits.

Lesotho's severance pay framework is primarily governed by statutory entitlements under its Labour Act 2024.<sup>491</sup> Employees are entitled to severance pay based on their length of service, typically calculated as two weeks' wages for each completed year of service after one year.<sup>492</sup> Despite being grounded in statutory entitlement, Lesotho's framework faces several challenges. Unlike Austria's pre-funded model, Lesotho relies on direct payments from employers at termination.<sup>493</sup> This can lead to disputes over payment amounts and delays if employers face financial constraints. In the case of *Kunene v JD Group Lesotho (Pty) Ltd and Another*,<sup>494</sup> the applicant was employed by the first respondent starting on September 30, 1983. He resigned on June 4, 2004, having served for a total of twenty-one (21) years. Following his resignation, he requested severance pay as outlined in Section 79 of the Code.<sup>495</sup> The employer refused to fulfil this request, referencing an exemption certificate that was issued in October 2004, which was five (5) months after the applicant had resigned.<sup>496</sup> The court rightfully rejected the retrospective application of the exemptions.<sup>497</sup> In the case of *Ben Heqoa v Browns Cash and Carry and Another LC/REV/331/06* (cited in [www.saflii.org/ls](http://www.saflii.org/ls)),<sup>498</sup> this Court determined that Section 79 (7) of the Code (as amended) does not give the Labour

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<sup>488</sup> Ibid.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid.

<sup>491</sup> Labour Act 2024 s 136.

<sup>492</sup> Ibid.

<sup>493</sup> Ibid.

<sup>494</sup> *Kunene v JD Group Lesotho (Pty) Ltd and Another LC/REV/386/06* (referenced in [www.saflii.org/ls](http://www.saflii.org/ls))

<sup>495</sup> Ibid.

<sup>496</sup> Ibid.

<sup>497</sup> Ibid.

<sup>498</sup> *Ben Heqoa v Browns Cash and Carry and Another LC/REV/331/06* (cited in [www.saflii.org/ls](http://www.saflii.org/ls))

Commissioner the authority to grant exemptions that take effect from an earlier date. Moreover, such retrospective application compromises the fundamental principles of legality.<sup>499</sup> This is one example of unnecessary disputes and delays for severance payments, which could have been avoided under the pre-funded model.

Lesotho's framework offers minimal rights for workers who are fired, which is in line with ILO conventions, but it is less effective than more contemporary systems like Austria's due to its rigidity and difficulties in enforcing the law. Without a formal pre-funding process or an integrated connection to social security benefits, Lesotho's severance pay system is essentially reactive, providing employee compensation after termination. Hence, it disregards the number of years the employee whose contract of employment is terminated due to misconduct. Under the funded model, the employee would access the fund for the contributions that the employer has made to the fund, just as the employee who has been dismissed on the same grounds may have access to other separation benefits that the employer provided. The Lesotho model mainly depends on lump-sum employer pay-outs, which are vulnerable to delays, defaults, and legal disputes, particularly in cases of insolvency, in contrast to Austria's system, where severance contributions are regularly made into individual accounts.

Furthermore, Austria's model is characterized by predictability, financial security, and portability, all of which are absent from Lesotho's current system. Lesotho's system may jeopardize worker security and lessen labour market dynamism in light of growing unemployment, growing informality in the labour market, and brittle employer compliance. Systemic change in line with global best practices is necessary to guarantee a more resilient and equitable severance pay structure. Systems for severance pay, which give workers financial support when their employment ends, are essential parts of labour market regulations. These systems' efficacy and efficiency have a big influence on employer compliance, worker security, and general economic stability.

Workers in Lesotho are left vulnerable during periods of unemployment because their severance pay is not linked to larger social security benefits, in contrast to more integrated systems. Without a pre-funding mechanism, money cannot be accumulated over time to guarantee on-time payments at termination. In addition to undermining employee confidence, this lack of financial stability may result in more lawsuits and conflicts between employers and

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<sup>499</sup> Ibid.

employees. The Severance Pay Model from Austria provides an alternative that is distinguished by its methodical and proactive approach. Throughout an employee's employment, employers regularly contribute to their accounts. This guarantees that money will be available when it's needed. If an employee changes jobs, they can transfer their accumulated severance money, increasing labour mobility and flexibility. Both employers and employees benefit from the system's predictability, which lowers the possibility of disagreements and guarantees compliance. The Austrian model offers comprehensive assistance during unemployment and is well-integrated with other social security benefits. By encouraging job changes without fear of losing accrued benefits, this proactive approach not only protects workers' financial resources but also fosters labour market dynamism.

Lesotho's current severance pay system is ineffective due to a number of issues. More workers are depending on severance pay as a vital source of income during job transitions as a result of rising unemployment rates. A sizable section of the workforce works in unorganized industries with little adherence to formal severance laws. Poor enforcement practices cause employers to disregard the law as it stands. These elements help create a workplace where employee security is jeopardized, which may result in lower output and unstable economic conditions.

### **3. Recommendation**

To align Lesotho's legal framework with best practices and improve fairness, the Labour Act ought to be revised to explicitly outline the types of dismissals that forfeit severance pay, clearly differentiating between just causes (such as gross misconduct) and regular dismissals. It should be mandated that dismissals adhere to fair procedures and be justified before affecting severance entitlements. A presumption in favour of severance payment should be adopted, placing the responsibility on the employer to prove why severance should not be granted. These changes would protect employees' rights, deter unjust dismissals, and maintain the integrity of the severance pay system. To enhance the effectiveness of the severance pay framework and provide clarity, Lesotho should also consider the following recommendations:

To address these inequities, the following legislative changes or clarifications are suggested: Revise Section 136(3) to permit alternative calculation methods when wage fluctuations are significant. For example: "In cases where an employee's wage has varied considerably during employment, severance pay may be determined based on the average wage over the last 12 months or the highest wage earned during continuous service, whichever is more just."

Introduce a clause for judicial discretion, allowing the Labour Court to deviate from Section 136(3) when its strict application leads to evident unfairness. Set sector-specific guidelines or regulations for industries that rely on project-based employment, such as construction or infrastructure, to ensure equitable and consistent treatment. Promote collective bargaining agreements to address this matter contractually, enabling negotiation between employers and employees to establish a fair severance basis where wage fluctuations are typical.

- a) Lesotho should think about switching from a lump-sum pay-out model to a contributory severance fund, like Austria does. A small portion of employee salaries may need to be deposited by employers into government-mandated, portable individual severance accounts. This protects employees from the risk of employer insolvency and guarantees fund availability upon termination. Employers are required by Lesotho's current severance pay model to give workers a lump sum payment when their employment ends.<sup>500</sup> Usually, the employee's final salary and length of service are used to determine this payment.<sup>501</sup> Although this system offers terminated employees immediate financial support, there are several drawbacks. When forced to make sizable lump-sum payments, employers may experience severe financial hardship, especially during recessions or times of insolvency. If their employer goes bankrupt or doesn't have enough money set aside for severance benefits, workers could be in danger.
- b) Employees' financial security is limited by the current system, which prevents them from transferring their accumulated benefits in the event that they change jobs. With the implementation of the "*Abfertigung neu*" model in 2003, Austria's severance pay system underwent a reform.<sup>502</sup> A set percentage of each employee's monthly salary currently 1.53%, must be contributed by employers under this system to a personal severance account that is overseen by government-regulated funds.<sup>503</sup> Benefits can be transferred between jobs without affecting an employee's eligibility.<sup>504</sup> The risk of poor management or insolvency is decreased because funds are overseen by qualified investment firms that are subject to stringent government regulation.<sup>505</sup> Employees who are fired have the option of keeping the money they invested for later use or getting

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<sup>500</sup> Labour Act 2024 s 136.

<sup>501</sup> Ibid.

<sup>502</sup> Klec (n 430).

<sup>503</sup> Ibid.

<sup>504</sup> Ibid.

<sup>505</sup> Ibid.

paid in full.<sup>506</sup> Instead of demanding sizable pay at termination, regular contributions distribute the cost over time.

- c) Lesotho could gain a lot by implementing a similar contributory severance fund model. Employees benefit from increased financial security when funds are guaranteed upon termination, irrespective of the solvency of the employer. Contributions that are spread out over time improve overall economic stability and lessen unexpected financial strain on employers. By enabling employees to keep their benefits when switching jobs, portability promotes labour mobility and may result in more productive and better job matches.
- d) Strong legal provisions should be in place to guarantee that employers fulfill their severance obligations penalty is five thousand may not be sufficient to encourage compliance. Severance-related disputes could be effectively resolved by a labour tribunal with speedier adjudication procedures. To improve deterrence, penalties for non-compliance should also be made more severe. The eligibility requirements, computation procedures, and payment schedules for severance pay should all be explicitly outlined in legislation. Resolution procedures might be sped up by a specialized labour tribunal that handles disputes pertaining to severance. Employers must be discouraged from ignoring their severance responsibilities by stiffening the penalties for non-compliance. Such actions would emphasize the importance of abiding by employment laws and encourage prompt compliance.
- e) Mechanisms that provide severance benefits to workers in the unorganized sector and those with brief tenure should be part of the reforms. Lesotho's policies would comply with ILO Convention No. 158 and Recommendation No. 166 if severance benefits were linked to unemployment insurance, pension contributions, and retraining initiatives. This would offer workers comprehensive assistance during job changes, reducing job lock and promoting labour mobility. As demonstrated by Brazil's FGTS model, workers should also be permitted to use accrued severance funds for other financial needs like housing or education. Initiatives to educate employers and employees about labour laws are necessary. This will increase adherence, give employees the confidence to assert their rights and promote an environment of ethical hiring practices. To guarantee adherence to global labour standards, Lesotho should regularly assess its

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<sup>506</sup> Ibid.

severance pay structure and take inspiration from nations that have effectively changed their severance policies, such as Austria, Chile, and South Korea.

#### **4. Conclusion**

Severance pay systems are essential for protecting employees' financial security during career changes and preserving general economic stability. Although Lesotho's existing severance pay system offers a basic level of protection in line with international norms, its reliance on employers making lump-sum payments upon termination leaves both employees and employers vulnerable to considerable risks. These include financial insecurity for workers, difficulties with enforcement, and operational stress for employers, particularly during periods of economic crisis or bankruptcy.

*"Abfertigung Neu,"* Austria's model, on the other hand, provides a progressive and sustainable strategy by means of a pre-funded, contributory severance system that guarantees consistent employer contributions to independently managed individual accounts. For workers, this model improves predictability, mobility, and financial stability while simultaneously lowering the employer's responsibility upon termination and promoting Labour market flexibility.

A move toward a contributory fund model, coupled with stronger legal protections and enforcement mechanisms, is necessary to strengthen Lesotho's severance compensation system. Furthermore, giving workers in the informal sector more protection and integrating severance payments with larger social security schemes will offer complete support for employees during career changes. Lesotho may bring its Labour legislation in line with international best practices, encourage more equitable Labour relations, and build greater economic resilience by implementing these reforms.

In the end, updating the severance pay system will promote social protection for employees, increase employer compliance, and foster a more vibrant and fair Labour market in Lesotho.

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