

## INEFFECTIVE DISMISSAL AND ITS IMPACT ON WORKERS WITH FAMILY MEMBERS WHO HAVE DEGENERATIVE AND TERMINAL ILLNESSES

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### Abstract

*The present investigation deals with a current theme, and with an important incidence for the worker, and that starts from the following problem: The lack of stipulation of ineffective dismissal in favor of workers who have relatives with degenerative and terminal diseases, violates the right to life and health, and demand for a reformatory process in the labor legal bodies of the States. With the silver problem, the following objective is proposed: "Establish a well-founded need to include in labor legislation, the figure of ineffective dismissal in favor of workers who have family members with degenerative and terminal diseases, to guarantee the right to health. and job stability. For this purpose, a descriptive-explanatory investigation will be carried out, in which the survey technique will be applied, in order to obtain a scientific and well-founded result.*

**Keywords:** Worker, illness, health, job stability

### INTRODUCTION

Workers, like all human beings, in addition to the activities for which they were hired, must go through unexpected events and / or force majeure that can affect their emotional life and therefore affect their work performance. Certainly, it must be considered that a worker is not a computer that can be programmed to execute an action mechanically and without emotions that can affect him, that is why it is necessary to identify all the circumstances surrounding the personal life of the worker to protect him, help him and prevent his right to work from being violated. The aforementioned has led to raise as a problem of the present investigation the following: The lack of stipulation of ineffective dismissal in favor of workers who have family members with degenerative and terminal diseases, violates the right to life and health, and demands a reform process in the labor legal bodies of the States.

Indeed, the whole family is exposed to the fact that one of its members may go through degenerative diseases and that could even require palliative care such as Alzheimer's, Cancer, Acquired Immunodeficiency Syndrome, heart diseases that are advanced, chronic kidney diseases, Alzheimer's disease (INCMNSZ, 2017). For this purpose, it is necessary to indicate what the WHO indicates regarding what should be understood by disease: "Alteration or deviation of the physiological state in one or more parts of the body, for generally known causes, manifested by characteristic symptoms and signs, and whose evolution is more or less predictable" (WHO, 2019). Faced with all these calamities, workers must have the guarantee that they will not be separated from their job, since their job stability in the living conditions in which their family member can be found is essential, either to be able to provide treatment and all medical expenses, as well as to be able to sustain the expenses demanded by the home and the livelihood of the worker himself, In addition, it should not be forgotten that job stability is not limited to a domestic law that only exists in Ecuador, on the contrary it is recognized in international instruments that clearly guarantee "The stability of workers in their jobs" (OAS, 1988). Indeed, helping a worker to be able to sustain his employment when he



has a relative within the second degree of consanguinity with a degenerative and terminal disease, in addition to guaranteeing the right to work established in the article of the Constitution of the Republic, will guarantee an extremely important human right such as the right to both physical and mental health. since in addition to the fact that by guaranteeing their job they are complying with the most elementary notions of humanity. Indeed, health is a state of absolute well-being in the physical, mental and social spheres (WHO, 1,946). For this purpose, it is necessary that the figure of ineffective dismissal not only protects pregnant workers, breastfeeding workers, and union leaders, but it is important that it benefits workers with a family member among whom will be their father, grandfather, son, grandson, or brother, with a degenerative and terminal disease, considering a degenerative disease to one that with the advance of time progresses the harmful effects on cells, tissues or organs (IGUALADOR, 2021) and in this way the necessary economic sustenance can be guaranteed, in these cases it must also be remembered that it is also important that in case a dismissed worker who is in this situation does not want to return to his work, he can be assisted with compensation equivalent to a year to more than that which corresponds to untimely dismissal, as established today in favor of workers established in article 195. 1 of the Labour Code of Ecuador. All this is justified in view of the fact that a disease can indeed be estimated as a crisis (FERNANDEZ, 2004)

At present, when a worker who has a family member - in the health conditions indicated - is subject to untimely dismissal, he has no legal protection that would allow him to continue to keep his job and therefore the economic sustenance that he urgently and urgently needs; Unfortunately, there may be cases of workers who may be subject to untimely dismissal with a family situation in which their spouse, their child, their parents, may be affected by an illness. That is why the figure of ineffective dismissal should also benefit this group of workers, since it allows them to be reinstated if they have been separated from their job without any legal basis, or be compensated with a high economic value in case they do not want to return to their functions.

#### METHODS

This research is of a descriptive-explanatory nature in view of the fact that from the question that if the lack of stipulation of ineffective dismissal in favor of workers who have family members with degenerative and terminal diseases, violates the right to life and health, and demands a reform process in the labor legal bodies of the States, It leads to seek an answer to the aforementioned question, which is in accordance with the labor reality that many workers may suffer.

In this research an explanation will be made with methodological basis in which the survey will be applied as a technique, which will constitute the basis of the results achieved in this research. This research will also proceed with the collection of bibliographic and documentary legal data where it will show that the subject studied is relevant to the current labor context.

#### RESULTS

The results of this research are consistent with the objective of the same, that is: Establish the need to include in labor legislation, the figure of ineffective dismissal in favor of workers who have family members with degenerative and terminal diseases, to guarantee the right to health and job stability. For this purpose, the technique of interviewing 97 legal professionals registered in the forum of Lawyers of the province of Tungurahua was applied, after the application of the corresponding formula, according to the following questions:

##### Question 1

Do you consider that the worker who has his spouse, or family member with degenerative and terminal disease should be protected with the labor figure of ineffective dismissal

Table 1

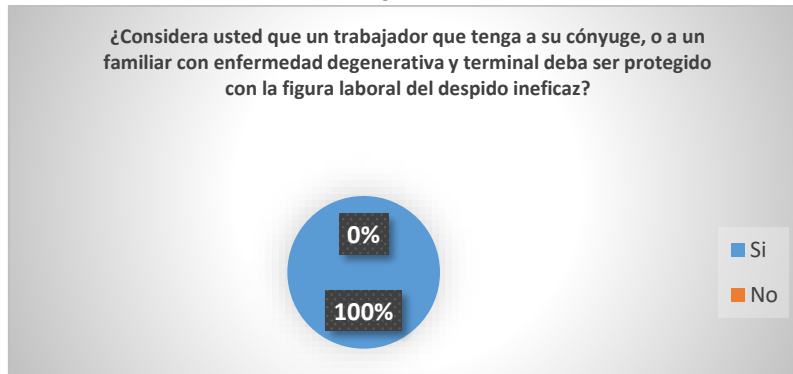
CATEGORY	FREQUENCY	PERCENTAGE
Yes	97	100%
No	0	0%



TOTAL	97	100%
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Figure 1



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**Analysis and interpretation**

From the results of question number one, it is concluded that 100% of the legal professionals surveyed consider that a worker should be protected with the labor figure of ineffective dismissal in case he has his spouse or a family member with a degenerative and terminal disease. This means that it is necessary that the ineffective dismissal extends its scope of protection to workers who are in this family situation, since if it is the object of an untimely dismissal the situation of the sick spouse or family member could be aggravated by not having the necessary economic support, more than the support needed by the worker himself.

**Question 2**

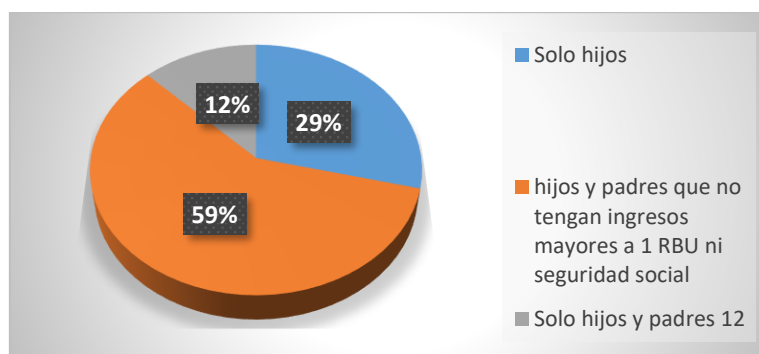
Which family members of the worker referred to in question 1, do you think should be considered in the case of ineffective dismissal that favours the worker himself.

Table 2

CATEGORY	FREQUENCY	PERCENTAGE
Children only	28	29%
Only children and parents who do not have income greater than 1 RBU or social security	57	59%
Only children and parents	12	12%
TOTAL	97	100%

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Figure 2



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**Analysis and interpretation**

From the results obtained had asked, it is concluded that the majority of respondents consider that the figure of ineffective dismissal should only protect workers who have a child or one of their parents who do not have income greater than a UBI or social security. Which means that this labor figure must be applied in favor of those workers whose family and economic situation demands special protection, since the worker is often the one who provides economic support to cover the medical expenses of the sick relative.

**Question 3**

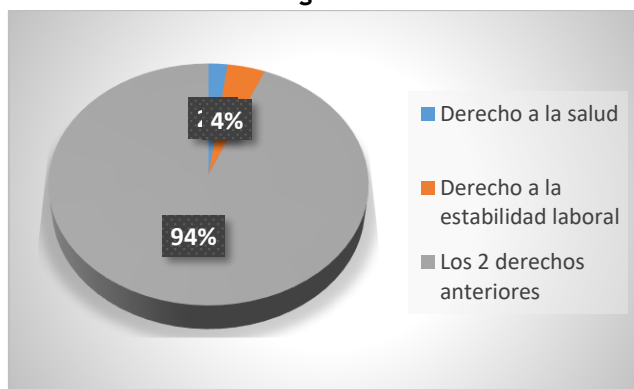
By extending the protection granted by the figure of ineffective dismissal to workers who have a spouse or family member with degenerative and terminal disease, what right do you consider would be guaranteed:

**Table 3**

CATEGORY	FREQUENCY	PERCENTAGE
Right to health	2	2%
Right to job stability	4	4%
All of the above rights	91	94%
TOTAL	97	100%

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**Figure 3**



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**Analysis and interpretation**

From the results obtained from question 3, it is concluded that almost all legal professionals surveyed state that, by extending the protection of the labor figure of ineffective dismissal, in favor of workers whose spouse or family member has degenerative and terminal diseases, the right to health and job stability would be guaranteed. Which means that this research aims to guarantee the health of the sick family member and the mental health of the worker himself, in addition to guaranteeing the permanence in his job with which he has to provide sustenance at home.

Therefore, it is concluded that the result obtained from this research consists of the need to establish in the labor legislation the figure of ineffective dismissal in favor of workers who have their spouse a child, or one of their parents with a degenerative and terminal disease, and it should be emphasized that in the case of parents the breadth of the figure of ineffective dismissal would have a place as long as the sick parent lacks sufficient economic income to allow him to pay for his medical expenses, considering for this purpose those parents whose income is less than a unified basic remuneration of the worker in general, which would guarantee the right to physical and mental health of both the sick spouse or family member and the job stability of the worker, with which human rights such as the Constitution of the Republic itself would be respected and guaranteed.



## DISCUSSION

The results obtained in this research show the need for labor legislation to include special protection for workers who go through an unfavorable family situation when their spouse or children or one of their parents is suffering from a degenerative and terminal disease protection that is fully justified by the urgent need to cover the large medical expenses required to treat a disease like this effectively for a logical and obvious sense of humanity you can not separate a worker through the untimely dismissal of his work activity that is what gives him economic sustenance, Hello and although it must be recognized that the Labor Code grants several rights to workers that tend to protect him as the most vulnerable part of the employment relationship it is also true that it is necessary to take In account of other facts that may happen to the worker and that are important to protect to guarantee human and constitutional rights such as the same right to health and job stability, in fact the worker should not be seen only as a person who with his work is able to produce or provide a service for the company, but as an individual possessing rights and with a human nature full of emotions and difficulties with which one cannot be indifferent; in addition to the fact that respect for all their human rights is basic, and not only consists of the right of a single human right, since these are interdependent, which means that some rights directly affect the enjoyment of others (Prosalus, Red Cross, 2014). And that when it wants it can dispense with the services of the same without considering pressing situations that the worker may have as is the case with the situation of pregnant women or workers who are breastfeeding and union leaders whom Ecuadorian labor legislation justly protects by declaring the untimely dismissal to which they are subject has been declared ineffective, forcing the company to reinstate the worker to his or her work or in turn if it is the worker's will not to return to his or her work activity To be compensated with a spatial and higher economic value compared to what a normal worker would receive for untimely dismissal. Indeed, it is inhumane and an attack on the human rights of the worker that of his sick spouse or family member who is dismissed unexpectedly when he is the economic breadwinner of the family, so that leaving him unemployed would not be a logical or adequate measure. Indeed, the human rights to health and job security are seriously affected; In addition to the right to work itself, we must not forget that "work is a right and a social duty" (Constitution of the Republic of Ecuador, 2008). On the other hand, it must be considered that a terminal illness entails specific care that has a high cost in the emotional order and can affect the economy of the home (MARÍN, 2010). In addition to the fact that a terminally ill person cannot be stripped of the economic scare that allows him to carry out his last stage of life in a humane way, in effect, dying in a dignified manner entails that there are ways that are more or less worthy to die (ZAMORA, 2012) It is also necessary to consider the fact that the worker is not intended to remain at work even if there are legal reasons to separate him. On the contrary, it is claimed that the worker has not separated from his work because there is no legal or logical reason to do so.

The results of this research are novel so that no similar research has been found and with the same approach, in the same way in Comparative Law it has not been possible to find legislation that establishes this protection to workers who are unfavorable family condition due to the illness of their spouse, of your child or parent whose income is less than the minimum remuneration established in their countries. However, there are leaves that favor workers in case of illness of the referred persons, thus, for example, within Ecuadorian legislation a leave of up to 25 days is established in case of hospitalization or with degenerative pathology of the children (VILLAGOMEZ, 2020), leave that is also determined in favor of public servants (LOSEP, 2022). However, as mentioned, there is no precedent in investigations or in comparative law that protect the figure of ineffective dismissal in favor of workers who are in the aforementioned circumstances, so the result of this investigation as said is novel and protects the worker who is in this situation highly difficult to cope with both emotionally and economically.

## CONCLUSION

In view of the difficult emotional and economic situation that a worker has to endure when his spouse, his child, or one of his parents (provided that his income is less than a unified basic remuneration) have a degenerative and terminal disease, it is necessary that within Ecuadorian legislation and in

that of all countries he is protected with the figure of ineffective dismissal, to avoid that it can be subject to untimely dismissal and thereby lose the economic sustenance so necessary when one of the aforementioned loved ones is in a state of health where economic expenses and emotional stability can be affected by losing their job without a legal cause to be separated. It is also necessary to establish that if the worker does not wish to return to work, he will be compensated with the value of 12 remunerations, as is considered in the case of a pregnant worker who has been subject to untimely dismissal.

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