

Insolvent Employer, Dismissal, Termination and Retrenchment of Employees:  
A Study on Whether Employee's Claims Arising out of Employment is Adequately  
Protected.

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We sincerely hope that this humble research will be useful to all in understanding some of the problems related to employment law in Malaysia, especially in the cases involving the dismissal, termination and the retrenchment of the employees of insolvent employers and the inadequacy of protection for the employees.

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## **ABSTRACT**

The maxim "easy to hire difficult to fire" is the terminology which most of the employer should practice. No employer having hired a person at considerable cost and having exposed the person to training, formal or otherwise, will want to terminate the person. However, when an employee has an attitude problem or whose work performance is not up to the expectations, his service can be terminated by the employer simply by invoking the termination clause in the employment contract. The employer has to follow certain rules and procedures and only at the end of it he could terminate the services of a non-performing employee.

The dismissal (either unfair or wrongful), termination and retrenchment are the major sanctions against employees for breach of their contract of service. An employee is employed by the employer under the contract of employment. An employer who wrongfully terminates the contract is liable to an action for wrongful dismissal or unfair dismissal, if the dismissal of the employee were not done in accordance to the provisions (unfair procedure). The same applies for retrenchment, which relates to the right of the employer to reduce the number of his employees, in situations where there is an excess of the workforce or where there is an economic recession.

Employers are likely to pay only the minimum compensation required by the law to employees who for the various reasons lose their employment. At the same time corporate employers may declare themselves insolvent and seek to be put into liquidation, if by doing so, they can reduce their liability to pay compensation to employees or others or escape altogether from their liability towards them. This raises the issue of whether the law as it currently stands provides adequate compensation or protection to employees who lose their employment and whether relevant changes should be made to the current position in order to ensure the better protection of such employees. This research seeks to determine the strengths or weaknesses of the law in

protecting and providing compensation to such employees and to make recommendations, if found necessary, to ensure their better protection.

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