

# 護理勞動權益： 勞工自願辭職、 預告期間與違約金

Labor Right for Nursing Stuff: Voluntary Resignation,  
Period for Announcement and Punitive Damage

邱慧洳 Hui-Ju Chiu \*



## 摘 要

不定期勞動契約之勞工，若自願性基於個人因素提出離職申請，應依勞動基準法第15條第2項規定準用同法第16條第1項規定預告雇主，惟若未遵守預告期間之規定，致生損害於雇主，雇主可對之請求損害賠償或違約金。本文擬介紹一則擬離職之護理人員未遵守預告期間之規定，遭醫院雇主流償違約金之判決。本件之爭點涉及勞工自願辭職、預告期間、債務不履行損害賠償與違約金等概念，本文擬藉此判決探究之。

If a labor with indefinite contract resigned on the personal ground voluntarily, he/she should make the employer an

\*臺北護理健康大學通識教育中心教授（Professor, General Education Center, Taipei University of Nursing and Health Sciences）

關鍵詞：自願辭職（voluntary resignation）、債務不履行損害賠償（compensation for damage due to non-performance for contract）、違約金（punitive damage）、預告期間（period for announcement）、護理人員（nursing stuff）

DOI：10.3966/241553062021060056010

announcement according to paragraph 15 section 2 of Labor Standard Act in combination with paragraph 16 section 1 of the same act. If the norm of the period for announcement wasn't be obeyed and made the employer damage, the latter could claim him/her about compensation for the damage or about punitive damage. A judgment, in which a nursing stuff didn't obey the norm and was claimed about punitive damage by the employer, would be introduced in this essay. The legal issues in that judgment were about concepts like the voluntary resignation, the period for announcement, the compensation for damage due to non-performance of contract, and punitive damage. These are the topics in this essay.

---

## 壹、案例事實

護理人員甲為X醫院之員工，於X醫院服務已滿5年，其於2006年6月21日以欲離職為由向X醫院索取離職申請單，旋於同年6月30日離職，未依勞動基準法（下稱勞基法）之規定於離職前30日向X醫院預告即自行離職。X醫院主張其院內勞工皆須提前排定下一個月之工作班表，甲擔任手術室之專職護理人員，具特殊資格，其代替性較一般護理人員為低。甲突然離職，嚴重影響人力調度，對已排定之手術病患增加不可預期之風險，除增加相關人事費用支出外，並造成X醫院營收相當損失。兩造勞動契約第14條第3項之約定為「護理人員未於一個月前提出離職申請，視同違規離職」與第15條第2項之約定為「護理人員違規離職，應於離職當日給付X醫院違規賠償金最近一個月總薪」，準此，X醫院主張甲未於一個月前提出離職申請，視同違規離職，應賠償其一個月全薪<sup>1</sup>。

---

1 本件改編自臺灣新竹地方法院竹北簡易庭96年度竹北小字第42號民事