

護理勞動權益： 雇主違反勞工法令 與勞工被迫辭職

Labor Right of Nursing Staff :
Employer Breaking the Labor Laws and
Employee Being Forced to Resign

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摘 要

雇主違反勞動契約或勞工法令，致有損害勞工權益之虞者，勞工得不經預告終止契約，勞工依此規定終止契約，應自知悉其情形之日起30日內為之。本文擬介紹一則護理人員主張雇主違反勞工法令，即未落實職業安全衛生設施規則所定之義務，進而終止其與雇主間勞動契約之判決。本件之爭點涉及「雇主違反勞動契約或勞工法令」、「有損害勞工權益之虞」之解釋、除斥期間等概念，本文擬藉此判決探究之。

Employee could terminate the contract without denunciation if the employer had broken the labor contract or the labor laws, causing damaging the rights of the

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關鍵詞：除斥期間 (preemption)、被迫辭職 (being forced to resign)、勞工法令 (labor laws)、職業安全衛生 (labor safety and health)、護理人員 (nursing staff)

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employee possibly. Accordingly, they should terminate the contract within 30 days since knowing the facts mentioned above. A judgment would be introduced in this essay that the nursing staff argued that the employer had broken the labor laws, without fulfillment of the duties according to the norms for the labor safety and health, and terminated the labor contract with the employer. The legal issues in it were about the concepts like the employer breaking the labor contract or the labor laws, damaging the rights of the employee possibly and the preemption. These are the topics of this essay by introducing the judgment.

壹、案例事實

護理人員甲任職於X洗腎診所，其於2012年6月19日收拾機器管路時，被丟棄在地上之洗腎用蝴蝶針彈起扎傷無名指，此蝴蝶針乃自罹患C型肝炎之洗腎病人身上所拔下，甲害怕遭感染，急於了解處理流程與通報機制，詢問當時在場之組長乙，遂得知X診所並無處理流程，嗣後緊急以電子郵件詢問工作傷害受害人協會與臺灣基層護理產業工會，始知悉雇主依職業安全衛生設施規則（原勞工安全衛生設施規則，於2014年7月1日修正名稱）第297條之1第1項第6款與第7款規定負有「感染預防教育訓練」與「扎傷事故之防治」之義務¹；

1 職業安全衛生設施規則第297條之1第1項規定：「雇主對於工作場所所有生物病原體危害之虞者，應採取下列感染預防措施：一、危害暴露範圍之確認。二、相關機械、設備、器具等之管理及檢點。三、警告傳達及標示。四、健康管理。五、感染預防作業標準。六、感染預防教育訓練。七、扎傷事故之防治。八、個人防護具之採購、管理及配戴演練。九、緊急應變。十、感染事故之報告、調查、評估、統計、追蹤、隱私權維護及紀錄。十一、感染預防之績效檢討及修正。十二、其他經中央主管機關指定者。」