

THE EFFECT OF DISCIPLINARY ACTION ON EMPLOYEE'S PROMOTION

HANI KHALAF MAHOS AL-JUBOURI

College of Law, Tikrit University, Iraq.

Email: hani1980khalaf@gmail.com

Abstract: *The term "public job" refers to any task that a person engages in professionally for the purpose of maintaining his standard of living while acting under the direction of the government. A set of guidelines that assign rights to the employee and outline his tasks and obligations apply to this position. It requires a set of qualifications and terms of appointment, in which the employee bears the burdens and responsibilities that the public employee carries out to achieve the management goals related to the public interest and serving the public benefiting from public utilities. The administration allocates financial rights that include the salary, bonus and promotion that the employee deserves after being appointed to meet his needs and raise his standard of living. These rights have a direct impact on the person's life since they are associated to his monthly income and the money he is able to preserve as a result of obtaining these rights. It is in a constant state of change based on the length of his service, the qualifications he gains through school qualifications, the job entitlement he achieves via promotion, and the bonus that raises his salary. In exchange for these rights, he has specific obligations to perform his duties to run public utilities. The administration will impose disciplinary penalties on him in case he breaches these duties and commits violations. These types of disciplinary penalties are defined by the text of the law according to the type of violation committed by the competent authority. They have consequential effects targeting his financial rights, as they have a direct impact on his financial entitlements.*

Keywords: *entitlements, administration, qualifications, responsibilities, guidelines*

INTRODUCTION

The disciplinary action imposed on the public employee causes a consequential effect which includes delaying promotion according to the type of action in accordance with the amended Law on Disciplining State and Public Sector Employees No. (14) of (1991). Depending on the punishment given, the conduct has a variety of consequence effects. We shall explain how the disciplinary action mentioned in Article (8/First, Second, and Fourth) of the aforementioned statute affected promotion in order to illustrate the effect of this action. We will also illustrate the disciplinary actions that have an effect on delaying promotion, referred to in Article (8) above, and whose effects the Iraqi legislator determined in three sections: the first one includes the effect of the warning action on promotion, the second one includes the effect of the action of oral warning to promotion, and the third one is the effect of the reprimand action on promotion.

RESEARCH IMPORTANCE

The public job is the vital nerve for administrating the state's public utilities. In order to ensure managing these utilities, there must be a person to perform tasks and run the administrative apparatus and the public utility, and bear the burdens and responsibilities. This is what is known as the public employee. The public job is based on the basis of the employee, his qualifications, and his abilities to perform the duties entrusted to him and guarantee his rights and their continuity, since the job is characterized by permanence and stability.

As a result of such tasks and responsibilities, the state organizes laws, regulations, and legislations that illustrate the rights and duties of the employee and organizes his job affairs in terms of financial rights represented in the salary, annual bonus, and promotion during his service. His monthly salary could rise as a result, helping him raise his standard of living and provide for his family. Such rights are almost among the fixed financial rights that the employee is entitled to periodically, and therefore these rights represent the main motive for attracting individuals looking



for appointment to the public job and their performance of their duties with carefully and sincerely. The appointment of the employee and his commencement of work is restricted by a number of duties defined by the law, due to its importance in ensuring the regularity of the work of public utilities and their performance. The law establishes disciplinary actions to be imposed as a result of committing the violation, and requires disciplinary responsibility for anyone who violates these duties. Disciplinary actions vary according to the type of violation committed. It causes consequences on the employee's financial rights during the job bond and is affected by it, whether it is related to pay cut or delaying the granting of the annual bonus and promotion according to the delay periods in the relevant legal texts. This is what we will discuss in our research on the consequential effects of disciplinary actions on the financial rights of the public employee during the job performance.

RESEARCH PROBLEM

There are a number of issues with the present study, including issues with the laws governing public employment, the directives and rules that govern matters relating to public employees, and the disciplinary measures and their consequences on financial rights. The Iraqi legislator did not specify the number of times that the disciplinary action is imposed on the employee when the violation is repeated, such as the warning action. Also, in other laws, the effects of the penalty on the employee's financial position were not indicated. The method for calculating the delay in promotion periods following the imposition of the disciplinary punishment from the due date or from the date of imposition is subject to a variety of viewpoints. Also, there are no effects of the disciplinary action on promotion, similar to upgrade.

THE EFFECT OF THE ORAL WARNING ON PROMOTION

The oral warning is one of the mildest forms of disciplinary actions that are imposed, because its consequential effects require delaying the employee's promotion for three months. The Law of Discipline of State and Public Sector Employees stipulates this action by stating "notifying the violating employee by a written notice of the violation he committed and directing him to improve his job behavior. This action entails delaying the promotion or increasing the period for three months." (Article (8A/First) of the Amended Law on Disciplining State and Public Sector Employees No. (14) of 1991).

The oral warning is a new action in the law of discipline of state employees in force, as the laws of discipline of state employees No. (41) of (1929) and (69) of (1936) that have been repealed are devoid of this action. This action is considered one of the most common imposed penalties by administrations, as it relates to minor violations committed by the employee during the daily work of the public job. This action is equivalent to the penalty of warning in a number of laws, including the Dental Association Law No. (46) of (1987), as it states: "The violator shall be notified of warning in a written notice notifying him of the dissatisfaction with his behavior" (Article (25)/ Dental Association Law No. (46) of (1987)

Likewise, in the Law of the Medical Association No. (81) for the year (1984) indicated in the text, "a letter has to be sent to the employee, notifying him of the dissatisfaction with his behavior" (Article (25/First) of the Medical Association Law No. 81 of 1984).

As for the Journalists Syndicate Law, it clarified the oral warning as "notifying the violating employee by a written notice warning him not to repeat the violation" (Article (1/26) of the Journalists Syndicate amended Law No. (178) of (1969). Also, in the Law of the Agricultural Engineers Association No. (74) of (1977) the disciplinary committees may issue a warning. (Article (30/First) of the Agricultural Engineers Association Law No. 74 of 1977, published in Al-Waqa'i Al-Iraqiya Newspaper, Issue 2592, on 13/6/1977). These laws did not have consequences on the financial aspect or job position in the warning. As for the Nursing Syndicate Law No. (8) for the year (2020), it stipulates issuing a warning. In the event that the penalty is repeated, there will be consequential effects as stated "temporary suspension from non-governmental work for a period of no less than a month and not more than one year if the member is punished twice" (Article 28 /



Fourth / E) of the Nursing Syndicate Law No. (8) for the year (2020), published in Al-Waqa'i Al-Iraqiya Newspaper, Issue 4604, on 11/16/2020.)

The period of delay in eligibility for promotion is three months and it applies from the date of eligibility for promotion. The penalty of oral warning shall be applied to the employee's right to delay his promotion in accordance with the period stipulated in the Law of Discipline of State and Public Sector Employees in force. The General Authority of the Consultative Assembly of the State, in its cassational capacity (the Supreme Administrative Court), has shown the effect of the penalty of oral warning with its decision. The penalties stipulated in clauses (first), (second), (third), (fourth) and (fifth) of Article (8) of the Disciplinary Law for State and Public Sector Employees No. (14) of (1991), amended, result in a delay in promotion for a period specified thereunder. (Decree of the General Authority of the State Council (Supreme Administrative Court) No. (34 / Discipline / Discrimination / 2009 on 18/5/2009, published in the decisions and fatwas of the Consultative Assembly of the State for the year 2009, p. 113.)

Comparative laws are devoid of a penalty for oral warning. The Egyptian Workers Law and the Jordanian Service System, mentioned above, do not contain any penalty for oral warning. The penalty of oral warning in Iraqi law can be canceled by obtaining a letter of appreciation in accordance with Article (21/Second) of the Law on Disciplining State and Public Sector Employees in force. If the employee obtains a letter of appreciation, the penalty for oral warning will be cancelled. This was supported by the Supreme Administrative Court in its decision: "The employee obtaining a letter of appreciation entails canceling the penalty." (Supreme Administrative Court Decision No. 523 / Employees Judgment / Cassation / 2013 on 8/28/2014, published in State Council Decisions of 2014, p. 267.)

THE EFFECT OF WARNING ON PROMOTION

The warning action against an employee is one of the penalties imposed on the public employee as a result of the violation he commits, and it has a consequences on promotion. In the Egyptian legislation, the Egyptian Foreign Service Law No. (166) for the year (1954) mentioned the penalty of warning to delay promotion for a period of three months. (Sultan, 2006, p. 122.)

The legislation also mentioned calculating the delay period for promotion from the date of imposing the original sentence, as the Egyptian Supreme Administrative Court took this principle in its decision. (Decision of the Egyptian Supreme Administrative Court, session of February 7 / 17 s / Principle No. 251 / 10 s / dated 3/14/1965, p. 878.) Also, the Jordanian legislator has adopted the principle of calculating the impact of the penalty on promotion from the date of imposing the penalty. As for the Iraqi legislator, Article (8) of the amended Law of Discipline of State and Public Sector Employees No. (14) of (1991), stipulates "The employee shall be notified in a written notice of the violation he is committing and warning him against breaching his job duties in the future. The effect of this penalty shall result in a delay in promotion or increase for a period of six months. This penalty was mentioned in the State Employees Discipline Law No. (69) of (1936) (repealed), as the law did not refer to consequences of the penalty (Al-Samad. 327.)

The warning action is one of the important actions that warns the public employee who commits the violation and imposes on him the necessity of avoiding, addressing and not repeating the negatives that occurred. It is noted that the legislator did not specify the text the number of times that an employee can be punished with this penalty, compared to the State Employees Discipline Law No. (69) of (1936) (repealed), which permitted punishing the employee twice. After that, the punishment will be more severe. Since the text of Article (8) of the Law on Disciplining State and Public Sector Employees in force was absolute, so it is based on its release according to the legal rule. This means that the discretionary authority can impose the penalty twice. We note that the legislator did not specify the type of violations that require the imposition of a warning penalty, but rather left that to the discretionary authority. In the text of Article (20) of the Law on Disciplining State and Public Sector Employees No. (14) of (1991), as amended, the legislator indicated that no more than one penalty should be imposed for one act. The legislator in this case must decide between not applying more than one punishment for a single conduct and dealing with



the situation if the same act was repeated or the breach for which a warning penalty was applied. In another decision of the Supreme Administrative Court, it allowed the competent authority to impose more severe actions if he re-committed a violation for which he was punished more than once (Al-Maadidi 2022, p.9.)

It is noted that the text of Article (8/Second) of the amended Law on Disciplining State and Public Sector Employees No. (14) of (1991) needs to specify the number of times the warning is imposed. In comparative law, the Jordanian legislator specified cases of imposing punishment once a year (Al-Aboudi, 2012., p. 224).

As for the Judicial Organization Law No. (160) for the year (1979), it permitted the imposition of a warning with the text “the warning entails delaying the judge’s allowance and promotion for a period of six months” (Article (58 / First) of the Judicial Organization amended Law No. (160) of (1979)

The warning penalty has a consequence of “delaying the promotion or the bonus or both for a period of not less than one year and not more than three years from the date of the decision, if he has completed the legal period for promotion, or from the date of their completion” (Article (58/Second) of the Judicial Organization amended Law No. (160) of (1979). As for the amended Public Prosecution Law No. (159) of (1979), imposing a warning against a member of the public prosecution, with the same effect referred to in the above-mentioned Judicial Organization Law (Article (62 / second / a) of the amended Public Prosecution Law No. (159) of (1979). In the Law of Engineers No. (51) for the year (1979) it was mentioned that the effect of the penalty of warning is stated in the text “First: the warning shall be noticed by sending a letter to the member in which the fault committed. There are reasons that make his professional behavior unsatisfactory and he is asked not to repeat it.

Second: Job suspension for a period not exceeding six months. With regard to the employee, the suspension is limited to working outside official working hours for a period not exceeding one year, and his department is notified of the decision. This follows withholding all engineering allocations of all kinds for the period during which he is laid off.

Third: The penalty of warning delays the promotion of the engineer to a higher rank for a period of six months, and the penalty of suspension delays his promotion to a higher rank by an amount equal to twice the period during which he was suspended. We note that the Iraqi legislator continued not to distinguish between promotion and upgrade in the above law. Likewise, the amended Law on Disciplining State and Public Sector Employees No. (14) of (1991) did not indicate any effect of the warning penalty on employee promotion. We see that the reason is the lack of clarification of the difference between promotion and upgrade and the continuation of confusion with this concept and the lack of an accurate definition for them. The Medical Association Law No. (81) for the year (1984) is devoid of any consequence of the warning penalty, as well as the amended Law of the Journalists Syndicate No. (178) for the year (1969).

The decision of the Employees Judicial Court stated that “the effect of the penalties stipulated in paragraphs (first), (second), (third) and (fourth) of Article (8) of the State Employees Disciplinary Law No. 14 of (1991) is dispelled to delay the increase for the periods specified thereunder. (Decision of the Employees Judiciary Court No. 26/2020 on 5/11/2020, unpublished).

The delay periods for promotion shall apply from the date the employee is entitled to the promotion pursuant to Article (9/First) of the State Employees Discipline Law No. 14 of (1991) amended by the text “The validity of the delay periods in promotion resulting from the penalties mentioned in Article (8) of this law, starting from the employee’s due date for promotion or increase. Returning to the text of Article (21/Second) of the amended Disciplinary Law for State and Public Sector Employees No. (14) of (1991) “If the employee is penalized, then thanks cancels the penalty of oral warning.” If he receives two commendations, the penalty of warning imposed on him shall be cancelled. If he obtains three commendations or more and he is penalized with a penalty more severe than the warning, then the period of delay in his promotion shall be reduced by one month for each commendation and not exceeding three months per year. We find that the text is clear with regard to the effect of books of gratitude and their abolition of punishment. The



legislator explicitly mentioned the phrase “promotion” and did not refer in this text to the concept of “annual bonus” and its implications as a result of imposing the disciplinary action. There are differing opinions in calculating the delay periods from the due date. The first opinion supports the calculation from the date of imposition of the penalty, similar to the comparative laws and guaranteeing the rights of the employee (Ghaylan, p. 225).

The second opinion supports the calculation from the date of the due date, as it achieves equality between employees, in addition to the application of the penalty. The passage of time will lead to a delay in his promotion. If the employee deserves to be promoted six months after the issuance of the order, the effect will be only six months, compared to the date of the penalty and the entitlement. Therefore, the effect of the penalty is for the duration only (Al-Luhaibi, pg. 51.).

We support this opinion because it achieves equality between employees and the purpose of applying the penalty. Dating back to repeating the punishment for the employee during the same job grade, then the most severe punishment is applied against him according to the text. “If the employee is punished with more than one penalty during the same job grade, the severest penalty shall be applied against him with regard to the delay in promotion according to what is decided in the previous paragraph.” (Article (9/Second) of the amended Law of Disciplining State and Public Sector Employees No. (14) of (1991)

THE EFFECT OF REPRIMAND ON PROMOTION

The reprimand is one of the most severe types of disciplinary punishment for an employee in terms of its consequences legal. It is imposed on serious violations, and the reasons that led to the imposition of the penalty are mentioned in the text. The employee shall be notified in writing of the violation he committed and the reasons that made his behavior unsatisfactory, and he shall be asked to avoid the violation and to improve his job behavior. This penalty entails delaying promotion or increase for a period for one year. Mentioning the violation in this penalty, given the seriousness of the violation and the type of punishment imposed, is what distinguishes it from other disciplinary penalties. It has a significant effect other than the consequential effects related to the delay in promotion. Mentioning the violation in the cause of the penalty gives a negative moral impact on the violator and prompts him to avoid falling into the violation again, avoiding its negative aspects and improving his job performance, especially as it causes a delay in promotion for a year. Consequently, he did not receive his entitlement and the delay in increasing the salary after his promotion. The employee strives hard to serve in order to obtain his promotion and improve his job level. Article (8) of the State Disciplinary Law of Employees No. (69) of (1936) (repealed) indicates the penalty of reprimand with its effects for a period of (one year) and the delay in obtaining his salary and promotion of his grade starting from the date of completion of the legal period. In the system of production incentives for the Real Estate Bank No. (14) for the year (1999), which indicated the effect of the reprimand action on the incentives granted to the employee who stipulated. “The employee's working period shall be deducted from each penalty directed against him during the period for which the incentives are disbursed, the periods indicated against it” (Article (8/fourth) of the amended Law of Disciplining State and Public Sector Employees No. (14) of (1991).

According to this provision, incentives shall be withheld from him for a period of (180) days. Most of the comparative laws are devoid of this kind of punishment, since the punishment corresponding to it is the action of warning that it imposes in its laws, with the exception of the Egyptian legislator who called this action (blame) and it is imposed on the holders of high positions (Article (6/A/First) of the Real Estate Bank Production Incentives System No. (14) for the year (1999), the base of Iraqi legislation). The Supreme Administrative Court issued its decision to stipulate that the violation be mentioned in the reprimand action, as stated in the text, “The law stipulates that the employee’s alleged violation be mentioned when punishing him with the reprimand” (Article (58) of the Egyptian Civil Service Law No. (81) of (2016).



The reprimand is one of the penalties imposed more than once within a period of (five years) (Supreme Administrative Court Decision 1149 / Employees Judgment / Cassation / 2014 on 7/28/2016, published in the decisions and fatwas of the State Council for the year 2016, p. 314.)

We note the importance of this penalty and its impact on the employee's position and its consequences, as well as the delay in promotion and its recurrence. The decision of the Supreme Administrative Court came as a text. "The administration may impose a severe penalty on the employee if he returns to committing a violation for which he was punished more than once" (Article (8 / Item 7 / Paragraph A / 1) of the amended Law No. 14 of 1991 on Disciplining State and Public Sector Employees). Likewise, the decision of the Supreme Administrative Court, in which it indicated that the employee's career is important in assessing the appropriateness of the punishment, in its decision, "The court must take into account the employee's career in estimating the appropriateness of the punishment imposed on him." (Supreme Administrative Court Decision, 1002, Employees Judgment / Cassation / 2016 on 31/1/2019, p. 9).

It is noted that the court relied in its decision on evaluating the behavior of the employee and repeating the disciplinary penalties imposed against him and its response to the appeal submitted for reducing the penalty of reprimand to the appellant in accordance with the content of its decision above. The impact of the reprimand against the employee has consequences on his position by delaying his promotion for a period of (one year). For this reason, the legislator mentioned that the abolition of this penalty must be given (3) letters of appreciation for its abolition, compared to the rest of the disciplinary actions and the decision of the Supreme Administrative Court, which indicated that the abolition of the penalty abolishes its effects by the text "The abolition of the penalty entails the abolition of its effects" (Supreme Administrative Court Decree No. 511/512 / Employees Judgment / Cassation / 2014 on 3/3/2016, unpublished.)

Therefore, the administration tends to impose physical violations due to their consequences, as well as to evaluate the employees' performance, prevent them from failing to perform their duties, evaluate their behavior, and avoid committing violations that lead to this punishment and its effects. (Article (21/Second) of the Amended Law on Disciplining State and Public Sector Employees No. (14) of 1991). (Supreme Administrative Court Decree No. 1360 / Employees Judgment / Cassation / 2019 on 8/8/2019, Khalifa, p. 60).

Because this penalty targets the employee's job position in addition to his income level, the consequence of this penalty on delaying his promotion and obtaining the increase leads to a delay in granting him the entitlement. Thus, it enhances the financial and moral effects of the violating employee, starting from mentioning the type of violation in the decision to impose the penalty to its financial impact on his financial rights, which leads to the occurrence of a functional and personal variable as a result of the imposition of the penalty for its effects (job position and income level) as a result of violating the regulations, instructions and laws of the public job. We see that the disciplinary action taken against the employee only affects promotion and that its impact is not discussed in the paragraph about promotion, which entails moving to a higher employment level. Thus, it was more appropriate to refer to the effect of the punishment on promotion and promotion, since the promotion is also a job gradation that the employee receives and from his other rights similar to the financial rights on which the disciplinary punishment falls. The other reason is that one of the conditions for its entitlement is to determine the competence of the employee, which is affected by the penalty, as in promotion. Therefore, in eligibility for promotion, the consequential effects of disciplinary penalties are taken into account.

CONCLUSION

A set of recommendations and results are included within the conclusions:

RESULTS

1. The laws enacted, including the Medical Association Law No. (81) for the year (1984), the Agricultural Engineers Association Law No. (74) for the year (1977), and the Nursing Association Law No. (8) for the year 2020, did not include any consequential effects in the oral warning

financially, or the job position compared to the amended State Employees Discipline Law No. (24) of (1991).

2. The Iraqi legislator did not specify, in the amended State Employees Discipline Law No. (24) of (1991), the number of times an employee punished with a warning.
3. There is divergence of opinions in calculating the periods of delay in promotion from the due date or from the date of imposing the penalty.
4. Comparative laws are devoid of reprimand, except for the Egyptian legislator who called this penalty “blame.”
5. The consequences were limited to the employee’s financial rights in the promotion, whereas the legal texts did not indicate any other effects on the promotion, as it is also one of the employee’s rights.

RECOMMENDATIONS

1. We recommend the Iraqi legislator to include the consequences of the penalty of oral warning, which are mentioned in the Doctors Syndicate Law No. (81) for the year (1984), the Agricultural Engineers Association Law No. (74) for the year (1977), and the Nursing Syndicate Law No. (8) for the year 2020, similar to the Discipline Law State Employees No. (24) of (1991), amended
2. We recommend the Iraqi legislator to amend the text of Article (8/Second) of the Amended State Employees Discipline Law No. (24) of (1991) by specifying the number of times an employee can be punished with a warning.
3. We recommend the Iraqi legislator to calculate the delay periods for promotion from the due date the promotion to include the employee with the consequential effects of the penalty and to achieve equality among employees
4. We urge the Iraqi legislator to impose the effects of disciplinary actions on promotion as being one of the employee's financial rights, be similar to promotion.

REFERENCES

- [1] Al-Aboudi, O, G. (2012) *Explanation of the provisions of the Amended State and Public Sector Employees Discipline Law No. 14 of 1991, Analytical Study, Library of Law and Judiciary, 2nd Edition.*
- [2] Al-Luhaibi, A, A, H. (2003) *The Impact of Penalties and Their Expiration on the Legal Status of an Employee - A Comparative Study, PhD thesis submitted to Al-Nahrain University, Faculty of Law.*
- [3] Al-Samad, m, s. (1991) *The Disciplinary Authority of Administration in Iraqi Legislation, a Comparative Study, a master's thesis submitted to the Judicial Institute, Baghdad, Iraq.*
- [4] *Decision of the Egyptian Supreme Administrative Court, session of February 7 / 17 s / Principle No. 251 / 10 s / dated 3/14/1965, p. 878.*
- [5] *Decision of the Employees Judiciary Court No. 26/2020 on 5/11/2020, without publication.*
- [6] *Decision of the General Assembly of the State Shura Council (Supreme Administrative Court) No. (34 / Discipline / Discrimination / 2009 on 18/5/2009, published in the decisions and fatwas of the State Shura Council for the year 2009*
- [7] *Dental Association Law No. (46) of (1987).*
- [8] *Doctors Syndicate Law No. (81) of (1984).*
- [9] *Egyptian Civil Service Law No. (81) of (2016)*
- [10] *Journalists Syndicate Law No. 178 of 1969*
- [11] *Judicial Organization Law No. (160) of (1979).*
- [12] *Law of the Agricultural Engineers Association No. 74 of 1977*
- [13] *Nursing Syndicate Law No. 8 of 2020.*
- [14] *Public Prosecution Law No. (159) of (1979).*
- [15] Sultan, K, H. (2006) *The Consequential Effects of Disciplinary Punishment in Iraqi Law and Comparative Laws, PhD thesis submitted to the College of Law, University of Baghdad.*
- [16] *Supreme Administrative Court Decision 1149 / Employees Judgment / Cassation / 2014 on 7/28/2016, published in the decisions and fatwas of the State Council for the year 2016,*
- [17] Al-Maadidi, K, O, K. (2022) *Disciplinary Penalties and their Effects on Employee Promotion, 1st Edition. Legal Legislation Office.*
- [18] *Supreme Administrative Court Decision No. 1360 / Employees Judgment / Cassation / 2019 on 8/8/2019*



- [19] *System of Production Incentives for the Real Estate Bank No. (14) of (1999), the base of Iraqi legislation*
- [20] *The Discipline of State and Public Sector Employees Law No. (24) of (1991), amended*
- [21] *The Supreme Administrative Court Decision No. 523 / Employees' Judgment / Cassation / 2013 on 28/8/2014, published in the decisions of the State Council for the year 2014.*
- [22] *The Supreme Administrative Court No. 511/512 / Employees Judgment / Cassation / 2014 on 3/3/2016, unpublished.*