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DISMISSALS GUIDE EUROPE

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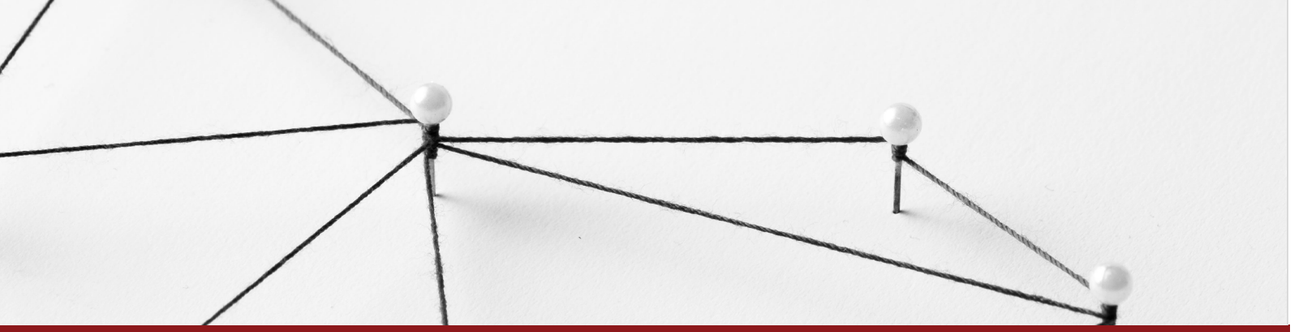

Introduction

Andersen, through the member and collaborating firms of Andersen Global and its European Employment Practice, has prepared this guide to provide an overview of termination procedures for employees in 30 European countries.

Even though European countries are regulated with the same principles, the considerable differences between one country and another make sometimes difficult for multinational companies to have an overview of how terminations work in different jurisdictions.

Each of the 30 countries has its country report, summarizing its individual and collective dismissal rules, formal requirements that must be observed, and the participation of employees representatives and state authorities.

We are confident that the Guide will help you considering this type of measure in different locations of the European continent. In case you are interested in receiving more detailed information, please contact one of the members of the Andersen Employment Practice who will be glad to give further advice.

Our Employment Practice has a proven track record in delivering best-in-class and seamless service.

- ☑ Layoffs
- ☑ Collective conflicts
- ☑ Outsourcing
- ☑ Litigation and labor disputes
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For what reasons can an employer terminate the employment relationship?

A termination is only valid if it is due to reasons relating to the capability (cf. under a.) or the behavior (cf. under b.) of the employee or by operational reasons of the employer which prevent the employee from continuing to be employed in the establishment (cf. under c.).

- ☑ A dismissal related to capabilities of the employee is possible if reasons in the person of the employee prevent further employment. Examples of personal reasons are not performing the job to the required standards, unjustified absences, continuous mistake, bad performance, loss of professional, physical, or personal qualifications, etc. From court practice, the employer should be able to substantiate that the employee does not have the ability and aptitude to perform the work owed and does not regain this ability in a timely manner despite previous warning or evaluations.

- ☑ A dismissal for conduct-related reasons is possible if the employee has violated contractual obligations and this has led to an impairment of the employment relationship. Examples of conduct-related reasons are being late frequently, rejection of work, unexcused absence, unauthorized start of vacation, theft, sexual harassment, insulting the supervisor or colleagues, competitive activity or unauthorized secondary employment, violation of the obligation to present a medical certificate in case of incapacity to work, etc. A warning is always the less severe remedy and it should generally precede a termination for conduct-related reasons, unless in the event of severe breach of the principle of trust by the employee where employer may apply the immediate termination.

- ☑ A reason for termination for operational reasons exists if an employer terminates an employment relationship because it cannot continue to employ the employee in the establishment due to operational requirements. The Albanian Labor Code ("Labor Code") provides that the termination of an employment relationship can occur due to the operational needs of employer and that restructuring is recognized as a valid cause for termination. Also, the court practice has tested that termination due to reorganization is considered as a termination for cause, subject to certain requirements.

More specifically, in order to prove that reorganization is the cause for termination of the em-ployment relationship, the employer is advised to: (i) produce written resolution on the need for redundancy of the job positions due to specific reason(s), e.g. introduction of new technology, closure of a unit, relocation of operations, decrease in the revenues of the company, etc.; (ii) be able to prove that the remaining employee(s) in the same or similar job positions, have higher qualifications and are more experienced than the employees made redundant. Although the exist-ing legislation does not provide for any mandatory selection criteria it is advisable that

they are non-discriminatory and objectively defined and stated (e.g. disciplinary records, skills, experience, standard of work performance, attendance, etc.); (iii) avoid recruiting new staff in the same or similar job position that was made redundant for at least 6 (six) months from the dismissal(s).

Is there special protection against dismissal for certain groups of employees?

An employer cannot terminate an employment contract, if, according to the existing legislation, the employee benefits payment related to temporary disability to work from the employer or from the Social Insurance Fund for a period not longer than one year, as well as in the case where the employee is on paid/unpaid leave given to him/her by the employer.

Pregnant women enjoy special protection against dismissal during pregnancy and during the maternity leave. After employee returns from maternity leave, it is not prohibited to terminate her employment relationship, however, the employer should be able to substantiate that the termination cause is not related to the pregnancy/child delivery.

The representative of the trade union cannot be dismissed without the consent of the trade union. If the trade union does not grant the consent, the employer may dismiss the representative of the trade union only if the court has found unfair the decision of the trade union.

Furthermore, the termination of employment contract by the employer is considered to be without cause if made for one of the below reasons:

- Retaliation against employee complaints (trying to enforce rights): Employer uses termi-nation as a means of retaliation against employee who raises complaints and tries to en-force rights under contract and law.
- Employee having to perform mandatory legal obligation: This is the case when the em-ployer terminates the contract because the employee has had to fulfil a mandatory legal obligation during the employment (e.g. appeared in court as witness thus unable to at-tend work);
- Discrimination: Employer terminates the contract due to employee's personal features (race, color, sex, age, civil status, family obligations, pregnancy, religious or political be-liefs, nationality, social status).
- Employee exercising constitutional rights: Employer terminate the contract due to reasons relating to the employee exercising constitution rights.
- Employer does not inform employee on the grounds for termination; and
- Employee membership or non-membership in trade union organizations/activities: Employer terminates the contract because of the employee's election or non-election to join a trade union or alike.

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What notice periods must be observed?

According to the Labor Code, there is a schedule of notice terms ranging to:

- 2 (two) weeks for workers who have been hired by the employer for up to 6 (six) months,
- 1 (one) month for workers who have been hired by the employer for more than 6 (six) months up to 2 (two) years,
- 2 (two) months for workers who have been hired by the employer for more than 2 (two) years up to 5 (five) years, and
- 3 (three) months for workers who have been hired by the employer for more than 5 (five) years.

The seniority for the calculation of the notice period is determined by the date of receipt of the notice. Previous employment with the same employer without a legal connection, or in another company in the same corporate group will generally not be counted. The statutory periods of notice cannot be shortened by virtue of a written agreement.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

An employment relationship may be terminated without notice for good cause when there are serious circumstances that do not allow, according to the good faith principle, the continuance of the employment relations. This kind of termination should be followed only as an exception, in the case that (a) an employee performs a serious breach of his contractual obligations (as for exam-ple fraudulent actions to the damage of the employer), or (b) in the case that the employee per-forms a minor breach of his contractual obligations repeatedly, despite the employer has provid-ed written warnings to the employee.

The Labor Code does not expressly define the term "serious misconduct" and "repeated minor misconduct" leaving it to the discretion of the courts. When deciding whether the just causes for termination with immediate effect under the Labor Code exist or not, the courts, in addition to the gravity of the misconduct, have evaluated and considered factors such as the employee's cir-cumstances (including length of service, previous disciplinary record and personal circumstanc-es), the nature of the job and the circumstances of the breach itself. Also, as a matter of court practice, for qualifying the misconduct of such gravity that it makes a continued employment relationship intolerable (due to the breach of principle of good faith), it is important for the em-ployer to prove the actual damage caused to the employer.

In case of immediate termination, the statutory termination procedure and the notice term will not apply, as the termination will be effective immediately as of the day of the notification sent to the employee.

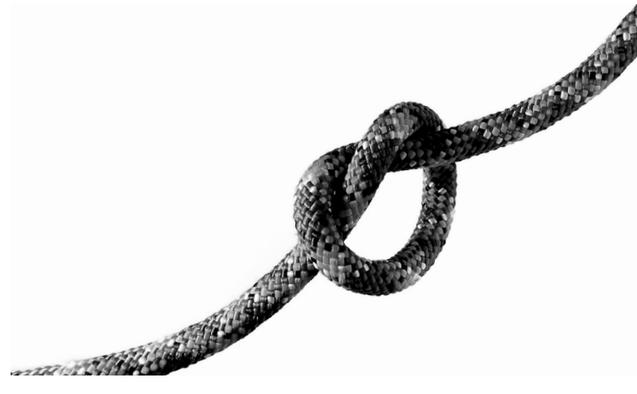
Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The following procedure, as prescribed under the Labor Code, must be followed by an employer seeking to terminate an employment contract (except for the immediate termination cases):

- The employer should conduct a meeting with the employee after having provided 72 (seven-ty-two) hours advance written notice of such meeting. During this meeting, the employer should discuss the reasons for the intended termination with the employee and acknowledge the employee's objections, if any.
- Termination of the employment contract as well as the cause(s) for such termination must be communicated to the employee in writing within a period of 48 (forty-eight) hours to one week after the afore-mentioned discussion.

In both cases of normal and immediate termination of employment the employer must specify the reasons for termination in the letter of dismissal.

The dismissal must be in written form to be valid. The electronic form is accepted only if it has been agreed in writing in the employment contract. The letter of dismissal must be delivered to the employee by post or by handing it over. The dismissal should always be signed by an authorized representative of the employer. Written proof of receipt or countersigned copy by employee is strongly advised to be kept as an evidence.



What measures must be taken in the event of a planned mass layoff?

A mass layoff or collective dismissal is defined under the Labor Code as the intended dismissal by the employer for reasons unrelated to the employee (e.g. need for company restructuring) of one or more employees within a period of 90 (ninety) days.

A mass layoff occurs, if within 90 calendar days the threshold of the number of employees to be dismissed is at least: (i) 10 (ten) for enterprises employing up to 100 (one hundred) employees; (ii) 15 (fifteen) for the enterprises employing between 100 (one hundred) and 200 (two hundred) employees; or (iii) 20 (twenty) for enterprises employing more than 200 (two hundred) employees.

In case of a planned mass layoff the company has a statutory duty to start a mandatory infor-mation and consultation procedure with the trade union representatives and the Ministry of Econ-omy and Finance. In the absence of a trade union, the procedure is started by way of a notice visibly placed in the workplace by the employer, disclosing the following information:

- the reason(s) for dismissal;
- the number of the employees to be dismissed;
- the number of employees employed; and
- the period during which it is planned to execute the dismissals.

One copy of this notice must also be submitted to the Ministry of Economy and Finance.

To attempt reaching an agreement, the company shall then undertake the consultation procedure with all the employees (in the absence of an employees' trade union) within a period of not less than 30 (thirty) days of the date of the notice, unless the employer accepts a longer period. If the parties fail to reach agreement, the Ministry shall assist them in reaching an agreement within 30 (thirty) days of the date on which the employer informed the Ministry in writing, in the aims of completing the consultation procedure. The Ministry cannot prohibit the collective dismissals. Afterwards, the company can inform the employees of their dismissal and begin the termination of employment contracts providing the relevant notice periods.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

According to the Labor Code, prior to taking a decision for reorganization of the company or any other decisions that may have important and essential effects in the work organization in the company and that may affect the legal status of the employees, the employer informs the repre-sentative of the trade union or in its absence the representatives of the employees and holds consultations with them regarding the reasons for such decisions, the social, economic and legal consequences for employees and for any measures which aim to avoid or mitigate such conse-quences.

Also, the relevant articles of the collective agreement, if applicable, or any other agreement be-tween the employer and the representative of the employees/ work council about obligatory con-sultation procedures, must be checked.

The recommendations of the works council/ employees' representative, if any, should not be bind-ing on the final decisions of the competent bodies of the company unless the provisions of the collective agreement (if any at all) or By-Laws of the employer provide otherwise.

The trade unions, if any, and the Ministry of Economy and Finance must be involved in the case of mass layoffs.

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Is there an obligation to offer severance payment in the case of dismissal?

Albanian law provides for the legal obligation to pay a seniority bonus in the event of an individual or collective dismissal on the condition that the employee has worked for more than 3 (three) years with the company. Such seniority bonus ought to be at least as much as half monthly sala-ry for each complete working year, calculated on the basis of the salary existing at the termina-tion of the employment relationship, or, if the salary is variable, calculated on the average salary of the preceding year and is indexed. Seniority bonus shall not be required to be paid in cases of immediate termination by employer for justified reasons, which are all material breaches that under the good faith principle, do not allow for the employer to be required to continue the em-ployment relationship with the employee.

Furthermore, severance payments may arise in individual employment contracts or a collective bargaining agreement or the internal policies of the employer.

Appropriate severance payments are also agreed as part of mutual termination agreements that may be concluded before, during or after the dismissal. In this case, it is up to the parties to negotiate the amount of the severance payment.

What legal protection options does the dismissed employee have and to what result do they lead?

There are different levels of protection available to the employee, spanning from the grounds of termination, to the procedure of termination itself. Albanian labor law grants the employee in the private sector financial damage compensation and no job protection in the event of an invalid termination.

If the employee is of the opinion that the dismissal is invalid, he/she may file a claim with the Labor Inspectorate or initiate a lawsuit for wrongful termination in the Civil Court within 180 days, starting from the day on which the notice period expired. The employee has the right to sue the employer for termination due to: (i) lack of proper justification; (ii) observation of termination pro-cedure and the notice period, and/ or (ii) failure to pay the payments due to the employee.

If the dismissal was based on discrimination (e.g., gender, age, political beliefs, or union activity), this can be challenged under anti-discrimination laws. The employee can file a complaint with the Commissioner for Protection from Discrimination or pursue a court claim.

Austria

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For what reasons can an employer terminate the employment relationship?

Austrian law provides for the possibility of ordinary termination or immediate dismissal. Furthermore, Austrian law currently maintains a distinction between employees ("Angestellte"), typically associated with a higher level of education, and workers ("Arbeiter"), whose roles are generally more physically oriented. This classification impacts termination rules, especially concerning notice periods, although these differences are gradually being phased out.

- ☑ Ordinary termination can be made without a specific cause, as long as the relevant notice periods and legal requirements are followed. Common reasons for ordinary termination include operational reasons, performance-related reasons, behavioral reasons or personal reasons, but the employer is not obliged to give a specific reason to the employee in general. Nevertheless, as of November 1, 2023, employees have the right to request a written explanation from the employer within five calendar days of receiving the termination notice. The employer is required to provide the written justification within five calendar days of receiving the request.

In addition to the notice period to be observed, the employer must note that court approval is required for the termination of certain groups of employees (e.g. for employees in protected categories like pregnant employees or those on parental leave).

- ☑ Immediate dismissal is reserved for significant violations of the employment contract or applicable law. In such cases, the employer has the right to terminate the employment relationship without notice. However, this action is subject to strict scrutiny and must be based on substantial, well-documented reasons. The possible reasons for immediate dismissal are specified in the relevant statutory provisions. These include, for example, gross misconduct, serious breaches of duty, criminal conduct, assault or defamation or breach of trust.

Is there special protection against dismissal for certain groups of employees?

In Austria, the following categories of employees are afforded special protection: (i) expectant mothers, as well as mothers and fathers who are on parental leave or working part-time due to the birth of a child (parental part-time employment); (ii) members of works councils or equivalent representatives, such as trusted advisors for employees with disabilities; (iii) employees who are called up for military, training or civilian service and women in training service; (iv) employees with disabilities who are protected under relevant legal provisions; (v) caretakers (in accordance with Caretaker Act).

These protected groups cannot be terminated or dismissed without specific legal approval or under certain circumstances, ensuring that their rights are safeguarded.

Expecting mothers and parents on parental leave or parental part-time

In Austria, pregnant women and new mothers/ parents are granted special protection against termination and dismissal to safeguard their rights during pregnancy, maternity leave, parental leave and parental part-time.

The protection against termination and dismissal for pregnant employees begins from the moment they are informed of their pregnancy and continues until 4 months after childbirth or until the end of maternity leave, whichever is longer. During this period, an employee generally cannot be terminated/dismissed. If a termination or dismissal is issued during this time, it is invalid, unless the employer obtains prior approval from the labor and social court. The court may only approve the dismissal if there is a reason for dismissal listed in the Maternity Protection Act (*"Mutterschutzgesetz"*).

Additionally, during parental leave or part-time parental work, there is extended protection against termination and dismissal. A dismissal during this period is only possible in very rare cases, such as when the business is shut down or due to other compelling economic reasons. But even in these cases, the employer must obtain approval from the labor and social court. The protection against dismissal and termination ends 4 weeks after the end of parental part-time leave, but no later than 4 weeks after the child's 4th birthday.

Between the child's age of four and seven (the statutory maximum), employees are granted protection against so-called "dismissal for cause". If a dismissal occurs due to the employee's parental part-time leave, it may be contested as an inadmissible termination in labor and social courts.

Employee representatives

Works council members cannot be terminated without the prior consent of the labor and social court. This applies to any form of termination, whether ordinary or immediate, during their term in office. The dismissal protection for works council members applies from the moment they are elected until their term ends and it continues even after their mandate if the termination occurs within a certain period after the end of their mandate.

The same protection applies to substitute members of the works council, election committee members, and employees who have announced their intention to run for works council elections. In such cases, dismissal can only be carried out with the prior approval of the labor and social court, ensuring that an employee is not unfairly dismissed due to their involvement in employee representation.

Military/civilian service

Employees who are called up for military, training or civilian service in Austria and women in training service are granted special protection against termination and dismissal while fulfilling their service period. The protection against dismissal and termination ends one month after the completion of military, training or civilian service. If the duration of the military, training or civilian service was less than two months, the protection against dismissal and termination ends approximately after half the duration of the service. Dismissals and terminations may only occur if prior court approval has been obtained.

It should be noted, however, that the employee must notify the employer immediately after receiving the notification of assignment and must resume service with the employer within six working days of the end of civilian service. Furthermore, the dismissal protection does not apply in certain exceptional cases, such as if the business is permanently closed.

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Employees with special needs

The Disability Employment Act (*"Behinderteneinstellungsgesetz"*) provides enhanced protection against termination for employees having disabilities with a degree of disability of at least 50 percent (*"begünstigte Behinderte"*). This protection ensures that the employment relationship of a disabled employee can only be terminated with prior approval from the Disability Committee (*"Behindertenausschuss"*). Approval must be requested at least four weeks before the intended termination. In exceptional cases, retroactive approval may be granted. Any termination without this approval is considered invalid.

The enhanced dismissal protection does not apply in case of dismissal without notice, during the first four years of a new employment relationship with a disabled employee hired after January 1, 2011 and during the first six months of a new employment relationship or an existing relationship established before January 1, 2011, if the employee becomes a disabled person during that period.

Additionally, exceptions may apply in cases of work-related accidents or internal job transfers within the same corporate group.

Caretakers

Caretakers are employees who have entered into an employment contract for the cleaning, maintenance, and oversight of buildings. If the employment contract was concluded before June 30, 2000, these employees are classified as caretakers, and the Caretaker Act (*"Hausbesorgergesetz"*) applies to them. For employment relationships established after June 30, 2000, they are also referred to as caretakers, but general employment law applies instead.

What notice periods must be observed?

The notice period refers to the duration between the termination notice and the actual end date of the employment relationship. It begins the day after the termination notice is received. The employer's notice period increases based on the employee's length of service.

Unless otherwise specified in a contract or collective agreement, the employer must adhere to the following notice periods: (i) 1st and 2nd year of service: 6 weeks; (ii) from the 3rd year of service: 2 months; (iii) from the 6th year of service: 3 months; (iv) from the 16th year of service: 4 months; (v) from the 26th year of service: 5 months.

Employees can terminate their employment by giving 1 month's notice to the last day of any calendar month. This notice period may be extended to up to 6 months through mutual agreement.

Dismissal provisions often provide for equal notice periods for employers and employees. The notice period for the employee can never exceed that of the employer.

As of 2021, workers are generally treated the same as employees regarding notice periods. However, there is an exception for workers who are employed in seasonal businesses. For seasonal industries, deviations from the (new) legal regulation can still be regulated by collective agreement. Seasonal industries are those in which the number of seasonal businesses exceeds the number of non-seasonal businesses.

In accordance with the statutory provisions, a cancellation only takes effect at the end of the quarter (cancellation date). However, collective agreements or individual contracts may also provide for termination on the 15th and/or the last day of the month.

Under what circumstances is an extraordinary termination admissible without respecting a notice period?

In Austria, extraordinary termination (dismissal without notice) can occur under specific circumstances where it is unreasonable to expect the employer-employee relationship to continue. The reasons vary depending on whether the person is categorized as a worker or an employee, and they typically relate to severe misconduct or situations that make the continuation of employment unacceptable. Grounds for dismissal are listed by way of example for salaried employees under the Salaried Employees Act (*"Angestelltengesetz"*), while they are listed in full for workers under the Industrial Code (*"Gewerbeordnung"*).

Employees under the Salaried Employees Act can, for example, be dismissed if they: (i) are unfaithful in their work or commit an act that makes them appear unworthy of the employer's trust; (ii) are unable to perform the work promised or appropriate in the circumstances; (iii) fail to perform the work without a legitimate reason (e.g. illness, misfortune) or persistently refuse to perform it; (iv) operate an in-dependent commercial enterprise without the employer's consent or are in the same line of business as the employer; (iii) fail or persistently refuse to perform work without a legitimate reason (e.g. illness, misfortune); (iv) operate an independent commercial enterprise without the employer's consent or carry on business in the same line of business as the employer for their own account or for the account of a third party; (v) are prevented from performing their duties by a lengthy prison sentence or by absence for a considerable period of time under the circumstances, except due to illness or misfortune; (vi) are guilty of breaches of morality or honor or assault (e.g. theft, embezzlement), or (vi) are guilty of offenses against the employer or employees (e.g. theft, embezzlement, assault).

Workers within the meaning of the Industrial Code can only be dismissed if they: (i) deceived the trade owner when concluding the employment contract by submitting false certificates, papers, etc. or did not inform him/her of the existence of another employment relationship; (ii) persistently violate their duties; (iii) are found to be unfit for the work to be performed; (iv) are found to be incompetent for the work to be performed; (v) leave work without authorization; (vi) become addicted to alcohol despite repeated unsuccessful warnings; (vii) are guilty of theft, embezzlement or any other criminal act which makes them appear unworthy of the employer's trust; (viii) are guilty of gross dishonor, assault or dangerous threats against the employer or employees; (ix) betray a business or trade secret or engage in a detrimental side business without the consent of the trade owner; (x) attempt to incite other workers to disobedience, rebellion against the trade owner, disorderly conduct or immoral or unlawful acts; (xi) are afflicted with a deterrent illness or become unfit for work through their own fault, or (xii) have to serve a prison sentence exceeding 14 days.

Both categories require that the employer act immediately when discovering grounds for extraordinary termination. The employer must typically conduct a swift investigation to justify the immediate dismissal and ensure the dismissal is legally sound. Failure to adhere to procedural requirements could render the dismissal invalid.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Notice of termination may be given either verbally or in writing in general. However, for legal certainty, it is recommended to provide the notice in writing. Furthermore, many collective bargaining agreements (CBAs) or individual employment contracts may mandate that terminations be provided in writing. When written form is required, the notice should explicitly state the intention to terminate the employment relationship and specify the effective date of termination.

The notice of termination must be delivered in a manner that ensures receipt can be verified. This may involve: (i) Personal Delivery: The notice is handed to the employee in person, preferably with the employee signing an acknowledgment of receipt; or (ii) Registered Mail or Courier: If not delivered in person, the notice should be sent in a manner that provides proof of the date and confirmation of delivery.

The employer is not obligated to specify the reasons for termination or disclose the exact grounds for dismissal unless the employee requests for it within five days. If an immediate dismissal is challenged by the employee, the employer may present reasons discovered after the dismissal, as long as these reasons are sufficiently serious.

The responsibility for issuing the termination lies with an individual who has the legal authority to represent the employer, such as the Managing Director, HR Manager, or another authorized HR representative.

What measures must be taken in the event of a planned mass layoff?

A mass layoff in Austria is defined based on the number of employees affected, relative to the size of the workforce. A notification requirement applies to employers planning to terminate employment relationships within a 30-day period of (i) at least 5 employees in employers with 21-99 employees; (ii) at least 5% of the workforce in employers with 100-599 employees; (iii) at least 30 employees in employers with 600 or more employees; (iv) the layoff of at least 5 employees over the age of 50, regardless of the company size. The "number of employees" used for the calculations includes all employees, including trainees and managers. It should be noted that both employer-initiated terminations and mutually agreed terminations must be added together to determine the total number of intended terminations.

Employers planning a mass layoff must comply with strict regulations to ensure the process is transparent and lawful, as follows:

If a works council is in place, before initiating a mass layoff, the employer must first inform and consult with the works council in writing. The information provided must include: (i) the reasons for the planned layoff; (ii) the number and categories of employees affected; (iii) the timeframe over which the layoffs are planned and (iv) any proposed measures to mitigate the consequences of the layoffs. Furthermore, the employer must give the works council the opportunity to provide its opinion or suggestions within a reasonable timeframe.

Due to the early warning system, the Public Employment Service (*"Arbeitsmarktservice/ AMS"*) must be notified in writing at least 30 days before the first termination of an employment relationship, with the notification co-signed by the works council. This allows the Public Employment Service to begin searching for new job opportunities for the affected employees at an early stage. If there is no works council, a copy of the notification must be provided to all affected employees. If terminations are issued before the expiration of the 30-day period, they are legally ineffective, unless prior approval has been obtained from the regional office of the Public Employment Service for the early termination.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Employers are obligated to engage with works councils and trade unions when planning significant employment changes or restructuring efforts. Works councils must be informed and consulted on various matters affecting employees, while trade unions play a key role in collective bargaining and protecting workers' rights. Additionally, employers must notify state authorities, such as the Public Employment Service, about mass layoffs (as previously outlined) and comply with government regulations to ensure legal compliance and support for affected employees. These participation obligations aim to protect employees' interests, foster fair labor practices and maintain a collaborative approach to employment matters.

☑ Works council:

A works council may be established in any organization employing more than 5 adult, non-related employees. It has numerous powers, including supervisory and control rights, informational rights, intervention rights and the right to consult. The works council must be established through a works council election. It is the responsibility of the workforce, not the employer, to organize and conduct the election for the establishment of the works council.

If the employee explicitly requests, they may consult with the works council prior to a planned mutual termination of the employment contract. In this case, a mutual termination cannot be legally agreed upon for the following two working days.

The employer must inform the works council prior to the intended termination of an employee. The works council has one week to provide a statement. During this period, the employer must engage in consultations with the works council if requested. Any dismissal issued before the end of this period is legally invalid unless the works council has already issued its statement.

If the works council has explicitly objected to the intended termination, it may challenge the termination in court upon the employee's request within one week. Should the works council choose not to take legal action, the employee has the right to contest the dismissal themselves within two weeks after the works council's deadline has passed. If the works council does not provide a statement regarding the intended termination within the one-week period, the employee may independently challenge the termination in court within two weeks of receiving the dismissal notice.

In the case of immediate dismissal, the works council must be notified immediately and, if requested, consultations must take place within three days. If the works council agrees to the dismissal, it can only be challenged in court on grounds of prohibited discrimination and for relevance of a frowned motive. If the works council remains silent or explicitly objects, the dismissal may also be contested on the basis of social unlawfulness, claiming that the dismissal imposes disproportionate economic hardship on the employee. In contrast to regular terminations, failure to notify the works council in advance does not invalidate the immediate dismissal.

☑ Trade Unions:

Although there is no direct requirement to involve trade unions in every termination or dismissal, trade unions often support employees in disputes and may provide legal representation if a dismissal is contested. Terminations and dismissals must also comply with any provisions specified in collective bargaining agreements, which are often negotiated by trade unions.

Is there an obligation to offer severance payment in the case of dismissal?

☑ Old System

The old severance payment system applies to employment contracts that began before January 1, 2003. Under this system, severance payments (*"Abfertigung alt"*) are calculated based on the employee's length of service with the company.

Employees are entitled to severance pay if they are terminated by the employer or if the employment relationship ends due to mutual agreement, retirement, or the death of the employer. The amount of severance pay depends on the total duration of employment: (i) 3 years of service: 2 months' salary; (ii) 5 years of service: 3 months' salary; (iii) 10 years of service: 4 months' salary; (iv) 15 years of service: 6 months' salary; (v) 20 years of service: 9 months' salary; (vi) 25 years of service: 12 months' salary.

Severance pay under the old system is typically paid as a lump sum upon termination of employment. The amount is based on the average salary over the last year of employment. If an employee resigns voluntarily or is immediately dismissed for serious misconduct, they are not entitled to severance pay. However, there are exceptions, such as cases involving mutual agreements where severance pay can still be negotiated.

☑ New System

For employment relationships that began after January 1, 2003, a "New Severance System" has been implemented. Under the new system, severance payments are no longer directly tied to the reason for termination. Instead, it is a fund-based system managed through employer contributions. Employers are required to contribute 1.53 percent of the employee's monthly gross salary to a special severance fund, known as the *"Mitarbeitervorsorgekasse"* or Employee Severance and Retirement Fund from the 2nd month of the employment relationship on. The contribution to the severance payment fund must be paid by the employer to the health insurance fund together with the other social security contributions. The health insurance fund then forwards the corresponding contribution to the severance pay fund. The severance fund is required to hold an account for each employee, which is used to calculate the severance payment. Employees must be provided with written information annually (as well as upon termination of employment) regarding their accrued severance entitlements and the main guidelines of the investment strategy.

Employees become entitled to the funds accrued in their account when their employment ends, regardless of whether they are dismissed, resign, or leave the job for other reasons, such as retirement. Upon termination, employees have the choice to either receive the accrued amount as a lumpsum payment or leave the money in the severance fund, where it continues to accrue for future claims or can be used for retirement benefits. It should be noted, however, that employees are not entitled to a payout if they resign; instead, the amount remains in the employee's account with the severance pay fund and continues to be invested there.

What legal protection options does the dismissed employee have and to what result do they lead?

Under the Austrian Labor Constitution Act (*"Arbeitsverfassungsgesetz"*), there are specific reasons that can make an employer's termination or dismissal subject to challenge. These reasons may include prohibited motives and/or the social injustice of the termination/dismissal. Although terminations/ dismissals based on such prohibited motives or social unfairness are initially effective, they can be contested in court. However, this is only applicable in businesses where a works council exists or could be established (with at least five employees). Certain special laws, such as the Equal Treatment Act (*"Gleichbehandlungsgesetz"*), may provide additional avenues for challenging a termination/ dismissal, bypassing the works council requirement. A termination or dismissal is considered socially unjustified (socially improper) if it significantly impairs the employee's interests. The court assesses the employee's entire social situation, including their prospects of reentering the job market, potential income loss exceeding 20 percent, family circumstances, and any other sources of income. In the case of employees who were over 50 years old at the time of hiring and were employed after June 30, 2017, challenges related to reintegration into the labor market due to their age are not given special consideration. For employees hired before June 30, 2017, the previous legal framework still applies, meaning that the higher age of the employee is only not considered during the first two years of employment. If a significant impairment of the employee's interests is identified, the employer must provide evidence of either personal reasons (e.g. violations of duties, substantial underperformance, longterm illness, lack of cooperation) or opera-tional reasons that prevent the continuation of employment (e.g. rationalization, reorganization, decline in orders). In cases where there are personal and/or operational grounds for dismissal, the court must balance the interests of the employee and the employer. If the works council explicitly objects to a dismissal for operational reasons, a "social comparison" must be conducted. In this process, an assessment is made to determine whether, based on social factors, the termination/dismissal would cause greater hardship to the affected employee compared to other employees in the same company and job category. If this is the case, the termination/dismissal is deemed socially unjustified.

> If this is the case, the termination/ dismissal is deemed socially unjustified."

A prohibited motive exists when the termination or dismissal is based on reasons such as: (i) joining, participating in, or being a member of a trade union; (ii) applying for a works council position; (iii) serving as a safety representative or safety expert; (iv) impending conscription for military, training, or civil service, or (v) asserting claims that the employer disputes. If both a prohibited and a non-prohibited reason for the termination/dismissal are present, the termination/dismissal can only be contested if the prohibited motive was a significant factor in the decision to terminate the employment.

To challenge a termination or dismissal, it is important to note that the employee must have been employed by the company for at least six months, and the following deadlines have also be adhered to: (i) if the works council explicitly opposes the termination/ dismissal, the employee may challenge the dismissal within 1 week after being notified of the termination/ dismissal (at the employee's request); (ii) if the works council fails to address the termination/dismissal challenge and in all other cases, the employee may contest the termination/dismissal within 2 weeks, either personally or through a lawyer.

If a termination or dismissal is successfully challenged in court, resulting in its invalidation, the employment relationship remains continuous. In cases where there was a period of unemployment between the actual termination and the final court ruling, a financial settlement must be made. This means the employer must pay any outstanding salaries, and the employee is required to reimburse any unemployment benefits received during this period.

Belgium

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For what reasons can an employer terminate the employment relationship?

Under Belgian law, the procedures for ending an employment relationship vary depending on the type of employment contract.

It is important to distinguish between (a) termination of a fixed-term contract (or a contract for clearly defined work) and (b) termination of an indefinite-term contract.

Additionally, certain termination methods may apply regardless of the type of contract. These include (c) termination by mutual agreement and (d) termination for serious (just) cause.

Finally, termination may also result from (e) a collective dismissal.

☑ Dismissal under a fixed-term contract or a contract for clearly defined work

Under a fixed-term contract or a contract for clearly defined work, the parties must specify, in writing at the time the contract is signed, the date on which the contract will end. On that date, the employee ceases working, and the employer must provide the necessary employment-related documents. If the employee continues working beyond the contractual end date, the contract automatically converts into an indefinite-term employment contract.

If the contract is terminated before its end date, the penalty is a severance pay equivalent to the salary that would have been due until the end date, though this amount cannot exceed twice the severance pay that would have been owed if the contract had been for an indefinite period.

☑ Dismissal under an indefinite-term employment contract

Under an indefinite-term employment contract, the employer may end the employment relationship either by giving notice *(see questions 3 and 5)* or immediately, with payment of a severance pay *(see question 8).*

☑ Termination by mutual agreement

When both the employer and the employee wish to end the employment contract together, the termination can occur by mutual agreement. In this case, the parties have considerable flexibility. This agreement requires a written document in which the employer and the employee specify the termination of the employment contract and set out the terms of the termination.

☑ Dismissal for Serious (just) Cause

Dismissal for serious (just) cause means that the employer finds, in the employee's conduct, a serious fault that makes any professional collaboration immediately and permanently impossible. The serious (just) cause can be invoked regardless of the type of contract and must be exceptional.

It requires compliance with several formalities, both in form and substance *(see question 4)*.

☑ Collective dismissal

A collective dismissal in Belgium concerns dismissals motivated by economic or technical reasons, affecting a minimum number of employees, i.e., at least six or more, depending on the total number of employees, in a workforce of at least 20 employees.

In other words, a collective dismissal is defined as one that affects a specified number of employees over a period of 60 days, as follows:

- ✓ At least 10 employees in employers with more than 20 but fewer than 100 employees.
- ✓ At least 10% of employees in employers with an average of at least 100 but fewer than 300 employees.
- ✓ At least 30 employees in employers with an average of at least 300 employees.

The employer must comply with certain rules, including an obligation to provide information and the payment of special compensation in the event of a collective dismissal.

Is there special protection against dismissal for certain groups of employees?

Under Belgian law, certain employees benefit from special protection against dismissal due to holding a specific function or being in a particular situation.

It is strictly prohibited to dismiss employees who hold certain functions within the employer, including union representatives (except for reasons unrelated to their mandate), members (or candidates) of the works council and/or the health and safety committee, and safety advisors, among others. This prohibition does not apply in cases of dismissal for economic or technical reasons, as well as for dismissal due to serious (just) cause.

Additionally, some employees are protected due to their particular situation, and their dismissal is prohibited if it is related to the reason for the protection. These include, among others, pregnant employees, breastfeeding employees, employees on paternity, birth, or adoption leave, employees who are victims of discrimination, employees who claim to be victims of violence, psychological harassment, or sexual harassment at work, employees who have made certain remarks in the work regulations logbook, and employees taking political leave, etc.

What notice periods must be observed?

The duration of the notice period depends on the employee's seniority and is expressed in weeks if the employee was hired after January 1, 2014. For any employee hired before this date, the notice period is calculated in two parts: the first part is based on the seniority acquired up to December 31, 2013 (the old calculation system, which is based on months), and the second part is calculated based on the seniority accumulated after that date, as detailed in the table below (the new calculation system).

Seniority	Notice period
< 3 months	1 Week
between 3 months and < 4 months	3 Weeks
between 4 months and < 5 months	4 Weeks
between 5 months and < 6 months	5 Weeks
between 6 months and < 9 months	6 Weeks
between 9 months and < 12 months	7 Weeks
between 12 months and < 15 months	8 Weeks
between 15 months and < 18 months	9 Weeks
between 18 months and < 21 months	10 Weeks
between 21 months and < 24 months	11 Weeks
between 2 years and < 3 years	12 Weeks
between 3 years and < 4 years	13 Weeks
between 4 years and < 5 years	15 Weeks
from 5 years onward	+ 3 weeks per year of seniority
between 20 years and < 21 years	+ 2 weeks per year of seniority
from 21 years onward	+ 1 week per year of seniority

Under what circumstances is an extraordinary termination without respecting a notice period possible?

When the employer decides to terminate the employment contract with immediate effect by paying a severance pay equivalent to the legal notice period, the employee is not required to serve the notice period.

In addition to this option, the employer can also terminate the employment contract due to a serious breach of conduct by the employee. In cases of a valid dismissal for serious (just) cause, the employer is not obligated to observe a notice period or pay any severance pay.

A dismissal for serious cause must follow a strict formal procedure within a specific timeframe: the employer must inform the employee in writing about the serious cause within 3 working days of learning about the facts justifying the dismissal. Then, within 3 days of this first notification, the employer must provide a detailed explanation of the serious breach of conduct in a letter. This letter must be sent by registered mail, served by a bailiff, or handed directly to the employee with a signed acknowledgment of receipt. Common examples of serious breaches of conduct in practice include absence from work, insubordination, refusal to work, dishonesty, falsification, theft, intoxication, insults, sexual harassment, and more.

Failure to comply with any of the formal or substantive requirements makes the dismissal invalid, and the employer will be required to pay a severance pay equivalent to the legal notice period.

> Failure to meet these requirements renders the dismissal invalid, requiring severance pay equivalent to the legal notice period."

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The notice period must be notified in writing, under penalty of nullity, in the correct language and specifying the start date and duration of the notice period. It is important that the notice is given by a person who has the authority to terminate the employment contract within the company.

This written notice must be delivered, also under penalty of nullity, by registered mail with effect from the third working day after the date of dispatch or by bailiff's service with immediate effect. The notice period starts on the Monday following the week during which the notice was given, as the notice takes effect only on the third working day after its dispatch.

The use of the correct language in the notice of the pre-termination is a complex and very important issue in Belgium. As a general rule, the language of the workplace location determines the language to be used, which will be either French, Dutch, or German.

What measures must be taken in the event of a planned collective dismissal?

The employer must inform the employee representatives in detail and in writing about the reasons for the collective dismissal, the categories of employees affected, and the selection criteria.

Next, the employer must organize a meeting with the representatives, allowing them to ask questions and suggest alternatives.

The employer must consider and respond to these suggestions, then send the collective dismissal notification to the relevant authorities.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The employer must formally notify the planned collective dismissal to the authorities (subregional employment service) and provide a copy to the employee representatives. The employer must ensure that a 30-day period is respected to allow employees (or their representatives) to raise any objections. Failure to comply with the information and consultation procedures may result in the employee continuing to perform their work contract, and in any case, the salary will continue to be paid.

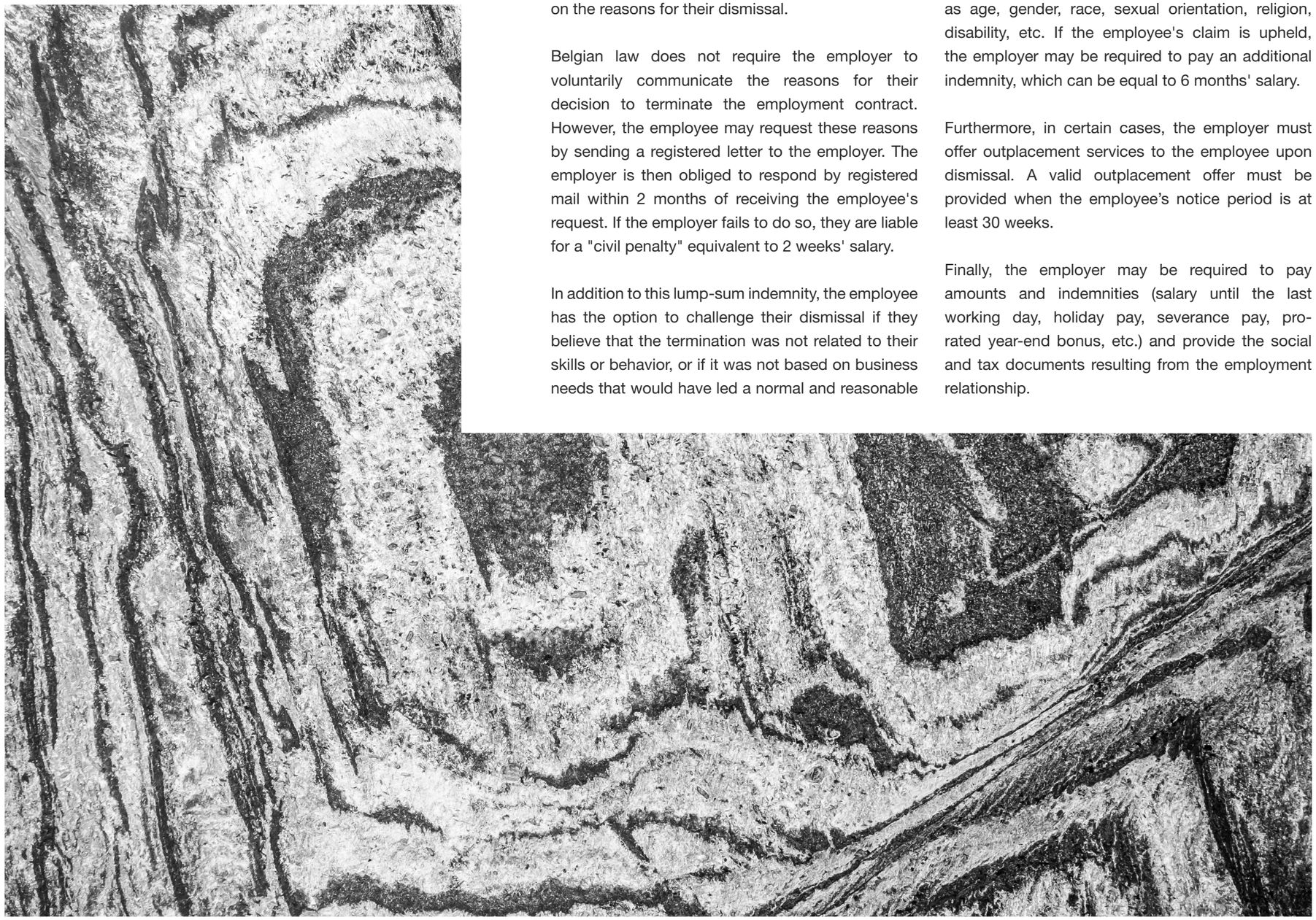
Is there an obligation to offer severance payment in the case of dismissal?

When the employer decides to terminate the contract by paying a severance pay, he must ensure payment of an indemnity equivalent to the current salary for either the entire notice period or the remaining part of it.

This termination is not subject to any specific formal requirements. However, for proof purposes, it is recommended to confirm the termination of the contract in writing.

The compensatory notice indemnity is calculated based on two criteria: the duration of the notice period and the employee's annual salary, which includes the current salary (both fixed and variable) as well as all benefits accrued under the employment contract. This severance pay is subject to social security contributions under Belgian law.

In some cases, regardless of how the employee is dismissed, a non-compete clause is included in the employment contract, under which the employee agrees not to compete with the employer, either as an employee or by developing an independent business. For the clause to be valid, it must meet strict and cumulative conditions: it must be in writing; apply to an employment contract where the gross annual salary exceeds EUR 41,969 (amount in 2024) at the time of termination; relate to similar activities; be geographically limited; not exceed 12 months from the date the employment relationship ended; and include the payment of a compensatory lump-sum indemnity by the employer if the employer decides not to waive the non-compete clause within 15 days of the termination of the employment contract. If the employer wishes to waive the non-compete, they must confirm this waiver to the employee within 15 days of the effective termination date. If they fail to do so, the employer will owe an additional indemnity to the employee.



What legal protection options does the dismissed employee have and to what result do they lead?

In practice, the issue of the motivation for dismissal is often used in legal proceedings by employees — especially those with long seniority — in order to seek additional compensation. Employees who have been dismissed and have an indefinite-term employment contract, with a minimum of 6 months of seniority, may be entitled to additional compensation based on the reasons for their dismissal.

Belgian law does not require the employer to voluntarily communicate the reasons for their decision to terminate the employment contract. However, the employee may request these reasons by sending a registered letter to the employer. The employer is then obliged to respond by registered mail within 2 months of receiving the employee's request. If the employer fails to do so, they are liable for a "civil penalty" equivalent to 2 weeks' salary.

In addition to this lump-sum indemnity, the employee has the option to challenge their dismissal if they believe that the termination was not related to their skills or behavior, or if it was not based on business needs that would have led a normal and reasonable employer to make such a decision. The judge will assess, based on the specific circumstances of the case, whether the dismissal is clearly unreasonable. If so, the employer may be ordered to pay an additional indemnity, ranging from 3 weeks to 17 weeks of salary.

Another option the employee can pursue in cases where an employer terminates the contract of an employee based on criteria protected by law, such as age, gender, race, sexual orientation, religion, disability, etc. If the employee's claim is upheld, the employer may be required to pay an additional indemnity, which can be equal to 6 months' salary.

Furthermore, in certain cases, the employer must offer outplacement services to the employee upon dismissal. A valid outplacement offer must be provided when the employee's notice period is at least 30 weeks.

Finally, the employer may be required to pay amounts and indemnities (salary until the last working day, holiday pay, severance pay, pro-rated year-end bonus, etc.) and provide the social and tax documents resulting from the employment relationship.

Bosnia and Herzegovina

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For what reasons can an employer terminate the employment relationship?

Given that Bosnia and Herzegovina consists of two entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina, we will look at the specifics of labor laws that are in force in these entities. In the Republic of Srpska, an employer may terminate the employment contract for the following reasons:

- Justified reasons: i) if the employee does not achieve the expected results of work or does not have the necessary knowledge and skills to perform the work; ii) if the employee has been convicted of a criminal offense at work or in connection with work; iii) if due to technological, economic or organizational changes the need to perform a certain job ceases or there is a reduction in the scope of work, and the employer cannot provide the employee with another job; iv) if the employee refuses to conclude an annex to the employment contract; c) if the employee does not return to work with the employer within five days from the day of expiration of the period of suspension of employment, i.e. unpaid leave;

- Due to violation of the work obligation: i) if the employee refuses to perform his work obligations determined by the employment contract; ii) commits theft, intentional destruction, damage or illegally disposes of the employer's assets, as well as causing damage to third parties which the employer is obliged to compensate; iii) abuse of position, with material or other harmful consequences for the employer; iv) discloses a business secret; c) intentionally prevents or hinders other employees from performing their work duties, thereby disrupting the work process with the employer; vi) violently treats the employer, other employees and third parties during work; vii) is unjustifiably absent from work for three days in a calendar year; viii) if he gave incorrect information which was decisive for the establishment of the employment relationship; ix) commit gender-based violence, discrimination, harassment and sexual harassment of other employees or mobbing; x) if he commits another serious breach of duty determined by the collective agreement.

- Due to non-compliance with work discipline: i) if the employee unjustifiably refuses to perform his duties or employer's orders in accordance with the law; ii) if he fails to submit a certificate of temporary incapacity for work; iii) if he abuses the right to leave due to temporary incapacity for work; iv) due to coming to work under the influence of alcohol or other intoxicants; c) if his behavior constitutes an act of committing a criminal offense at work or in connection with work; vi) if an employee working in high-risk jobs, where special medical fitness has been established as a special condition for work, refuses to be subjected to a health fitness assessment; vii) if he does not respect the work discipline prescribed by the act of the employer, i.e. if his behavior is such that he cannot continue working for the employer.

The labor law of the Federation of Bosnia and Herzegovina is not as explicit as in Republic of Srpska when it comes to the dismissal reasons and the employer may terminate the employment contract: i) if such dismissal is justified for economic, technical or organizational reasons, ii) if the employee is unable to perform its obligations under the employment contract, iii) due to violation of the work obligation.

Is there special protection against dismissal for certain groups of employees?

It is also important to mention that there is a special protection against dismissal provided for women whose employment contract cannot be terminated due to pregnancy or because a woman uses maternity leave. This protection is provided in both entities, while in the Republic of Srpska, there is also special protection against dismissal provided for employees who are injured at work or are suffering from an occupational disease whose contracts also cannot be terminated while they are medically incapable of work, regardless of whether the contract has been concluded for an indefinite or definite period of time.

What notice periods must be observed?

When it comes to the notice periods, in the Republic of Srpska, it may not be shorter than 15 calendar days if the termination of the employment contract is given by the employee, nor shorter than 30 calendar days if the termination of the employment contract is given by the employer. The notice period starts from the day of delivery of the notice to the employee. The general act and the employment contract regulate in more detail the cases and conditions for the notice period, the duration of the notice period and other issues related to the rights and obligations of the employee and the employer during the notice period. Also, the employer is obliged to allow the employee to use one day off per week during the notice period to look for a new job.

> The employer must allow one day off per week to look for a new job."

In the Federation of Bosnia and Herzegovina, the notice period cannot be shorter than seven days in case the employee terminates the employment contract, nor shorter than 14 days in case the employer terminates the employment contract. A longer duration of the notice period may be determined by the collective bargaining agreement, rulebook and employment contract, but not longer than 30 days when the employee terminates the employment, or three months when the employer terminates the employment.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Also, the employer may terminate the employment contract, without the obligation to respect the notice period in case the employee is responsible for a serious breach of his duties or work discipline. In addition, in the Republic of Srpska, the employer may terminate the employment contract without the obligation to comply with the notice period if the employee is convicted of a criminal offense at work or in connection with work, or if the employee does not return to work with the employer within five days from the day of expiration of the period of suspension of employment, i.e. unpaid leave.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Employers should be aware that the decision on termination of the employment contract must contain information on the notice period, must be made in writing and delivered personally to the employee. The execution of these decisions is always the responsibility of the director or a person authorized by him.

What measures must be taken in the event of a planned mass layoff?

In the event of a planned mass layoff, the employer in the Republic of Srpska is obliged to adopt a redundancy program if determines that due to technological, economic or organizational reasons, within 90 days, will cease the need for work of employees who are employed for an indefinite period of time, for at least: i) 10 employees if the employer has more than 30 and less than 100 employees; ii) 10% of the employees if the employer has more than 100 employees; iii) 30 employees regardless of the total number of employees. This program must contain the reasons for the cessation of the need for employees, the total number employees, qualification structure, age and years of service and jobs they perform, criteria for determining redundancy, employment measures: transfer to other jobs, work with another employer, retraining or additional training, part-time work, but not less than half of full-time work and other measures, funds for resolving the socio-economic position of redundant employees, deadline for termination of employment contract and so on. The proposal of the program has to be submitted to the trade union or the works council and to the Employment Bureau no later than 8days from the day of determining the program proposal, for the purpose of giving an opinion. The trade union or workss' council is obliged to submit an opinion on the program proposal within 15 days from the day of submitting the proposal, and the Employment Service is obliged to submit to the employer within the same period a proposal for retraining, additional training, self-employment, employment with other employers, as well as other measures for new employment of redundant employees. The employer is obliged to consider the opinion of the trade union and the Bureau and to inform them of its position within 8days from the day of submitting the opinion. The criteria for determining redundancy cannot be the absence of employees from work due to temporary incapacity for work, pregnancy, maternity leave, childcare and special childcare.

In the Federation of Bosnia and Herzegovina, an employer who employs more than 30 employees, and who intends to terminate the employment contract of at least 5 employees for economic, technical or organizational reasons within the three months, is obliged to consult with the employees' council and the union. An employer is also obliged to adopt the redundancy program which must contain the same elements as stated for the Republic of Srpska.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Unfortunately, the role of works councils is marginalized in the jurisdictions of Bosnia and Herzegovina, and the decisions and opinions of works councils are not binding on employers nor in individual cases affect the legality of termination procedures. Trade unions are not involved in dismissals in any way. In the Republic of Srpska there is an Agency for the peaceful settlement of disputes whose role is to mediate in agreements between employees and employers regarding the realization of the right to a labor relationship. In case the dispute cannot be resolved before the Agency, the parties will be instructed to look for court proceedings.

Is there an obligation to offer severance payment in the case of dismissal?

The employer is obliged to pay severance pay to an employee who has concluded an employment contract for an indefinite period of time, and whose employment is terminated by the employer after at least two years of uninterrupted employment with the employer, unless the employment is terminated due to violation of the work obligation or work discipline.

The amount of severance pay is determined by the general act or the employment contract and depends on the length of work of the employee with the employer and amounts to at least one third of the average monthly salary after tax paid to the employee in the last three months before the termination of the employment contract. The severance pay may not exceed six average monthly salaries paid to the employee in the last three months before the termination of the employment contract.

> "The severance pay may not exceed six average monthly salaries paid in the last three months before termination."

What legal protection options does the dismissed employee have and to what result do they lead?

In the Republic of Srpska, an employeewho considers that the termination of his employment contract has violated his employment right may file a motion for amicable settlement of the labor dispute before the Agency for amicable settlement of the labor disputes or a lawsuit to the competent court for the protection of that right. The right to file a motion and a lawsuit is not conditioned by the employee's prior appeal to the employer for protection of his rights. The employee may file a proposal for amicable settlement of the labor dispute within 30 days from the day of delivery of the decision on dismissal or a lawsuit for protection of rights before the competent court no later than six months from the date of delivery of the decision.

In the Federation of Bosina and Herzegovina, an employee who considers that his employer has violated his employment right by terminating his contract is obliged to demand from the employer to exercise that right within 30 days from the day of delivery of the decision. If the employer does not comply with the request within 30 days from the day of submitting the request for protection of rights or reaching an agreement on the peaceful settlement of the dispute, the employee may file a lawsuit before the competent court within a further 90 days.

Bulgaria

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For what reasons can an employer terminate the employment relationship?

In Bulgaria the grounds for unilateral termination by the employer can be divided into three major groups – due to reasons in the employee, due to reasons in the employer and due to objective reasons.

- ☑ A dismissal for reasons in the employee is possible on the following grounds: where the employee lacks the capacity for efficient execution of the work; where the employee does not possess the educational level or professional qualification required for the work executed; upon refusal by the employee to follow the employer's undertaking or a division thereof, when the said undertaking or division relocates; upon qualifying for retirement due to acquired length of service and age; upon change of the requirements for execution of the position, if the employee does not satisfy the said requirements.

- ☑ A dismissal for reasons in the employer, which fall in the definition of business reasoning, is possible on the following grounds: upon full closure of the employing undertaking; upon closure of a part of the employing undertaking; staff cuts; upon reduction in the volume of work; upon idling for more than 15 working days.

- ☑ A dismissal for objective reasons is permissible in the following cases: upon expiration of the agreed term or completion of the assigned work; upon return to work of the substituted employee; where the position occupied by the employee must be vacated for the reinstatement of an unlawfully dismissed employee, where the employee is unable to perform the assigned work due to illness; upon the death of the employee; due to another objective reasons.

Is there special protection against dismissal for certain groups of employees?

Under some of the dismissal grounds the employer must obtain a preliminary permission from the labor inspectorate for each particular case in order to dismiss: a female employee, who is the mother of a child under three years of age; an occupational-rehabilitee; an employee suffering from a mental illness, diabetes, tuberculosis, professional illness, ischemic heart disease or oncological illness; an employee who has commenced the use of a permitted leave; an employee who has been elected as an employees' representative for the time until the said employee is in such capacity; an employee who has been elected as an employees' representative on health and safety at work for the time he serves in such a capacity; any employee, who is a member of a special negotiating body, a European Works Council or a representative body in a European Company or a European Cooperative Society, for the duration of performance of the functions thereof.

In the same cases an employer may dismiss an employee, who is a member of the trade union at the undertaking, of a territorial, industrial or national elective trade union governing body, during the time of occupation of the relevant trade union position and within six months after the said employee vacates office, only with the preliminary consent of the trade union body designated by decision of the central leadership of the trade union organization concerned.

Where so provided for in a collective agreement, the employer may dismiss an employee due to staff cuts or reduction in the volume of work after obtaining the advance consent of the relevant trade union body in the enterprise.

A pregnant employee or a female employee in an advanced stage of IVF treatment, may be dismissed only in case of a full closing of the undertaking, upon refusal by the employee to follow the employer's undertaking or a division thereof, when the said undertaking or division relocates; where the position occupied by the employee must be vacated for the reinstatement of an unlawfully dismissed employee, when the performance of the employment contract is objectively impossible; disciplinary dismissal or where the employee has been detained for the execution of a sentence. However, a disciplinary dismissal is permissible only after the labor inspectorate has granted a preliminary permission.

An employee, who are using leave due to childbirth, may be dismissed only upon final dissolution of the employer.

What notice periods must be observed?

The notice periods under the Bulgarian legislation do not depend on the length of service of the employee. The notice period must be identical for both parties.
In case of an employment contract for an indefinite term the notice period may be stipulated between one and three months.
In case of an employment contract for a fixed term the notice period is three months, but not longer than the remaining part of the term.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

An employment relationship may be terminated without notice during the probation period, if such is stipulated. The probation period may not exceed six months.

Dismissal without observing the prior notice term is permissible in the following cases: disciplinary dismissal; where the employee has been detained for the execution of a sentence; the employee has been disqualified, by a sentence or according to an administrative procedure, from practicing a profession or from occupying the said position; where the employee is divested of the academic degree, required for the occupied position; where the employee refuses to accept a suitable work offered thereto upon occupational rehabilitation.

In any other cases the employer may not observe the notice period against severance payment amounting to the gross monthly remuneration for the unobserved notice period.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The dismissal must be in written form to be valid. The letter of dismissal must be delivered to the employee. The safest and most straightforward way is to hand it over directly to the employee. If the employee refuses to receive the dismissal order, the refusal must be evidenced by two witnesses. The dismissal should always be signed by an authorized

representative of the employer. Otherwise, the employee may immediately reject the dismissal and the dismissal is null and void.

The order needs to outline the grounds for the termination, the time frame of the termination and the due severance payments.

In case of a disciplinary dismissal, the employer must invite the employee to provide statement and explanation on the alleged violation prior issuing a motivated termination order.

What measures must be taken in the event of a planned mass layoff?

The Bulgarian legislation has implemented the European legislation on mass dismissals. In these cases the employer is entitled to execute the mass redundancies only after completing the procedure for information and consultation of the employees and notification of the Bulgarian Employment Agency.

Mass dismissals are dismissals effected on the employer's initiative for one or more reasons not related to the individual worker or employee concerned, where the number of dismissals is at least 10 in enterprises normally employing more than 20 and less than 100 workers and employees during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days; at least 10 per cent of the number of workers and employees in enterprises normally employing at least 100 but less than 300 workers and employees during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days; at least 30 in enterprises normally employing 300 workers and employees or more during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days.

If the employer has dismissed at least five workers and employees within 30 days, each succeeding termination of an employment relationship which is effected on the employer's initiative for other reasons not related to the employee shall be assimilated to the total number of dismissals for the purpose of calculating the number of dismissals.

In cases of mass dismissals the employer is obliged to execute the following preliminary actions: to initiate consultation and information proceedings with the employees or their representatives not later than 45 days prior to the dismissals; to notify the Bulgarian Employment Agency not later than 30 days prior to the dismissals regarding the number of the dismissed employees, the grounds for the termination and to secure evidence of performed proceedings for consultation and information within the legal term.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

With the exception of mass dismissals, or where the employer may dismiss an employee, who is a member of the trade union at the undertaking, of a territorial, industrial or national elective trade union governing body, during the time of occupation of the relevant trade union position and within six months after the said employee vacates office; or this is provided for in a collective agreement, the works councils, trade unions and state authorities do not participate in the dismissal procedures.

Is there an obligation to offer severance payment in the case of dismissal?

Where the notice period shall not be observed, the employee is entitled to a compensation in the amount of the gross remuneration of the worker/employee for the remaining term of the notice period that has not been observed.

Upon dismissal due to the full or partial closing-down of the undertaking, staff cuts or reduction of the volume of work, the employee is entitled to compensation by the employer. The compensation shall be in the amount of his/her gross remuneration for the period of unemployment but for no more than one month. If within that period the employee starts working for a lower remuneration, he/she shall be entitled to the difference for the said period.

Upon termination of the employment relationship due to illness, the employee shall be entitled to compensation by the employer in the amount of his/her total remuneration for a period of two months, provided that he/she has had at least 5 years of service and during the last 5 years of service has not received any compensation on the same grounds.

Upon termination of the employment relationship after the employee has acquired the right to retirement for the respective years of service and age, irrespective of the grounds for the termination, he/she is entitled to compensation by the employer in the amount of his/her gross remuneration for a period of two months; and where the employee has worked with the same employer for the last ten years, the compensation shall equal his/her gross remuneration for a period of six months.

Upon termination of the employment relationship the employee shall be entitled to cash compensation for unused paid annual leave. The compensation only applies to the days, the right of use of which has not expired by lapse of time.

What legal protection options does the dismissed employee have and to what result do they lead?

The Bulgarian legislation treats legal disputes as labor claims, where the subject is related to remunerations and other issues related to the conclusion, execution and termination of the employment, disputes over the official length of service of the employee; disputes over execution of collective labor rights.

The limitation periods for labor claims are as follows: one month for claims over unlawful disciplinary notes and limited liability of the employee; two months for claims over unlawful dismissal; three years in all other cases.

The Bulgarian legislation does not provide for specific labor courts and/or special out of court bodies for settlement of labor disputes. Labour disputes are examined by the general courts under the provisions of the Bulgarian Civil Procedure Code ("CPC"). Regarding these proceedings the CPC envisages a faster procedure, which due to the overload of the Bulgarian courts is ineffective and labor disputes may take years until the final court ruling.

The CPC provides for three instances proceedings – first, appellate and cassation. Where the dispute is over material interest under BGN 5,000 (approx. EUR 2,500) or over disputes for disciplinary notes and warnings the ruling of the appellate court is final.

The employees are freed from payment of state fees and expenses upon initiation of the labor claim. In case of a ruling in favor of the employee, the employer covers the fees and expenses for the court proceedings, while in case of a ruling against the employee, the fees and expenses are covered by the state budget.

Out of court settlement between the parties is admissible and the Bulgarian legislation does not provide any specific requirements, where the dispute is over labor matters.

in case the competent Bulgarian court finds the respective dismissal to be unlawful, the employee is entitled to claim a compensation amounting to up to 6 gross monthly salaries for the time he/she was unemployed, as well as reinstatement at his/her previous employment.

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For what reasons can an employer terminate the employment relationship?

The employer may terminate the employment contract on a regular or extraordinary notice of dismissal.

In relation to a regular notice of dismissal, the employer may terminate the employment contract with the prescribed or agreed notice period, if he or she has a justified reason for doing so, as follows: 1) if the need to perform a particular job ceases due to economic, technological or organizational reasons (business-conditioned dismissal) 2) if the employee is not able to properly perform his or her obligations from the employment relationship due to certain permanent characteristics or abilities (personally conditioned dismissal) 3) if the employee violates the obligations arising from the employment relationship (dismissal due to misconduct of the employee) or 4) if the employee did not satisfy during probationary period (dismissal due to dissatisfaction during probationary period). When deciding on business-conditioned dismissal, the employer shall take into account the duration of employment relationship, age and maintenance obligations charged to the employee, however, it shall not apply to employers employing less than twenty employees.
In case of an extraordinary notice of dismissal, the employer shall have a justified reason for termination the employment contract concluded for an open-ended or fixed-term period, without the obligation to comply with the prescribed or agreed notice period, if due to a particularly serious breach of the employment obligation or some other particularly important fact, taking into account all the circumstances and interests of both parties, the continuation of the employment relationship is not possible. The employment contract may be terminated exceptionally only within fifteen days from the day of becoming aware of the fact on which the extraordinary notice is based.

On the other hand, temporary absence from work due to illness or injury is not a justified reason for dismissal. Also, filing a complaint or an action, or participating in proceedings against an employer for violating an act, other regulation, collective agreement or working regulation, or addressing of employees to competent bodies of state authorities, shall not constitute a justified reason for dismissal. Addressing employees on reasonable suspicion of corruption or filing a report on that suspicion in good faith to responsible persons or competent bodies of state authorities, shall not constitute a justified reason for dismissal.

Is there special protection against dismissal for certain groups of employees?

During pregnancy, use of maternal, parental, adoptive, paternity leave or leave which is equivalent in terms of content and manner of use to the right to paternity leave, part-time work, part-time work for the purpose of increased child care, leave of a pregnant employee, leave of an employee who has given birth or an employee who is breastfeeding a child and leave or part-time work for the purposes of nursing care and care of a child with severe developmental disabilities, or within 15 days from the cessation of pregnancy or cessation of the use of these rights in accordance with the regulation on maternal and parental benefits, the employer may not dismiss from work a pregnant woman and a person exercising any of these rights.

Such dismissal shall be null and void if, on the day of dismissal, the employer was aware of the circumstances referred to in previous chapter or if the employee notifies his or her employer, within a period of fifteen days following the receipt of the notice of dismissal, of the circumstances referred to in the previous chapter, enclosing an appropriate certificate signed by an authorized physician or another authorized body.

Also, the Labor Act prescribes that an employee who has suffered an injury at work or has contracted an occupational disease, during a temporary incapacity for work during treatment or recovery from an injury at work or an occupational disease, may not be dismissed by the employer.

What notice periods must be observed?

In case of a regular notice of dismissal, the notice period may be defined by law or the employment contract.

The Labor Act defines that, in case of a regular notice of dismissal, the notice period shall be at least:

- ☑ two weeks, if the employee has been employed by the same employer for less than one year without interruption;
- ☑ one month, if the employee has been employed by the same employer for one year without interruption;
- ☑ one month and two weeks, if the employee has been employed by the same employer for two years without interruption;
- ☑ two months, if the employee has been employed by the same employer for five years without interruption;
- ☑ two months and two weeks, if the employee has been employed by the same employer for ten years without interruption; and
- ☑ three months, if the employee has been employed by the same employer for twenty years without interruption.

However, if an employee has been employed by the same employer for twenty years without interruption, the notice period is extended by two weeks if the employee has reached 50 years of age or by one month if the employee has reached 55 years of age. On the other hand, the Labor Act stipulates that the notice period applicable to dismissals for employee misconduct may be reduced to half the notice period defined in the Labor Act. Where an employee ceases to work before the expiration of the prescribed or agreed notice period at employer's request, the employer shall pay them a salary compensation equaling their salary and recognize all other rights such employee would have if they had actually worked up to the expiration date of the notice period. During the notice period, the employee has the right to be absent from work for no less than four hours per week and still receive salary compensation, provided they spend such time seeking new employment.

It is also important to note that, where an employment contract is terminated by the employee, the notice period may not exceed one month, unless the employee has a particularly important reason.

An employee who, at the time of termination of the employment contract has reached 65 years of age and 15 years of pensionable service, shall not be entitled to a notice period.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

As mentioned above, an employment contract may be terminated by an extraordinary notice of dismissal by giving a notice of termination within fifteen days of the date when the person concerned came to know about the fact upon which the extraordinary dismissal is based. However, it is important to notice that in relation to extraordinary dismissals, the employment contract may be terminated without allowing the prescribed or agreed notice period if the employer or the employee has a justified reason for termination of employment, if due to a particularly serious breach of the employment obligation or some other particularly important fact, taking into account all the circumstances and interests of both parties, the continuation of the employment relationship is not possible.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

An employee may terminate his or her employment contract, subject to a prescribed or agreed notice period, without specifying any reasons for doing so.

The dismissal given by the employer shall be in written form to be valid. The employer shall also give reasons for dismissal in written form. Furthermore, the letter of dismissal shall be delivered to the employee. Proper delivery is important because of the notice period which starts running from the first following day after the employee is handed the notice of dismissal. The safest and most straightforward way is to hand it over directly to the employee. It is important that the notice is given by a person who has the authority to terminate the employment contract within the company.

> The notice period begins on the first following day after the dismissal notice is properly delivered to the employee, ensuring clarity and compliance with legal requirements."

Moreover, before regular notice due to the misconduct of the employee, the employer shall warn the employee in written form of the obligation arising from the employment relationship and indicate to him or her the possibility of dismissal in the event of continued breach of that obligation, unless there are circumstances that do not justify expecting the employer to do so. Prior to the regular or extraordinary notice due to the misconduct of the employee, the employer is obliged to allow the employee to present his or her defense, unless circumstances exist due to which the employer cannot be reasonably expected to do so.

What measures must be taken in the event of a planned mass layoff?

An employer with whom, within a period of ninety days, the need for the work of at least twenty employees could cease to exist, of which the business-conditioned notice would terminate the employment contracts of at least five employees, shall be obliged to consult the works council in a timely manner and in the manner prescribed by the Labor Act in order to reach an agreement for the purpose of eliminating or reducing the need for the termination of the work of employees. The redundancy shall include employees whose employment relationship will be terminated by the business-conditioned notice and the agreement between the employer and the employee at the proposal of the employer.

The employer shall provide the works council with appropriate information in written form on the reasons why the need for employees' work could cease, the number of total employed employees, the number, occupation and jobs of employees for whose work the need could cease, the criteria for the selection of such employees, the amount and manner of calculation of severance pay and other benefits to employees and the measures taken by the employer to take care of redundant employees.

During the consultation procedure with the works council, the employer shall consider and explain all possibilities and proposals that could eliminate the intentional termination of the need for employees' work. The employer shall also inform the competent public employment service of the conducted consult with works council and submit to it the relevant data, data on the duration of the consult with the works council, the results and conclusions of the conducted consult, and enclose a written statement of the works council.

Employees made redundant shall not have their employment relationship terminated during a period of thirty days from the date of delivery of the notice to the competent public employment service.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Before bringing the decision of dismissal, the employer must consult the works council on the intended decision and must provide the works council with information relevant for rendering the decision. Unless otherwise provided by the employer's agreement with the works council, the works council shall, within eight days, and in the event of extraordinary notice within five days, submit its statement of the intended decision to the employer. If the works council fails to submit a statement on the intended decision within the deadline, it shall be deemed that there are no objections and proposals. The works council may object to dismissal if the employer does not have a justified reason for dismissal or if the dismissal procedure provided for in the Labor Act has not been carried out. The decision of the employer rendered contrary to the provisions of the Labor Act on the obligation to consult the works council shall be null and void.

The employer may, only with the prior consent of the works council, render a decision on:

- dismissal of a member of the works council,
- dismissal of a candidate for a member of the works council who has not been elected, within a period of three months after the determined final election results,
- dismissal of an employee whose work capacity has been reduced due to a work injury or occupational disease with remaining work capacity or reduced work capacity with a partial loss of work capacity, i.e., dismissal of an employee with a disability,
- dismissal of an employee of 60 years of age, except for dismissal of an employee of 65 years of age and 15 years of pensionable service,
- dismissal of the employees' representative in the employer's body.

If the works council fails to declare or withhold its consent within eight days, it shall be deemed to be in agreement with the decision of the employer. If the works council withholds consent, the withholding must be justified in written form, and the employer may, within fifteen days from the date of delivery of the statement of withholding the consent, request that this consent be substituted by a court decision or arbitration award. The court of first instance shall decide on the action of the employer within thirty days from the date of filing the action.

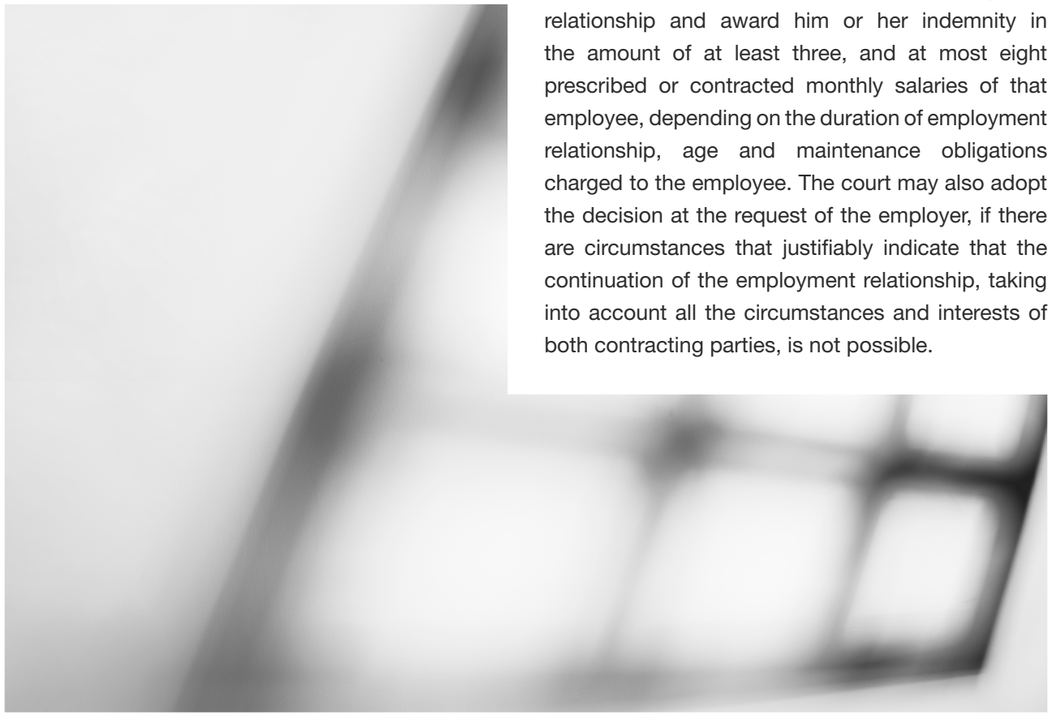
During the performance of his or her duty and six months after the cessation of such duty, and without the consent of the trade union, it shall not be possible to subject the trade union representative to termination of the employment contract by means of notice.

If no works council is established at the employer, all rights and obligations pertaining to works council herein defined shall be exercised by a trade union representative.

> If no works council exists, a trade union representative assumes all associated rights and obligations."

Is there an obligation to offer severance payment in the case of dismissal?

Severance pay shall be the amount of money paid by the employer to an employee who was dismissed after two years of continuous work as a means of securing income and mitigating the adverse consequences of the dismissal. Severance pay shall not be obtained by an employee who was dismissed due to his or her misconduct and by an employee who at the time of dismissal is at least 65 years old and has 15 years of pensionable service. The amount of severance pay shall be determined by reference to the length of the previous continuous employment relationship with that employer, and may not be contracted, i.e., determined in the amount of less than one third of the average monthly salary earned by the employee in the three months before the termination of the employment contract, for each completed year of work with that employer. Unless otherwise provided by law, collective agreement, employment regulation or employment contract, the total amount of severance pay may not exceed six average monthly salaries earned by the employee in the three months prior to the termination of the employment contract.



What legal protection options does the dismissed employee have and to what result do they lead?

An employee who considers that his or her employer has violated a right from an employment relationship may, within fifteen days from the delivery of the decision violating his or her right, or from the knowledge of the violation of rights, request the employer to exercise that right. If the employer fails to comply with this request within fifteen days from the submission of the employee's request, the employee may request the protection of the violated right before the competent court within a further period of fifteen days.
If the court finds that the dismissal of the employer is impermissible and that the employment relationship has not been terminated, it shall order the return of an employee to work. An employee who disputes the permissibility of dismissal may request that the court temporarily order his or her return to work until the end of the dispute.

If the court finds that the dismissal of the employer is not permitted and it is not acceptable for the employee to continue the employment relationship, the court shall, at the request of the employee, determine the date of termination of employment relationship and award him or her indemnity in the amount of at least three, and at most eight prescribed or contracted monthly salaries of that employee, depending on the duration of employment relationship, age and maintenance obligations charged to the employee. The court may also adopt the decision at the request of the employer, if there are circumstances that justifiably indicate that the continuation of the employment relationship, taking into account all the circumstances and interests of both contracting parties, is not possible.

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For what reasons can an employer terminate the employment relationship?

An employment relationship can be terminated, with or without cause, by the parties to same by mutual consent.

In cases of unilateral termination initiated by an employer, there is a statutory presumption that the dismissal is unfair unless the employer can, at the time of the employee's dismissal, substantively justify same on one (or more) of the following potentially fair grounds: (a) failure of the employee to satisfactorily carry out work (other than by reason of temporary incapacity); (b) statutory redundancy; (c) force majeure (including act of war, civil insurgence, act of God or non-deliberate destruction of work premises from fire); (d) lapse of fixed term contract or employee retirement occasioned by age (as retirement age may be fixed by custom, law, collective agreement, workplace regulations or otherwise); (e) conduct that renders the employee liable to termination without notice.

Where a potentially fair ground for dismissal is alleged, supporting evidence should be adduced by the employer that a fair procedure was equally followed to objectively establish that the fair ground exists and also to afford the employee an opportunity to be heard in relation to same.

Is there special protection against dismissal for certain groups of employees?

Dismissal of an employee on one (or more) of the following grounds is considered automatically unfair by statute: (a) trade union membership, participation in trade union activities outside working hours (or within working hours, if consented by the employer) or health and safety committee membership; (b) candidacy or tenure as workplace representative or any acts done at any time in such capacity (c) filing of a complaint, or participation in civil, criminal, administrative or regulatory proceedings, against the employer (d) race, color, sex, marital status, religion, political opinion, national or social origin; (e) pregnancy or maternity; and (f) parental leave, carer leave or other leave on grounds of force majeure.

Moreover, it will be deemed automatically unfair to dismiss (or select for redundancy) an employee for asserting a statutory right (or an infringement of a statutory right) concerning health and safety, public interest disclosures (whistleblowing) or in the context of a transfer of undertakings.

> A fair procedure must be followed and the employee should be afforded an opportunity to heard in relation to the dismissal"

What notice periods must be observed?

Statutory obligation of the employer

Unless the employment contract expressly contains more favorable provisions (regarding the length of the notice period), an employer is not obliged by statute to give notice of employment termination where the employee has been continuously employed for less than six months (irrespective of whether such period was declared, or treated, as probation or not). This applies horizontally to all employees in the public and private sector (including apprentices and shareholders of private companies who are employed by their companies) with the sole exception of employees engaged at hotels and leisure centers. Employees with continuous employment of at least six months (26 weeks) but less than one year (51 weeks) are entitled to at least one week's notice from the employer. Employees with one years' (52 weeks) continuous employment or more are entitled to one week's notice for each complete year of employment from the employer, up to a maximum of eight weeks' written notice, as shown below:

Period of continuous employment (calculated in weeks)	Minimum period of notice (calculated in weeks)
From 26 to 51 weeks	1 Week
From 52 to 103 weeks	2 Weeks
From 104 to 155 weeks	4 Weeks
From 156 to 207 weeks	5 Weeks
From 208 to 259 weeks	6 Weeks
From 260 to 311 weeks	7 Weeks
From 312 and over	8 Weeks

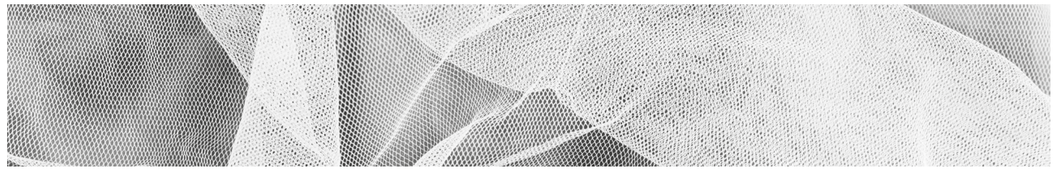
Where notice of termination of employment is given by an employer to an employee, the employer is entitled to pay the employee in lieu of notice (known as PILON). Such payment represents the notice period (statutory or contractual) instead of an employer requiring the employee to serve the notice in fact. PILON is provided by statute as a right to, and may be exercised at the absolute discretion of, the employer; it applies regardless of its incorporation in the employment agreement. An employee who receives PILON is considered employed until the end of the prescribed notice period to which the PILON refers.

Whilst under termination notice by an employer, an employee is statutorily entitled to accept, as well as commence, employment with any new employer and is under no further obligation to notify the employer of such new employment undertaken. Where the employee undertakes such new employment during the termination notice period, any right to payment for the remainder unserved notice period is lost.

An employer cannot give notice to an employee who is absent from work due to incapacity for a period of up to six months from the first day of absence. Furthermore, the period of notice of an employee who becomes incapable to work as a result of a work accident which occurs during the period of notice, is suspended for so long as that incapacity persists.

Statutory obligation of the employee

Unless the employment contract expressly contains more favorable provisions (regarding the length of the notice period), the minimum notice due to be given to an employer by an employee intending to resign with at least: (a) six month's continuous employment but less than one year is one week; (b) one years' continuous employment but less than five years is two weeks; (c) five years or more of continuous employment is three weeks, as shown below:



Period of continuous employment (calculated in weeks)	Minimum period of notice (calculated in weeks)
From 26 to 51 weeks	1 Week
From 52 to 259 weeks	2 Weeks
From 260 and over	3 Weeks

Where notice of termination of employment is given by an employee to an employer, any right of the employee to receive payment in lieu of serving the notice period will only exist if, and be enforceable in such manner as, expressly provided in the employment contract or as otherwise mutually agreed by the parties to the employment contract.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

An employer is entitled to summarily dismiss (terminate, that is, without notice) an employee when the employee's conduct is broadly such that renders the employee liable to summary dismissal. As to the former, the following conduct during the performance of the employment constitutes, amongst others, valid grounds for summary dismissal: committing a serious or criminal o"ense, inappropriate behavior, serious or repeated breach or disregard of workplace policies or other rules relevant to employment, breach of mutual trust and confidence or other like behavior rendering the continuation of the employment relationship reasonably untenable.

The employer's recourse to summary dismissal must be exercised as a last resort, as well as within reasonable time from the conduct triggering the dismissal. Failure to do so will be perceived by the court as a waiver of such right (with any dismissal likely to be considered as unfair if not proximate to the triggering event). Provided that the circumstances of the summary dismissal so admit, the employer must also have processes in place to allow the employee to be heard prior to the dismissal. The burden of proving that the employee's summary dismissal was fair rests entirely with the employer.

On the other hand, an employee is also entitled to terminate the employment where the employer's conduct is such that renders the employment liable to termination. The employee's recourse to constructive dismissal must be exercised within reasonable time from the employer's conduct triggering the resignation, as failure to do so will be perceived by the court as a waiver of such right (unless the employee is able to prove that the employment continued under protest).

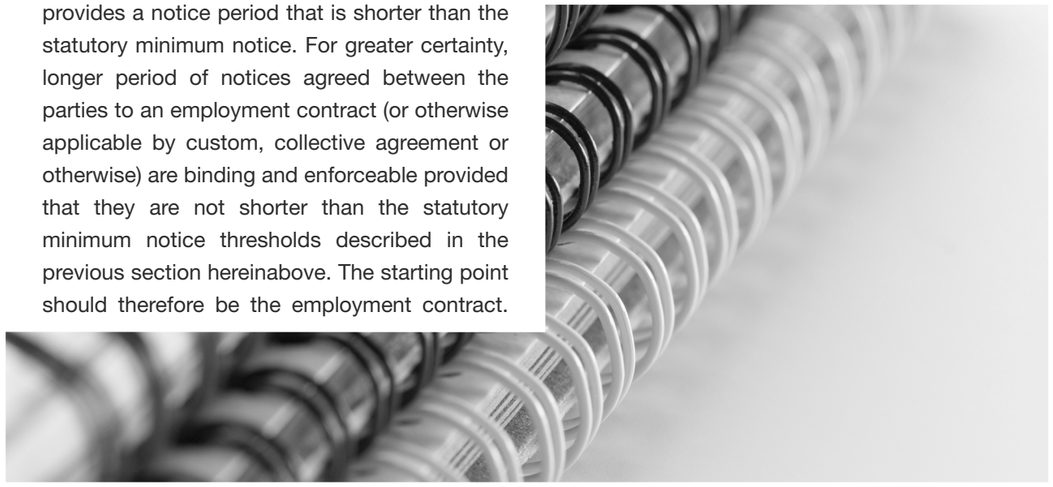
Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

In order to provide a valid termination notice, the party providing same must have regard to the formalities laid down both by statute as well as the employment contract itself. In particular:

- Length: The statutory minimum notice period provided in the previous section hereinabove is binding and enforceable where the employment contract:
  (i) is silent on notice or length of notice; or (ii) provides a notice period that is shorter than the statutory minimum notice. For greater certainty, longer period of notices agreed between the parties to an employment contract (or otherwise applicable by custom, collective agreement or otherwise) are binding and enforceable provided that they are not shorter than the statutory minimum notice thresholds described in the previous section hereinabove. The starting point should therefore be the employment contract.

- Form: A termination notice provided by an employer to an employee must be in writing in order to be valid. In contrast, a termination notice provided by an employee to an employer need not be writing, unless the contract of employment otherwise provides.

- Service: The statute does not require for a termination notice to be served but merely given, therefore regard must be had for any service formalities and any other modalities (i.e. language) that may be incorporated by virtue of the employment contract.



What measures must be taken in the event of a planned mass layoff?

An employer in the private sector who intends to lay-o" a group of employees should hold consultations in good time with the employees' representatives when the following circumstances and thresholds apply:

Number of employees in the establishment	Minimum number of employees dismissed by redundancy over period of thirty days
21 – 99	at least 10
100 – 299	at least 10% of the workforce
300 or more	at least 30

With a view to reaching a consensus, the employer must provide the employees' representatives with written particulars concerning: (a) the reasons for the contemplated redundancies; (b) the number and categories of the employees to be made redundant; (c) the number and categories of employees normally employed; (d) the period over which the contemplated redundancies are to be implemented; (e) the selection criteria proposed to identify employees to be shortlisted for redundancy; and (f) the method for calculating any further payments to be made to the employees as a result of the redundancy. The employer must provide advance notice of at least one month to the Ministry of Labor and Social Insurance before any contemplated collective redundancies are implemented, annexing further thereto the aforesaid written particulars.

Where the employment is terminated by reason of redundancy, an employee that has been continuously employed for at least two years (104 weeks) by the same employer is entitled to pursue a claim for a statutory redundancy payment from the Redundancy Fund. The payment is intended to the reward the employee for past services (not compensate for loss su"ered) and is calculated within a fixed range with reference to the years of employment and the annual salary (see table on range of compensation award that follows hereinbelow). This claim may be submitted to any Social Insurance District Offce or Citizen Service Bureau within three months from the day of the dismissal of the employee (extended to twelve months from the day of the dismissal if good cause for the delay can be provided).

An employee is redundant when employment is terminated due to: (a) the employer having ceased (or intending to cease) to carry on the business which the employee was engaged; (b) the employer having ceased (or intending to cease) to carry on the business in the place where the employee was engaged; (c) operational reasons (such as modernization, mechanization or any other change in the production or organizational methods which reduces the necessary number of employees; change in the products, production methods or requisite employment skillset; departments becoming production; volume of work or business contraction). Subject to the operational needs of the business, redundant employees have priority for re- engagement where the employer decides to increase the workforce within eight months from the redundancies.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The employer is not obliged to obtain the permission or consent of any third party in order to be able to validly terminate the employment relationship. In the context of collective dismissals, the employer must provide the employees' representatives with such written particulars, as well as notify such information on the consultation to the responsible authorities, as detailed in the immediately previous section above.

Is there an obligation to offer severance payment in the case of dismissal?

An employee's entitlement to compensation for termination of employment arises where an employee: (a) is unfairly dismissed by an employer after a continuous employment term of at least six months (26 weeks); or (b) is constructively dismissed from employment for reasons attributed to the employer's conduct.

Subject to the amount sought to be claimed as compensation by the employee, the amount of compensation is determined either by application to the Industrial Disputes Tribunal (where the claim sought does not exceeds the equivalent of two years' salary) or by civil action with the District Court (where the claim sought exceeds the equivalent of two years' salary).

Regarding applications filed with the Industrial Disputes Tribunal and with reference to the table below, the amount of compensation that can be awarded in cases of unfair dismissal ranges between: (a) a minimum amount that is calculated in accordance with the years of employment; and (b) a maximum amount, that can't be more than the employee's equivalent of two years' salary, namely:

Period of continuous employment	Range of compensation award	
	Minimum	Maximum
Up to 4 years	2 weeks wages for each continuous period of employment of 52 weeks	Employee's salary of 2 years
Above 4 and until 10 years	2 1⁄2 weeks wages for each continuous period of employment of 52 weeks	
Above 10 and until 15 years	3 weeks wages for each continuous period of employment of 52 weeks	
Above 15 and until 20 years	3 1⁄2 weeks wages for each continuous period of employment of 52 weeks	
Above 20 and until 25 years	4 weeks wages for each continuous period of employment of 52 weeks	

In assessing the amount of compensation, the Industrial Disputes Tribunal or the District Court (as the case may be) will, among others, have regard to other factors such as the emoluments of the employee, the period of employment, the loss of career and re-employment prospects, the age of the employee and the conditions surrounding the dismissal. The amount of compensation up to the salary of one year is payable by the employer and any additional amount from the Redundancy Fund.

What legal protection options does the dismissed employee have and to what result do they lead?

On, or in view of, the termination of employment, the parties to an employment agreement may privately negotiate an out-of-court settlement for any (or all) claims arising therefrom. In accordance to its terms, such private settlement will amount to an estoppel for all matters therein agreed prohibiting, that is, claims from being litigiously pursued by any party to the employment agreement.

In the absence of an out-of-court settlement, the Industrial Disputes Tribunal has exclusive jurisdiction to determine matters arising from the termination of employment (such as payment of compensation, payment in lieu of notice, compensation arising out of redundancy, other payments arising out of the employment agreement, claims arising under the enactment for the protection of maternity, unequal treatment or sexual harassment in the workplace, as well as disputes between provident funds and their employee members) provided always that the amount claimed as compensation by the employee does not exceeds the equivalent of two years' salary. Where the amount claimed as compensation by the employee exceeds the equivalent of two years' salary, or the employee pursues claims that are outside the termination of employment, proceedings may be instituted by civil action at the District Court. Claims pursued with the Industrial Dispute Tribunal must be filed by application not later than twelve (12) months from the date of dismissal.

For unfair dismissal claims the employee may, in addition to accrued pecuniary loss (being the payment of notice period, accrued holiday pay, loss of any other benefits entitled under the employment agreement), claim: (a) compensation calculated with reference to the employee's years of employment and annual salary (see previous table on range of compensation award), considering further the employee's loss of career and re-employment prospects, the age of the employee at the time of dismissal, the actual circumstances that brought about the dismissal and the conduct of the parties (which cannot exceed the equivalent of two years' salary where the claim is pursued with the Industrial Disputes Tribunal); or (b) reinstatement to the position from which the employee was dismissed (provided that the employer's workforce comprises of more than nineteen employees and the employee expressly requests it as a remedy), consequential orders ensuring arrears of pay and benefits are paid to the employee for the period between the date of termination of employment and the date of reinstatement as well as compensation not exceeding twelve months' salaries.

Czechia

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For what reasons can an employer terminate the employment relationship?

Under Czech law, an employer may terminate an employment relationship unilaterally only on the basis of an exhaustive list of reasons. If the employer unilaterally terminates the employment relationship for a reason other than those permitted by law, the termination is invalid. An employer must specify the reason for dismissing an employee and may not subsequently change the reason. The eligible reasons may be divided into two categories - reasons on the part of the employer and reasons on the part of the employee.

☑ The reasons on the part of the employer.

The employer may terminate the employment relationship by giving notice if the employer or its relevant part is dissolved or relocated, or if the employee becomes redundant due to the adoption of organizational changes.

☑ The reasons on the part of the employee.

The employment relationship with the employee may be terminated unilaterally if the employee becomes unfit for work due to his/her health condition, if the employee no longer meets the legally established requirements for performing the work, if the employee's work results are unsatisfactory even after a reasonable remedy period, or if the employee grossly violates his/her duties. In the event of a particularly serious breach of the employee's duties, the employer may terminate the employment relationship immediately and without notice.

If the employer and the employee agree on the termination of the employment relationship, it may be terminated bilaterally without stating the reason by means of an agreement on termination.

If a probationary period is agreed upon, both the employer and the employee may terminate the employment relationship even without stating the reason.

Special Protection

Is there special protection against dismissal for certain groups of employees?

Czech law protects vulnerable groups of employees by so-called protection period. These particularly include (i) employees who are temporarily unable to work due to illness or injury; (ii) employees who are called up for military exercises or service and employees who are on long-term leave of absence to perform a public office; (iii) pregnant employees and employees on maternity or parental leave and; (iv) employees who are providing long-term care for a member of their household.

A notice of dismissal given to an employee during the protection period would not be valid.

Exceptions to Protection

The employer may still terminate the employment relationship in certain cases during the protection period described above. These are situations when the employer is liquidated or relocated, and when the employee violates his or her legal obligations.

However, this exception to protection does not apply, in particular, to pregnant employees and employees on maternity leave. Pregnant employees may be dismissed only in the event of the dissolution of the employer or a particularly serious breach of obligations. Employees on maternity leave may only be dismissed due to the dissolution of the employer.

Notice Period

What notice periods must be observed?

The Labor Code provides for a general notice period of two months. The general notice period may be extended, but not shortened, by written agreement between the employee and the employer.

The notice period begins on the first day of the calendar month following the date of delivery of the notice and comes to an end upon the expiry of the last day of the relevant calendar month.

Absence of notice period

Under what circumstances is an extraordinary termination without respecting a notice period possible?

The provisions on the notice period do not apply if the employment relationship is terminated with immediate effect or if the employer and the employee agree on this in the agreement on the termination of the employment relationship.

The employer may terminate the employment relationship with immediate effect in two cases:

☑ The employee commits a particularly serious breach of his/her obligations under the legal regulations related to the work performed by the employee.

☑ The employee is convicted by a court of a crime committed intentionally and sentenced to imprisonment exceeding 1 year (6 months if the crime was committed during or in connection with the performance of the work).

The employer may terminate the employment relationship with immediate effect only within two months from the date on which the employer becomes aware of the grounds for immediate termination, provided that such termination occurs no later than one year from the date on which the grounds for termination arose.

Formal Requirements

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

According to the Labor Code, any termination of employment must be in writing. All documents related to the termination of employment must be delivered to the employee in person. However, it can be done electronically if certain conditions are met. It is also important that the notice is given by a person who has the authority to terminate the employment contract within the company.

The employer is legally required to provide valid and substantiated reasons for the termination of employment.

Collective Dismissals

What measures must be taken in the event of a planned mass layoff?

The Labor Code provides for special obligations of the employer in the event of termination of the employment relationship with a certain number of employees within a period of 30 calendar days. A collective dismissal occurs when the employer lays off (i) at least 10 employees in the case of an employer with 20 to 100 employees; (ii) at least 10 % of employees in the case of an employer with 101 to 300 employees; and (iii) at least 30 employees in the case of an employer with more than 300 employees. In the case of collective dismissals, the employer must inform the trade union and the works council in advance and enter into discussions with them. A fine may be imposed on an employer who violates his or her obligation to the relevant trade union, works council or occupational health and safety representative.

Importantly, the employer must also notify a regional branch of the Labor Office. The employment relationship of an employee dismissed as a result of collective redundancy cannot end earlier than 30 days from the date of delivery of the employer's written notice to the regional branch of the Labor Office.

Employees representatives and state authorities

What participation obligations exist vis-à-vis to works councils, trade unions and state authorities?

If an employer has a trade union, the employer is obliged to consult any notice or immediate termination of employment with the trade union.

If an employer wishes to terminate the employment of a union official (an employee who is a member of any trade union body or who has been in such position in the past year), the employer must obtain the trade union's consent. Trade union may refuse to give its consent. In such a case, the termination of employment is invalid.

Nevertheless, the employer may initiate the court dispute over the validity of the dismissal. If other conditions for the dismissal are met and the court finds that the employer cannot fairly be required to continue to employ the trade union official, then the dismissal is valid even without the union's consent. If the employer does not ask the trade union for its consent, the termination of employment is invalid, even if the employer could not be reasonably required to continue employing the trade union body member.

State authorities must be notified regarding dismissals only in the cases of collective dismissals.

Severance Payment

Is there an obligation to offer severance payment in the case of dismissal?

Under certain conditions, an employee is entitled to severance payment, which is calculated on the basis of the average earnings of a particular employee. An employee is entitled to severance payment if the employment is terminated by notice due to the employer's dissolution, relocation, or organizational changes. The amount of severance pay depends on the length of employment and is one to three months' salary.

An employee is further entitled to severance pay in the amount of twelve times the average monthly wage if the employment is terminated by notice as a result of an accident at work or occupational disease.

Legal protection for the employees

What legal protection options does the dismissed employee have and what result do they lead?

If the employer terminates the employment relationship invalidly and the employee notifies the employer that he/she insists on continued employment, the employment relationship continues, as does the employer's obligation to pay the employee's wages.

The employee may challenge the validity of the termination of the employment relationship in court within a limitation period of two months from the date on which the employment relationship would have ended due to the invalid termination.

If the court rules in favor of the employee and awards compensation for wages, the employer may request the court to reduce the compensation for wages for the period exceeding six months from the date of the invalid termination of employment.

Estonia

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For what reasons can an employer terminate the employment relationship?

In Estonia, an employer can terminate an employment relationship under specific conditions outlined in the Employment Contracts Act. An employer may not terminate the contract ordinarily without a reason. The employment contract can be terminated unilaterally by the employer only extraordinarily with good reason arising from the employee's conduct or skills or the economic situation.

Here are the main reasons for which an employer may legally terminate an employment contract: (i) the aim of the probation period has not been met; (ii) due to economic reasons (i.e. redundancy due to reduced work volumes, restructuring, the employer´s bankruptcy or liquidation); (iii) due to a decrease in the employee's capacity for work (e.g. if the employee has not been able to perform his or her duties for a long time due to the employee's health or if the employee has been unable to perform his or her duties due to insufficient work skills, non-suitability for the position or inadaptability); or (iv) if the employee has committed a violation (including breach of confidentiality and non-compete obligation, committed a theft, fraud or another act bringing about the loss of the employer's trust in the employee etc.).

Is there special protection against dismissal for certain groups of employees?

An employer may not cancel an employment contract with a pregnant woman or a woman who has the right to maternity leave, or a person who is on paternity leave, adoptive parent leave or parental leave due to lay-off, except upon cessation of the activities of the employer or declaration of the employer's bankruptcy. An employer may not cancel an employment contract with a pregnant woman or a woman who has the right to maternity leave due to a decrease in the employee's capacity for work. In case the employment contract is terminated with the employees' representative the employer must seek before the opinion of the employees who elected the person to represent them or the trade union about the cancellation of the employment contract.

Before cancelling an employment contract due to lay-off, the employer shall determine the group of employees who have the preferential right of keeping their job. Pursuant to the Employment Contracts Act, the employees' representative (for example, the employee's trustee, working environment representative, member of the working environment council) and employees who are raising a child under three years of age have the preferential right of keeping their job.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

The employer does not have to comply with the term for advance notice if the employee fundamentally breaches his or her duties, as a result of which the employer cannot be required to continue the contract. This is, in particular, the case where an employee has committed a fundamental breach of his or her duties and his or her action precludes the continuation of the employment relationship until the expiry of the term of advance notice. An employer may cancel an employment contract without adhering to the term for advance notice only if, considering all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term for advance notice.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The notice of termination shall be submitted in a format which can be reproduced in writing (e.g. e-mail or message) or in writing (signed digitally or by hand). When an employer terminates the contract, the notice must include a clear explanation of the reasons for termination, especially in cases involving redundancy, decrease in the employee's capacity for work, or misconduct. Unlike a breach of the formal requirement, the omission of a justification does not result in voidness of the notice of termination, but the employee may claim compensation for the damage caused by the lack of justification for the cancellation. In addition to the correct format of cancellation of the employment contract, it shall be noted that termination of the employment contract cannot be contingent, as contingent termination is vague for the employee and consequently harmful. A declaration of cancellation of an employment contract becomes valid if the employee has received it. The person who is issuing the termination notice shall have authority to represent the employer for this transaction (either legal representative or acting under relevant authorization).

What measures must be taken in the event of a planned mass layoff?

A collective layoff occurs where a certain number of employees are made redundant within a 30-day period. Prior to a collective layoff, an employer must inform the Unemployment Insurance Fund and the employee's trustee or, in his or her absence, the employees of the proposed dismissals and the reasons for such measure. In addition, the employer must consult with the employees' representatives with the aim of reaching an agreement regarding the possibility of avoiding or reducing the number of redundancies, possible measures to alleviate the consequences of the terminations and ways of supporting the dismissed employees in their search for work. During the consultation process, the employees' representatives have the right to meet with the employer and to submit their representations. Only after consulting with the employees and informing the Estonian Unemployment Insurance Fund does the employer have the right to perform the collective lay-off and can hand over the notices of termination to the employees. Collective cancellation of employment contracts enters into force upon the expiry of the term for advance notice of cancellation, but no sooner than 30 calendar days after the time when the Estonian Unemployment Insurance Fund received the information on lay-off sent to it after consultation.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

As mentioned above, employers must inform and consult with the trustee if planning collective redundancies. The consultation should take place before the final decision is made, to discuss possible alternatives and measures to mitigate the impact on employees. In cases of collective redundancies, employers must also notify the Estonian Unemployment Insurance Fund before the planned terminations.

If there is a collective bargaining agreement in place, it may include specific provisions or protections for employees facing termination.

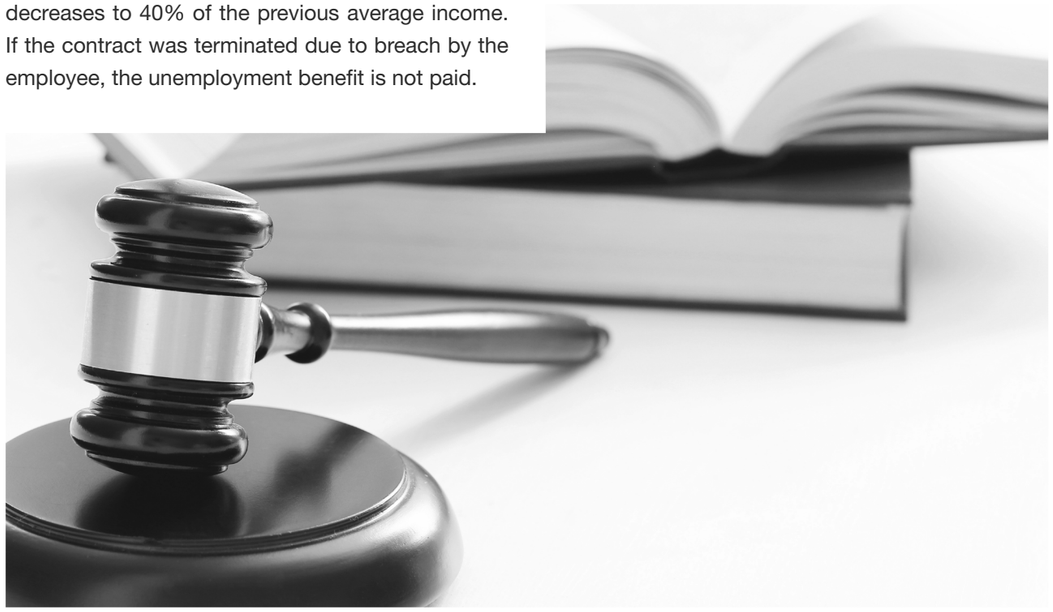
Is there an obligation to offer severance payment in the case of dismissal?

Upon lay-off, in the case of an unspecified term employment contract, an employer shall pay an employee compensation to the extent of one month's average wages of the employee. In case of lay-off of an employee working under an employment contract entered into for a specified term, an employer shall pay compensation to the extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term. For example, upon cancellation of an employment contract entered into for seven months after four months have passed due to lay-off, the employer shall pay the employee three months' wages as compensation.

In any other cases of cancellation of the employment contract by the employer, the law does not impose an obligation on the employer to pay compensation to the employee due to cancellation of the contract. In addition to severance if employment is terminated by the employer during the probationary period, due to redundancy or due to a decrease in the employee's capacity for work, the employee is entitled to unemployment benefit payable by the Unemployment Fund. Unemployment benefit for the first 100 days of unemployment is 60% of the previous average income and after 100 days, it decreases to 40% of the previous average income. If the contract was terminated due to breach by the employee, the unemployment benefit is not paid.

What legal protection options does the dismissed employee have and to what result do they lead?

The employee may contest the termination in a labor dispute committee or court for establishment of voidness of cancellation within 30 calendar days as of the receipt of the notice of termination. If the labor dispute resolution body finds that the cancellation of the employment contract is illegal or contrary to the principle of good faith and at least one of the parties requests the termination of the contract, the contract shall be deemed terminated by cancellation. As an exemption, the employer cannot claim for contract termination, if the employee is a pregnant woman, a person who has a right to pregnancy and maternity leave or an employees' representative. If the contract is terminated by the labor dispute body, the employer must pay the employee compensation in the amount of three months' average wages for the illegal cancellation. Upon termination of the contract on the above grounds in a situation involving a pregnant woman, a person who has a right to pregnancy and maternity leave or an employees' representative, the employer must pay the employee compensation in the amount of twelve months' average wages. The labor dispute resolution body is not bound by the amount of compensation claimed by the employee and may increase or decrease it.



Finland

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Legal reasons

In Finland, dismissal is related to employment contracts of indefinite duration. A fixed-term employment contract cannot be terminated unless this is expressly agreed at the time the employment contract is concluded. Exceptionally, fixed-term employment contracts may be dismissed in the event of the employer's bankruptcy, death or reorganization proceedings.

Both the employee and the employer can terminate the employment contract, but the employer must have legal reasons for termination. The employee does not have to give a reason for their dismissal, but they must also observe the notice period. The legal reasons for dismissal of employee are usually divided into two categories: reasons related to the employee's person *("individual grounds")* and economic and production-related reasons *("economic and production-related grounds").*

When an employee is dismissed on individual grounds, the Employment Contracts Act stipulates that the reason for dismissal must be "proper and weighty". Such grounds include any significant change in the employee's ability to perform their work and serious neglect of contractual duties such as neglecting work duties, defective work performance, failure to follow instructions or constant tardiness. The dismissal decision always requires an overall assessment of the situation, which may take into account different types of infringements and omissions. The right to dismiss on individual grounds must be exercised within a reasonable time after the employer has become aware of the reason for dismissal. A reasonable period has been considered to be approximately two months from the time when the employer became aware of the reason for dismissal.

Dismissal on economic and production-related grounds is possible if the amount of work the employer can offer diminishes substantially and permanently due to economic or production-related reasons or as a result of restructuring. Economic grounds for dismissal include a company's reduced or inadequate performance and the anticipation of such circumstances. Production-related grounds for dismissal and grounds arising from restructuring refer to any changes in the employer's production process that have a substantial and permanent impact on the amount of work available. There must have been a substantial reduction in work, meaning that any reduction in work does not constitute grounds for dismissal. The reduction in work must also have been other than temporary. The Employment Contracts Act does not specify when the reduction in work has lasted for so long that it is no longer temporary. However, it is generally considered that a reduction in work of more than 90 days is in any case necessary for the dismissal of an employee. It should also be remembered that employment contracts cannot be terminated on financial or production-related grounds if the employees can be reassigned or retrained. Termination would therefore be unlawful at least in the following circumstances: the employer hires a new employee for a similar role (either before or after the termination of an existing employee) or the restructuring of the employer's business has not actually caused a reduction in the amount of work available.

Special protections

Under the law, personal circumstances that cannot be used as grounds for termination include: an employee's illness, disability or injury, except where these cause a substantial reduction in the employee's work ability for a long period of time and the employer cannot reasonably be expected to continue the employment contract; an employee's participation in industrial action pursuant to the Finnish Collective Agreements Act or on their trade union's orders; an employee's political, religious or other views or participation in social activism or associations; an employee's exercising their legal remedies.

The law also lays down special provisions on the termination of pregnant employees and employees on family leave. An employee may not be terminated on the grounds that the employee is pregnant or exercises their right to a family leave. Any termination of an employee during their pregnancy or family leave is deemed to have been due to these factors unless the employer is able to prove other grounds for the termination. However, the employer may terminate the employment of a pregnant employee when the termination is made on grounds unrelated to the pregnancy, such as due to financial or production reasons or grounds related to the employee's person. The ban on termination during pregnancy or family leave does not apply to termination due to the employer's bankruptcy or death. The employer may terminate the employment of an employee on maternity, special maternity, paternity, parental or child-care leave for financial or production reasons only when the employer's operations cease entirely.
Employees' representatives also enjoy special protection against dismissal. These include shop steward, employee representative, occupational safety representative and employees' administrative representative. An employer may dismiss an employees' representative on individual grounds only with the consent of a majority of the employees represented by the employees' representative. An employees' representative may be dismissed for economic and production-related reasons only if their work ends and the employer is unable to arrange for them to take up tasks corresponding to their skills or otherwise suitable for them or to train them for other tasks.

Notice period

Unless otherwise agreed in the employment contract, dismissal is always accompanied by a notice period. In practice, such agreements are rare, as collective agreements usually prevent any waiver of the notice period. If an employment contract can be terminated without notice, the employment relationship ends at the end of the working day or shift during which notice of termination is given to the other party to the contract.

The notice periods are defined separately for the employer and the employee. The longer the employment relationship, the longer the notice period. The decisive factor is the uninterrupted duration of the employment relationship.

According to the Employment Contracts Act, the notice periods to be observed by the employer are: 14 days if the employment relationship has lasted up to one year; one month if the employment relationship has lasted more than one but not more than four years; two months if the employment relationship has lasted more than four but not more than eight years; four months if the employment relationship has lasted more than eight but not more than 12 years; six months if the employment relationship has lasted more than 12 years.

The periods of notice to be observed by the employee are respectively: 14 days if the employment relationship has lasted up to five years; one month if the employment relationship has lasted more than five years.

The employer and the employee can also agree on the length of the notice period. The maximum period is six months. The period of notice to be observed by the employer may be agreed to be longer than the period of notice to be observed by the employee. For example, the employer's notice period can be one month and the employee's two weeks. If the opposite is agreed, the employee may give the employer the notice period agreed with the employer when giving notice.

Absence of notice period

Both employer and employee may cancel the employment contract for an extremely weighty reason. In the case of cancellation, there is no notice period and the employment relationship ends immediately. An employment contract may be cancelled regardless of its duration (whether indefinitely valid or fixed-term). The reason for cancellation is always due to the other party to the employment contract, while the reason for dismissal may be due to the dismissing party himself or to external circumstances.

The employer may cancel the employment contract if the employee has committed such a serious breach of their essential obligations arising from the contract that the employer cannot be reasonably expected to continue the employment relationship. The employee may cancel the employment contract if the employer violates or neglects their responsibilities arising from the employment contract or the law in such a way as to have an essential impact on the employment relationship.

Examples of extremely weighty reasons for cancellation include: giving misleading information when concluding the employment contract; intentionally jeopardizing occupational safety; being intoxicated and using intoxicating substances at the workplace; gross defamation or violence against another person; disclosing business or professional secrets; bribery; neglecting job duties despite receiving a warning; or continued and serious negligence of the employer's obligations, e.g. failure to pay wages or threatening the employee with violence.

> Cancellation is reserved for the gravest breaches, ensuring swift resolution when trust is irreparably broken."

The employer may also treat the employment contract as cancelled if the employee has been absent from work for at least seven days without giving the employer a valid reason for the absence. The employee has a similar right if the employer is absent. If there was a valid reason for the failure to notify, the cancellation of the employment contract is revoked. It should be noted that cancellation of the employment relationship for financial or production reasons is not allowed. Cancellation must be announced within 14 days of the reason for cancellation becoming known.

If it has been agreed in the employment contract that the employment relationship is to start with a probationary period, it is possible by both the employer and the employee to cancel the employment relationship without notice during the probationary period. However, cancellation during the probationary period carried out by the employer is not allowed on discriminatory or inappropriate grounds.

Formal requirements

As a general rule, the employer must give the employee a warning before dismissing the employee on individual grounds. Even one warning may be sufficient. The purpose of the warning is to give the employee an opportunity to correct their behavior before the final decision to dismiss is taken, but the notice of dismissal must not be given immediately after the warning has been given. If the employee's misconduct is sufficiently serious, dismissal without a warning is possible. The warning has no specific formal requirements, but since it is important for the employer to be able to prove later that they have given the warning, it is usually best to give the warning in writing. The warning must state the reason for which it is given. It should also state that a repeat offence may result in the termination of the employment contract

Before terminating an employment contract on individual grounds, the employer must also give the employee the opportunity to be heard. The purpose is to give the employee the opportunity to express their views on the grounds for dismissal. The hearing procedure is not specified in the law, and it may be oral or written. Failure to comply with the hearing obligation does not invalidate the dismissal, but the employer who fails to comply with the hearing obligation may be required to pay higher compensation if the dismissal is otherwise found to be contrary to the law.

Where the reason for termination of the employment contract is other than individual grounds, the employer has no obligation to hear the employee. However, the employee must be informed of the reasons and options before the dismissal. The obligation to explain applies to dismissal for economic and production reasons, bankruptcy, death of the employer and in the case of reorganization proceedings.

The other party must be informed of the dismissal in writing or orally. The notice of dismissal must normally be delivered to the employee in person. In practice, this may mean, e.g., that the employee is informed orally of the dismissal or is given a letter to that effect. The employment contract may also be terminated by telephone.

Collective dismissals

If the employer regularly employs more than 20 employees, it shall follow the change negotiation procedure set down in the Act on Cooperation within Undertakings. The negotiation procedure is strictly regulated, and any breach of the obligations set out in the aforementioned act may lead to severe indemnity payments for each affected employee.

In all situations, if an employer dismisses at least ten employees on economic or production grounds, the employer must immediately inform the Employment and Economic Development Office. The notification must state the number of employees to be made redundant, their occupations or jobs and the dates on which their employment contracts will end.

In these cases, the employer is also obliged to inform the employee of their right to an employment plan under the Act on Public Employment and Business Service.

Employees' representatives and state authorities
An employer does not need prior approval from a government agency to dismiss an employee. A single termination of employment relationship by notice or with immediate effect in general does not need to be consulted either with the employees' representative or the trade union the employee is a member of. However, if the employer terminates an employee on individual grounds, the employee has the right to be assisted at the pre-termination hearing, e.g., by a colleague or a shop steward.

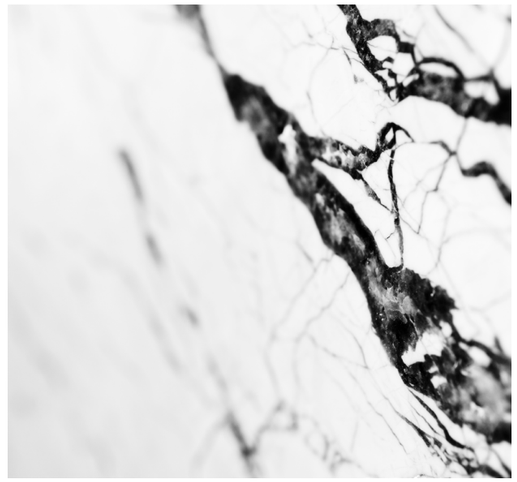
If the employer must comply with the Act on Cooperation within Undertakings (employing at least 20 employees) and it considers termination of at least ten employees, it must provide the employee representatives with any information available to it as follows: the grounds for the intended measures; the initial estimate of the number of terminations; a report on the principles applied to determine which employees must be served with a notice of termination; and a time estimate on the implementation of such terminations. If the employer is considering serving notice of termination for fewer than 10 employees, the employer may provide the aforesaid information to the employees concerned or to their representatives (if the employees have selected such representatives).

Severance payment

In the Finnish legislation, there is generally no legally mandated severance pay scheme. The employee only has a right to their salary during the notice period, unless otherwise expressly agreed upon between the parties.

If the dismissal is later deemed invalid by the court, the employer can be compelled to pay a lump sum compensation equivalent to 3–24 months' salary in addition to the salary of the notice period.

The amount of compensation is decided on the same basis regardless of whether the employment contract was terminated on inadequate individual or collective grounds, or the basis of a probationary period, or general cancellation grounds. The amount of compensation is determined based on overall discretion, in which several factors are considered. Usually, the amount is between 6–12 months' salary plus legal costs of both parties, which in certain



cases might exceed the amount of compensation to be paid to the employee.

Legal protection for the employee

The legality of the dismissal is ultimately decided by the courts. An action for unlawful dismissal must be brought within two years of the end of the employment relationship. An action for unlawful dismissal must be brought within two years of the end of the employment relationship. However, if the dismissal is found by a court to be unlawful, the legal relationship is not restored, i.e. the employer is not obliged to take back an employee who was unlawfully dismissed. The consequence for employer of a dismissal found to be unlawful is the compensation described in the previous section.

When an employer has dismissed an employee on economic or production-related grounds and the employer within nine months of the termination needs new employees for the same or similar tasks which the former employee performed, the employer shall offer this work to the former employee. The employer shall at the local employment office inquire whether the employee is still registered as a jobseeker at the area's Employment and Economic Development Office. The terms and conditions of the employment relationship do not have to be the same as they were before, e.g. the pay can be lower than it was. The re-employment obligation is valid for nine months from the termination of the employment relationship.

France

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Legal reasons

In France, all employees can only be dismissed individually for a legitimate reason (disciplinary or personal reasons, such as professional inadequacy or medical inaptitude certified by the occupational doctor) or for objective reasons (economic or technical-organizational necessities): all employees, regardless of the number of employees, are entitled to protection against unfair dismissal. An employment contract may also be terminated without cause during the trial period.

- Dismissal for personal reasons is possible if there are reasons that prevent the employee from continuing to work due to unreliability, even if this unreliability is not strictly related to the tasks performed by the employee. Typical examples of such situations are alcohol or drug abuse, or imprisonment for very serious crimes. In any case, it is necessary that any non-work-related behaviors have a negative influence on work-related tasks (for example, a truck driver who consumes alcohol or drugs outside working hours, or a primary or secondary school teacher involved in child abuse).There may also be other reasons inherent to the employee, such as professional inadequacy observed by the employer, where the situation has continued to deteriorate despite the implementation of performance monitoring and real assistance from the employer. Finally, it is also possible to dismiss an employee who has been declared unfit for work for medical reasons by the occupational doctor, and whose redeployment to another position is impossible.

- Dismissal for conduct-related reasons is also possible if the employee has violated a contractual obligation, and such violation constitutes a serious breach of the employment contract. Examples of conduct-related reasons are frequent lateness, refusal to work, unexcused absences, unauthorized leave, theft, sexual harassment, insulting superior or colleagues, unauthorized competitive activities or secondary employment, failure to present a medical certificate in the event of incapacity for work, etc.

  In the cases indicated in a) and b) above, any violation must be reported in writing by the employer to the employee, who has the right to be heard in a prior interview in his defense, including with the assistance of a representative of the employee or a colleague. The employer must give due consideration to the employee's defense before deciding or proceeding with the dismissal. The law, national collective bargaining agreements and company internal regulations regulate the time limits for the “disciplinary procedure”.

- Another reason for individual dismissal is “dismissal for reasons not inherent to the person of the employee”. This type of dismissal means that the employer must terminate an employment relationship due to restructuring or downsizing for economic, technological or production-related reasons. The French Supreme Court has ruled that a company's decision to permanently reduce the number of its employees can be based on the observed need to safeguard the company's competitiveness, and not just to cope with a state of economic crisis. In this way, the company anticipates future major economic difficulties and takes immediate steps to prevent this from happening by laying off employees for economic reasons.

  Dismissal for economic reasons is not possible if the dismissed employee can be reassigned to a vacant position within the company. The possibility of reassignment must therefore always be considered. If there are fewer vacancies than employees to be made redundant, vacancies should be offered to interchangeable employees (all employees at the same job level, even if they perform different tasks) who have a heavier family burden and greater length of service. If there are no vacancies, employees may be made redundant according to the application of order criteria (with employees with the greatest seniority, the most family responsibilities or the oldest having priority to remain in positions that have not been eliminated).

Special protections

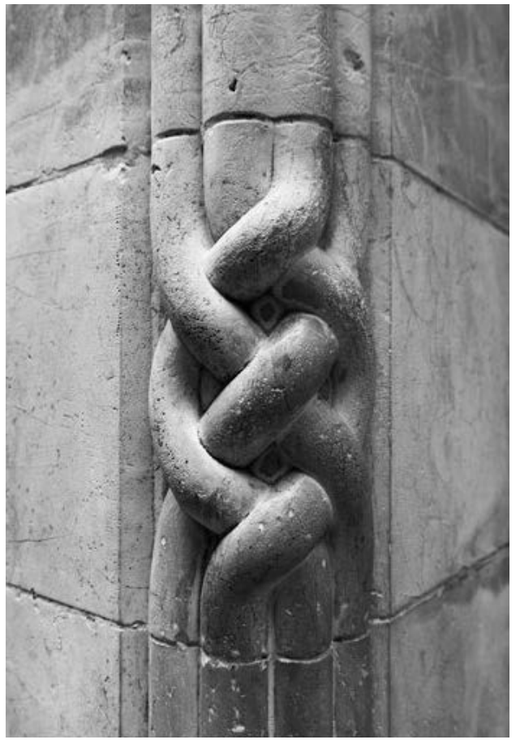
An employee who is pregnant or on maternity leave is protected against dismissal. During pregnancy and after maternity leave, the employer may, depending on the reason, dismiss the employee. Her protection against dismissal is relative. During this period, dismissal is only possible in cases of serious misconduct, or if the employer is unable to maintain the employment contract for reasons unrelated to maternity (e.g. permanent closure of the company).

During maternity leave, the employer may not dismiss the employee. Her protection against dismissal is absolute. Absolute protection also applies during the paid leave taken immediately after maternity leave (possibly extended by pathological leave) and ends with the organization of the return medical examination by the occupational doctor prior to resuming work.

Elected (works council members) or appointed (delegates and union representatives) staff representatives can only be dismissed for just cause or just cause with the prior authorization of the labor inspectorate (a branch of the French labor administration responsible for monitoring the proper application of labor regulations). In the absence of valid authorization, these protected employees cannot be dismissed.

Notice period

The minimum notice period is set by law according to seniority, but these periods are often far less favorable than those laid down in national collective bargaining agreements, and it is the latter that should be applied in most dismissal cases. The notice period increases according to the employee's seniority and level; notice periods range from a minimum of one month to a maximum of 6 months, and national collective bargaining agreements specify whether working days or calendar days are to be calculated. Seniority for the purpose of calculating the notice period is determined by the date on which the letter of dismissal is sent.



Formal requirements

An employment relationship can be terminated without notice for cause; this type of dismissal is usually for disciplinary reasons if the employee commits a serious and negligent breach of contract that makes it impossible to continue the employment relationship, even during the notice period, such as: repeated and unjustified absenteeism or lack of punctuality; lack of discipline or disobedience at work; verbal or physical offence against the employer or work colleagues; defamation of the employer or management (including in social media); any behavior by the employee (including outside the office) likely to break mutual trust, such as a criminal conviction; regular drunkenness or drug use at workplace, and all cases provided for by the law on unfair competition.

In these cases, the employer must follow the disciplinary procedure described in point 1 for the breaches mentioned in paragraphs (a) and (b).
In all other cases, where the employer dismisses the employee with immediate effect, exempting him/her from work during the notice period, a compensation must be paid equal to the salary he/she would have received during the notice period.

To be valid, dismissal must be formulated in a detailed letter of dismissal, stating precisely: the reasons for dismissal; the procedure followed; and the effective date of the dismissal.

The letter of dismissal must be given to the employee with proof of delivery. The safest way is to send the letter of dismissal by registered post with acknowledgement of receipt.

Collective dismissals

Collective redundancies are defined as the dismissal of several employees for reasons linked to economic factors affecting the company. The procedure varies according to the number of employees involved and the size of the company, with distinct obligations in terms of consultation and information both towards the company's social and economic committee (CSE) and towards the relevant administrative authorities.

Collective redundancies, governed by French legislation, impose specific consultation and information procedures on the employer. These procedures vary according to the number of employees made redundant over a 30-day period, and the size of the employer.

Companies must differentiate between “small-scale redundancies”, involving between 2 and 9 employees, and “large-scale redundancies”, involving at least 10 employees, with obligations differing significantly according to these categories. In the case of large-scale redundancies, the procedure varies according to whether the company's workforce is less than, equal to or more than 50 employees.

For these procedures, the employer must convene the Social and Economic Committee *(“CSE”)* in writing at least three days before the meeting and provide the necessary information concerning the proposed redundancy. In addition, the employer is required to inform the French Administration *(“DREETS”)* by providing the minutes of the works council's consultation on the redundancy plan, and to notify any redundancies within eight days of sending the redundancy notices.

For companies with fewer than 11 employees, the procedures for collective redundancies are similar to those for individual dismissals, with the exception of the cooling-off period between the preliminary interview and the notification of the dismissal. In this case, the employer waits only 7 working days after the interview to notify the dismissal, whether for managerial or non-managerial staff.

In companies with 11 to 49 employees, the formalities for collective redundancies vary according to whether the company has a Works Council *(CSE).*

If the company does not have a Works Council, procedures are similar to those for a company with fewer than 11 employees. If there is a works council, it must be consulted before any preliminary meeting is held with the employees to be made redundant. This consultation includes the presentation of the redundancy plan, the economic, technical or financial reasons put forward, and the measures envisaged to avoid or limit redundancies, such as outplacement procedures and redeployment assistance.

For companies with more than 50 employees, redundancy procedures involving at least 10 employees over a 30-day period must include a job protection plan *(PSE)* and be preceded by consultation with the Works Council *(CSE).* This consultation must include several meetings.

The employer must also transmit all information concerning the redundancy plan to the French administration *(DREETS)* in electronic form via a dedicated portal. The CSE issues two opinions on the proposed collective redundancy plan and on the terms of application of the *PSE*. The *PSE* must then be validated by the French authorities before the redundancies can be implemented.

In the case of collective redundancies, employee’ rights and the compensation calculations are strictly regulated by the French Labor Code.

Employees made redundant for economic reasons are entitled to severance pay, the amount of which may vary according to seniority and the industry’s collective bargaining agreement. In the event of redundancy under a *“Plan de Sauvegarde de l'Emploi” (PSE),* employees may be entitled to additional compensation, known as supra-legal compensation. This compensation is negotiated between staff representatives and the employer, and its amount is set in accordance with collective agreements specific to each company.

Employees are also entitled to compensation in lieu of notice, if notice is not served, and to compensation in lieu of paid vacation for days not taken.

It should be noted that employees who have been made redundant may be eligible for support measures, such as the *“Contrat de Sécurisation Professionnelle” (CSP)* or the *“congé de reclassement” (reclassification leave).* These measures offer support in finding a new job and training opportunities, with the aim of facilitating the professional reintegration of the employees concerned and mitigating the impact of the redundancy on their careers.

Employees' representatives and state authorities

The Works Council *(CSE)* only needs to be consulted in the event of collective dismissals, as described in point 6 above. In the event of disciplinary dismissal as described above in point 1.b, the employee concerned may defend himself/herself with the assistance of an employee representative or a colleague.

The CSE will also be consulted in certain cases of dismissal of protected employees or medically unfit employees.

Finally, as seen in point 6, the French authorities must validate the PSE implemented in the case of large-scale collective redundancies in companies with more than 50 employees. As seen in point 2, the dismissal of certain protected employees must be authorized by the French authorities.

Severance payment

Under French law, there is no general legal obligation to pay severance pay in the event of dismissal, in addition to the benefits due in all cases of termination of employment, such as redundancy pay, accrued and untaken vacation pay, and compensation in lieu of notice in the event of dispensation at the employer's initiative.

However, severance pay may result from a conciliation or settlement agreement between the parties if the employee contents the dismissal. In legal cases concerning the legitimacy of the dismissal, the law stipulates that when the parties first appear before the French Employment Tribunal, the latter will attempt to achieve conciliation between the parties to put an end to the dispute. In this case, the conciliation compensation is defined based on a scale which sets the amount of the indemnity according to the size of the employer in relation to the number of employees and seniority.

A settlement indemnity may also be agreed between the parties, based on their mutual desire to avoid litigation, in return for the payment of a settlement compensation in addition to all other indemnities paid at the time of final settlement and termination of employment. There is no fixed scale for such compensation, the amount of which is negotiated between the employer and the former employee.

Legal protection for the employee

French employment law grants employees job protection, as well as severance pay in the event of unjustified dismissal. If the dismissal is invalid, the employee can ask for reinstatement, but the judge is under no obligation to grant this. In practice, reinstatement is extremely rare. Reinstatement is sought only in cases where it is a matter of right, such as when dismissal is null and void for discriminatory reasons (e.g. protection of pregnant women), in cases of harassment of the employee, or when dismissal has been carried out without administrative approval where this is required (e.g. employee representatives).

The employee must bring an action to contest the dismissal before the Employment Tribunal within one year. If this deadline is not met, the termination is considered effective, and no further action may be taken in respect of the breach of the employment contract.

When reinstatement is not possible, the judge awards the employee compensation for dismissal without real and serious cause. This compensation is paid by the employer. The amount of the compensation varies according to the size of the company and the employee's seniority at the time the letter of dismissal was sent. The judge determines the amount by reference to the scales set out in the French Employment Code, which establish the maximum amounts of compensation that may be awarded, depending on the length of service of employees and the size of the company concerned (more or less than 11 employees). Compensation for dismissal without real and serious cause cannot be combined with compensation of up to one month's salary that may be awarded to an employee dismissed following an unlawful procedure (failure to meet deadlines or the obligation to convene a prior interview).

Germany

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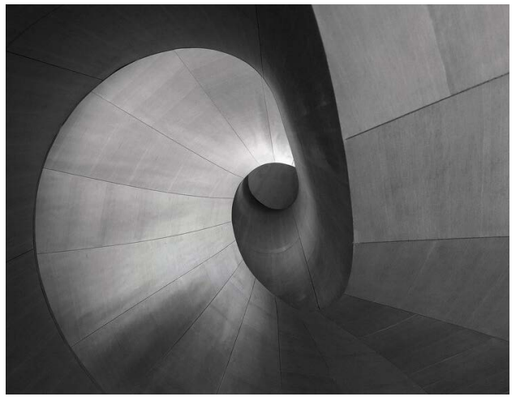
Legal reasons

In Germany, only employees in establishments with more than 10 employees enjoy protection against dismissal. Employees in small establishments can be dismissed at any time without a reason, subject to the notice period. Employees in establishments with more than 10 employees enjoy protection against dismissal if their employment relationship has existed for more than 6 months. A termination is only valid if it is caused by reasons relating to the person (cf. under a.) or the behavior of the employee (cf. under b.) or by urgent operational reasons which prevent the employee from continuing to be employed in the establishment (cf. under c.).

a. A dismissal for personal reasons is possible if reasons in the person of the employee prevent further employment. Since the employee regularly has no influence on his/her (lack of) abilities and characteristics, the disturbance of the employment relationship must be so massive that the employer does not have to accept it. Examples of personal reasons are long or frequent short illnesses, lack of work permits, alcohol/drug addiction, imprisonment, loss of professional, physical or personal qualifications, etc. For the dismissal to be effective, a negative prognosis must be available. It is required that the employee does not have the ability and aptitude to perform the work owed and does not regain this ability in a timely manner.

b. A dismissal for conduct-related reasons is possible if the employee has violated contractual obligations and this has led to an impairment of the employment relationship. Examples of conduct-related reasons are being late frequently, rejection of work, unexcused absence, unauthorized start of vacation, theft, sexual harassment, insulting the supervisor or colleagues, competitive activity or unauthorized secondary employment, violation of the obligation to present a medical certificate in case of incapacity to work, etc. Any conduct-related termination must be proportionate. Thus, a warning must regularly precede the termination for conduct-related reasons. A warning is always the less severe remedy and must usually precede a termination for conduct-related reasons.

However, the weight of a breach of duty is far greater if a warning has already been issued for a previous similar breach of duty.



c. A reason for termination for operational reasons exists if an employer terminates an employment relationship because he/she cannot continue to employ the employee in the establishment due to operational requirements. The most relevant situation in practice is when the need for employment has been eliminated by an entrepreneurial decision. Such a decision is primarily made while performing efficiency measures, introducing new work or production methods, or carrying out plant closures, outsourcing, relocation of operations, etc. The dismissal itself cannot be the sole subject of the operational decision. The Federal Labor Court recognized a decision to implement a permanent reduction in personnel as a permissible entrepreneurial decision. The employer must present a plausible concept demonstrating that it will be possible to permanently operate the work area in question in the future with a reduced number of personnel and how this will be done. A dismissal for operational reasons is not possible if the dismissed employee can be reassigned to a vacant position in the company.

The possibility of reassignment must therefore always be considered. If there are fewer vacant positions than employees to be dismissed, the vacant positions will have to be offered to those employees who most merit protection based on various social criteria. The employer's obligation to retain the employee includes that it must be prepared to offer reasonable possibilities for further education or retraining and to give the employee time to learn the new job, typically up to 3 months. If a job has been eliminated and there is no way the employee can be reassigned, the employer must carry out a "social selection" to determine who merits protection against dismissal according to various criteria. The "social selection" is carried out among all comparable employees within the entire establishment. Employees who have not completed the 6 month waiting period cannot participate in the social selection; they must be the first to be dismissed, since they do not yet enjoy statutory protection against dismissal. The decisive factor in ascertaining the comparability of the employees is whether they are interchangeable. Employees are interchangeable if they can exchange jobs immediately or after a reasonable training period. From the group of interchangeable employees, those with the least eligibility for "social" protection must be the first to be dismissed.

The need for social protection is based on the following four criteria: (i) seniority with the company, (ii) age, (iii) number of dependents and (iv) severe disability of the employee. Employees may only be excluded from the social selection procedure, if individual employees have special qualifications, knowledge, or skills, and if their retention is of particular importance to the company.

Special protections

Pregnant women enjoy special protection against dismissal during pregnancy and 4 months after delivery if the employer was aware of the pregnancy or delivery when issuing the dismissal or becomes aware of it within 2 weeks of delivery of the dismissal notice. The special protection against dismissal already applies during the probationary period and in establishments with fewer than 10 employees. Only in very exceptional cases, e.g., closure of operations, the termination can be declared admissible by the competent authority.

A dismissal is also excluded during parental leave. Employees (male and female) have a right up to 36 months of parental leave. The state authority responsible for the protection of employees may nevertheless declare dismissals to be permissible in exceptional cases.

Employees with severe disabilities are generally protected against dismissal. Any dismissal requires the prior consent of the competent authority for the integration of severely disabled persons. Approval will only be granted if the termination is not related to the severe disability. A dismissal issued without such consent is invalid.

Members of the works council and certain other employee representational bodies can only be dismissed for good cause *(wichtiger Grund)* if the consent of the works council has been granted or replaced by a court decision. An ordinary dismissal of such employees is only effective if the termination is based on operational reasons due to a plant shutdown or the closure of an operating division. The special protection against dismissal continues for 1 year after the expiration of the term of office.

Notice period

The basic legal notice period is 4 weeks counting back from the 15th or the last day of a calendar month. This notice period increases depending upon the seniority of the employee. If the employee has 2 years of seniority with the company, the notice period increases to 1 month; and to 2 months for 5 years' seniority; 3 months for 8 years' seniority; 4 months for 10 years' seniority, 5 months for 12 years' seniority, 6 months for 15 years' seniority and 7 months for 20 years' seniority; each time to the end of the month.

The seniority for the calculation of the notice period is determined by the date of receipt of the notice. Previous employment with the same employer without a legal connection, or in another company in the same corporate group will generally not be counted. Employment contracts or collective agreements may provide longer periods of notice in individual cases. The statutory periods of notice are only minimum notice periods.

Absence of notice period

An employment relationship may be terminated without notice for good cause (wichtiger Grund) if facts are given which, considering all circumstances of the individual case and weighing the interests of both contractual parties, make it unreasonable to expect the party giving notice to continue the employment relationship until the end of the notice period. Good cause is given if objective facts place a serious burden on the employment relationship. In principle, operational, personal and conduct-related reasons can be considered. In practice, however, termination without notice is just usually for conduct-related reasons if the employee commits a very serious breach of duty. An extraordinary termination can only be made within a period of 2 weeks. The period begins at the time when the employer becomes aware of the facts relevant to the termination.

Formal requirements

The dismissal must be in written form to be valid. The electronic form is excluded. The employer does not have to specify the reasons for termination in the letter of dismissal. Even the specification of an incorrect period of notice does not make the dismissal invalid. The letter of dismissal must be delivered to the employee. The safest and most straightforward way is to hand it over directly to the employee. The dismissal should always be signed by an authorized representative of the employer. Otherwise, the employee may immediately reject the dismissal and itis null and void.

Collective dismissals

In case of a mass layoff, the employer must inform the employment agency in detail before issuing the planned dismissals. A mass layoff occurs if within 30 calendar days (i) more than 5 employees in an establishment of 20 to 60 employees; or (ii) 10% or more than 25 employees in an establishment of 60 to 500 employees; or (iii) at least 30 employees in an establishment of 500 or more employees are to be dismissed. Other terminations of the employment relationship initiated by the employer shall be deemed equivalent to dismissals.

Prior to the notification to the employment agency, the employer must inform the works council in good time and provide it with the relevant information in writing, if the employer intends to carry out notifiable dismissals. The relevant information include the reasons for the planned redundancies, the number and occupational categories of workers to be made redundant, the number and occupational categories of the workers normally employed, the period during which the redundancies are to take place, the criteria laid down for selecting the workers to be made redundant, and the criteria provided for the calculation of any severance pay. The employer and the works council must discuss ways of avoiding or limiting redundancies and mitigating their consequences.

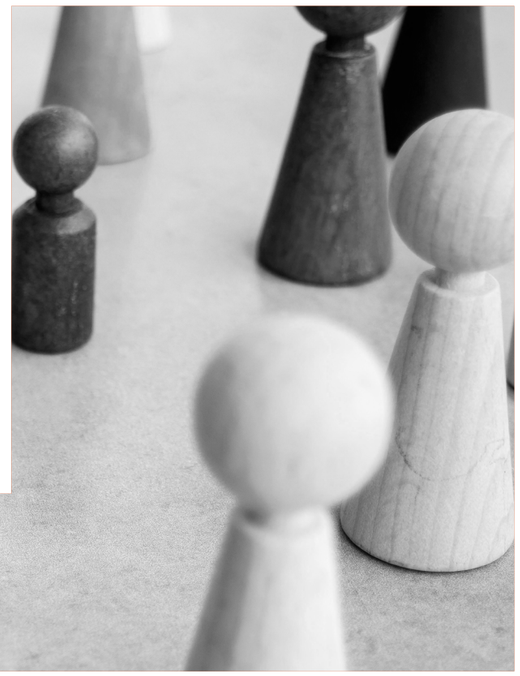
The notification of mass layoffs to the employment agency must be enclosed with the information to the works council and its statement. If the mentioned requirements are not met, all dismissals are invalid.

Employees' representatives and state authorities

If a works council exists, it must be heard before every dismissal. Otherwise, the dismissal is invalid. The notification made to the works council must contain the affected employee's personal data, the type of dismissal, notice period, and the grounds for the dismissal. Depending on the type of dismissal, more information might be needed, e.g. in the case of a behavioral dismissal, information about a prior warning. It must be kept in mind that only the information provided to the works council during the hearing can later be used in possible court proceedings to justify the legality of the dismissal. The works council cannot prevent a dismissal. If the works council objects to the dismissal, it only gives the involved employee a right to retain his/her employment after the expiration of the dismissal notice period until the legal proceeding on the dismissal has been resolved.

The works council has codetermination rights if the dismissals are made in connection with a restructuring of an establishment of companies with more than 20 employees. The employer must inform the works council of plans to implement any operational changes in the establishment that would be of material disadvantage for the employees. A change of operation always occurs in the case of mass layoffs. The employer must attempt to agree on a reconciliation of interests *(Interessenausgleich)* with the works council before implementing an operational change. This reconciliation of interests describes the organizational execution of the operational change.

To compensate the employees for the economic disadvantages the operational change will bring upon them, the employer must agree with the works council on a social plan (Sozialplan). This social plan regulates matters such as compensation payments for disadvantages incurred by the employees because of the operational change. Trade unions are not involved in dismissals. The Employment Agency must be involved in the case of mass layoffs. In the case of severely disabled employees and employees on maternity and parental leave, the competent state authority must approve the dismissal.



Severance payment

German law does not provide a general legal obligation to pay a severance in the event of a dismissal. The employee has no legal claim to severance pay regardless of whether the notice of dismissal is effective or invalid. If the termination is invalid, the employee is entitled to continued employment and the employer cannot terminate the employment relationship unilaterally by paying a severance payment. However, severance payments may arise from a social plan (Sozialplan) or a collective bargaining agreement. Corresponding severance payment claims are usually measured based on length of service, age and alimony obligations.

Appropriate severance payments are also agreed as part of termination agreements. In this case, it is up to the parties to negotiate the amount of the severance payment, which is regularly based on the length of service. In addition, severance payments are often agreed to end dismissal protection lawsuits. In corresponding settlements, employer and employee agree that the employment relationship ends at a certain point in time in return for a severance payment. If there are doubts about the validity of a dismissal, the Labor Court often proposes a severance payment of 0.5 gross monthly salary per year of employment for amicable settlement. Only in rare exceptional cases the Labor Court may terminate the employment relationship in return for severance pay at the request of one party.

Legal protection for the employee

German labor law grants the employee job protection, and no severance pay protection in the event of an invalid termination. If the termination is invalid, the employee is entitled to continued employment in accordance with his/her employment contract.

Therefore, he/she must file an action for dismissal protection with the Labor Court within 3 weeks. If the period for bringing an action is not observed, the termination is deemed to be effective, and the employment relationship ends after the expiry of the ordinary period of notice. The employee's action for protection against unfair dismissal is seeking a declaration that the employment relationship was not terminated by the notice of termination and that it will continue with unchanged terms beyond the date of termination.

Greece

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For what reasons can an employer terminate the employment relationship?

☑ According to the Greek employment law, an employment contract may be lawfully terminated at any time without cause, as the validity of the termination does not depend on the existence of a particular cause.

However, for certain cases in order to lawfully proceed with the termination of the employment agreement there must be cause for the termination. These cases pertain mainly to specific categories of employees such as pregnant employees, employees who recently became mothers/fathers, or trade union representatives, who are protected against dismissal for a certain period as determined by the law.

☑ Depending on the employer's decision the dismissal might take place either with prior notice or not. Any dismissal should take place in writing and the employer is required to pay the proper statutory severance payment to the employee.

Employees have the right within the deadline provided for by the law to challenge the validity of their dismissal before the competent courts. If that is the case and according to procedural law requirements, it will be up to the employer to refute their claims and provide arguments justifying the dismissal.

Is there special protection against dismissal for certain groups of employees?

Greek employment law provides for certain protected categories of employees or circumstances during which the termination of an employment agreement is either prohibited or allowed under specific terms and conditions.

☑ Prohibition of termination during annual leave.

The termination of any employment agreement is strictly prohibited during annual leave.

☑ Members of trade unions Boards of Directors (BoD).

According to the applicable legislation the termination of an employment agreement of employees who serve as members of trade unions BoDs may occur only if based on serious grounds (termination for cause). This kind of protection is in force throughout the employees' tenure as a BoD member and up to one (1) year after the expiry of their tenure.

☑ Protection of employees with parental responsibilities.

Pregnant employees and employees who have given birth cannot be dismissed throughout the period of their pregnancy and up to eighteen (18) months following the delivery of their child. Moreover, employees who have fathered a child are protected against dismissal for a period of six (6) months following childbirth. Any dismissal within the period mentioned above is permitted only if based on serious grounds (termination for cause).

Furthermore, in these cases, the employer is required to provide in writing the grounds justifying the termination of employment, and to notify accordingly both the employee concerned and the competent labor authorities.

Additionally, the dismissal of any employee on the grounds that they applied for or have taken parental leave or have exercised the right to request flexible working arrangements (as determined by the relevant framework), is also prohibited by the law.

What notice periods must be observed?

☑ The employer has the option – not obligation – to give notice to the employee with respect to the termination of their employment contract. In principle, the parties are free to negotiate and agree on notice periods, longer than those provided by law, mainly when notice is given by the employer (for employees there is a maximum limit set out by the law).

The statutory notice period to be observed is determined in relation to the tenure an employee has completed with the same employer.

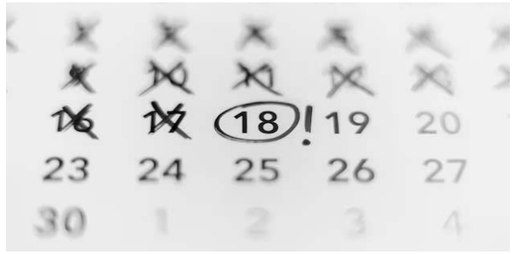
If notice is given, the employer is required to pay only half (50%) of the statutory severance payment.

Length of service	Notice period
1 day to 12 months	no notice period to be observed
12 months (completed) to 2 years	1 month
2 years to 5 years	2 months
5 years to 10 years	3 months
more than 10 years	4 months

Statutory minimum notice period to be observed by the employer (according to tenure completed)

What notice periods must be observed?

☑ Employees are also required to notify their employer in case they wish to terminate their employment. According to the law, the notice period that an employee must observe is half of the notice period stipulated for employers and up to three months at most. To be specific:



Length of service	Notice period
1 day to 12 months	no notice period to be osberved
12 months (completed) to 2 years	15 days
2 years to 5 years	1 month
5 years to 10 years	1 month & 15 days
more than 10 years	2 months

Statutory minimum notice period to be observed by the employee (according to tenure completed)

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Any indefinite term employment agreement may be terminated lawfully at any time without observing a notice period, considering that employers are not required by law to observe any notice period.

However, if the employer decides to terminate the employment agreement without observing the notice period, they are obliged to pay the full statutory severance payment, not half of it, as would be the case in the event of termination where a notice period is granted.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Open-ended employment agreements

Any indefinite term employment contract may be terminated lawfully and validly at any time, provided that the following conditions are observed:

☑ Terminating the employment agreement "in writing": Verbal dismissals are prohibited under Greek law. Employers are required to provide employees with a document informing them on the termination of their employment agreement. This document should be stamped and signed by the company's legal representative or any other person who has been properly authorized for this purpose. Notwithstanding the above, if the employee refuses to sign the termination document, the employer will have to send this document to the employee by means of an extrajudicial statement addressed to them and duly delivered by bailiff.

☑ Paying the proper statutory severance payment: As mentioned above, the basis for calculating this payment is the gross regular salary of the employee during the last month of full employment prior to their dismissal. Furthermore, the statutory severance payment is to be paid to the employee's bank account.

Should the sum to be granted as severance payment exceed an amount equivalent to wages of two (2) months, the employer is legally bound to grant the employee at the time of the dismissal the proportion of the severance payment equivalent to the wages of two (2) months. Regarding the remaining amount to be granted, the payments to the dismissed employee should be made in bimonthly instalments, with every instalment amounting to at least the equivalent of wages of two (2) months, except for the remaining amount to be paid being smaller than the equivalent of two (2) months. In such cases when granting the severance payment in instalments is permitted by the law, the first instalment should be paid by the completion of the two-month period after the date of the termination of the employment contract.

☑ Informing the competent authorities: Employers proceeding with terminating open-ended employment agreements are required to notify each dismissal to the "ERGANI" Informational System, managed by the Public Employment Authority (DYPA) and the Labor Inspectorate within four (4) working days after the dismissal.

Fixed - term employment agreements

For terminating a fixed-term employment agreement, employers are required to:

☑ Provide serious grounds justifying the termination (termination for cause): In principle, any fixed-term employment agreement is terminated after its term expires without having to observe any conditions such as giving notice or granting severance payment. In this case, employers, apart from the obligation to inform the competent authorities, as mentioned below, hold no other specific obligation.

However, when employers decide to terminate a fixed-term agreement prior to the expiry of the term agreed, they should provide serious grounds/cause for the termination (e.g., serious breach of contractual obligations, unjustified absenteeism, improper execution of duties, criminal convictions, etc) justifying such premature termination of the employment. Otherwise, the employer may be enforced to pay the employee all the remuneration that the latter would have received in case the agreement was not prematurely interrupted.

☑ Informing the competent authorities: Employers proceeding with terminating open-ended employment agreements are required to notify in writing each dismissal to the "ERGANI" Informational System, managed by the Public Employment Authority (DYPA) and the Labor Inspectorate within four (4) working days after the dismissal.

What measures must be taken in the event of a planned mass layoff?

☑ Pursuant to the provisions of the relevant legislation, companies or establishments employing at least twenty (20) and up to one hundred and fifty (150) employees may dismiss up to six (6) employees on a monthly basis. Furthermore, businesses employing more than one hundred and fifty (150) individuals may dismiss up to 5% of their personnel but no more than thirty (30) employees on a monthly basis.

If according to the business plan, these limits are going to be exceeded, dismissals are classified as "collective dismissals" or "collective redundancies" or "mass layoffs". In such an event, the employer is required to proceed with certain additional actions including the information and consultation with the workers' representatives.

☑ In fact, the procedure to be followed on behalf of the employer prior to the implementation of the collective dismissals ("information & consultation") includes the following:

✓ The employer consults with the workers' representatives with a view to reducing the number of the dismissed or mitigating the negative effects of the dismissals.

✓ At the same time, the employer informs the workers' representatives by providing any information necessary and informing them in writing about key items, such as the grounds

leading to the collective dismissals project, the number and the categories of the employees under dismissal, the number and the categories of the employees usually employed within the business or the establishment, the time where the dismissal are to be effective, as well as the criteria regarding the selection of the employees to be dismissed.

The duration of the “consultation & information” procedure is thirty (30) days, starting off from the respective employer’s invitation to the workers’ representatives. The participating parties should keep a record of their opinions on the collective dismissals project. At the end of this procedure, the employer submits this record as well as any other document used during consultations to the Supreme Labor Council, a public body competent to supervise collective dismissals, consisting of an equal number of representatives from the State, of employers and of workers.

- If the procedure is “successful”, i.e., the parties reach an agreement on the execution of the dismissal plan, the dismissals may take place according to the terms and conditions agreed, ten (10) days after the submission of the records to the Council.

On the contrary, i.e., whether the parties fail to reach such agreement, the Council determines whether the employer has fulfilled their respective obligations.

In this case, the Council will: (i) Rule that the employer’s obligations were fulfilled, so that the employer could proceed with the dismissals twenty (20) days after the Council’s respective decision. (ii) Rule that the employer’s obligations were not fulfilled. In such an event, the Council may extend the consultation period or set a deadline for the employer in order to fulfil their obligations.

Regardless of the aforementioned, the collective dismissals plan is considered valid (even if no agreement is reached) given that sixty (60) days have passed after the submission of the

consultation records to the Council on behalf of the employer.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

As far as collective dismissals are concerned, the employer is required to notify the competent labor authorities (Supreme Labor Council) of the commencement and the outcome of the consultation period with the workers’ representatives.

As for any other termination of any employment contract which does not fall within the scope of collective dismissals, no notifications requirements are to be observed prior to the termination.

Is there an obligation to offer severance payment in the case of dismissal?

- According to the provisions of Greek labor law, in the event of termination of an indefinite employment contract (which should be made in writing) the employer is required to pay the proper statutory severance payment. The respective payment is determined upon taking into consideration the length of tenure with the same employer and the amount of gross remuneration received by the employee during the last month of full employment (prior to the termination of the employment agreement).

Employees are only entitled to severance payment under the condition that they have completed twelve (12) months of service with the same employer.

Such a payment may not exceed the amount of thirty (30) times of the lowest daily wage for unskilled workers, currently set at EUR 37,07, multiplied by eight, which adds up to a cap of 8.896,80 EUR .

- In view of the above, the statutory severance payment is calculated as follows:

Length of service	Severance payment
12 months (completed) - 2 years	2 monthly wages
2 years - 4 years	2 monthly wages
4 years - 5 years	3 monthly wages
5 years - 6 years	3 monthly wages
6 years - 8 years	4 monthly wages
8 years - 10 years	5 monthly wages
over 10 years	6 monthly wages
over 11 years	7 monthly wages
over 12 years	8 monthly wages
over 13 years	9 monthly wages
over 14 years	10 monthly wages
over 15 years	11 monthly wages
over 16 years	12 monthly wages

Furthermore, employees who, until November 12th, 2012, had completed at least seventeen (17) years of tenure with the same employer, are entitled to additional payment as follows: Should the employer

Length of service by 12.11.2012	Severance payment	Additional amount to be granted
over 17 years	12 monthly wages	+ 1 monthly wage
over 18 years	12 monthly wages	+ 2 monthly wages
over 19 years	12 monthly wages	+ 3 monthly wages
over 20 years	12 monthly wages	+ 4 monthly wages
over 21 years	12 monthly wages	+ 5 monthly wages
over 22 years	12 monthly wages	+ 6 monthly wages
over 23 years	12 monthly wages	+ 7 monthly wages
over 24 years	12 monthly wages	+ 8 monthly wages
over 25 years	12 monthly wages	+ 9 monthly wages
over 26 years	12 monthly wages	+ 10 monthly wages
over 27 years	12 monthly wages	+ 11 monthly wages
over 28 years	12 monthly wages	+ 12 monthly wages

Should the employer decide to observe the notice period provided for by the law, then the severance payment to be granted in only half of the severance payment otherwise provided and as described above.

- Notwithstanding the above, pursuant to the labor legislation currently in force, any employer may proceed with the termination of an indefinite term employment contract without being legally obligated to grant the employee severance payment, under the condition that the employer has already pressed charges against the employee regarding any offence which has been committed while the employee carried out his/her work or the employee faces an indictment for a misdemeanor any other more serious offence.

  Moreover, as it has been decided by case law, the employer may eventually terminate the employment relationship without granting the employee severance payment when the employee is seeking dismissal to receive compensation. To be specific, in such cases for no severance payment to be paid it will have to be proven that the employee intentionally behaved inappropriately or breached their contractual obligations or even performed their duties poorly, for the sole purpose of forcing the employer to dismiss them and claim their respective severance payment.

What legal protection options does the dismissed employee have and to what result do they lead?

- Any employee has the right to challenge the validity of their dismissal before the competent courts, by filing a respective brief including their claims on the issue, within a three-month period from the termination date. Said deadline should be observed at all times, otherwise the respective right shall be perceived to be lapsed.

- If the claims of the employee are perceived to be valid, pursuant to the provisions of the law and depending on the request included in their respective brief, if the termination of the employment contract is deemed to be null and void, the employment agreement shall be considered to still be in effect. If that is the case, the employer would be liable for salary payment from the termination date and onwards, up to the point of successfully terminating the employment. Furthermore, the employer would be required to rehire them and employ them in the same position they were employed in prior to their termination.

- Alternatively, provided that the requirements of the latest legislation introduced will have been met and in accordance with the decision of the court upon and the request made either by the employee or the employer, instead of reinstating them and granting them salaries due, the employee may be granted an additional severance payment (besides the statutory). Said payment falls within the range of their regular salary of three months (minimum) and up to their statutory severance payment doubled. It is up to the court to determine the exact amount to be granted.

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For what reasons can an employer terminate the employment relationship

An employment relationship can be terminated via termination agreement or via termination by notice or via termination notice with immediate effect.

In case of a termination agreement no reasoning is necessary.

Employees having an indefinite term of employment can be dismissed only for reasons relating to either the employees' abilities; or their behavior/conduct regarding the employment; or the employer's operations. (This latter category includes economic grounds in general, such as layoffs, or when due to reorganization, a position is eliminated, two or more positions are merged or when a quality exchange is necessary.) An employee having an indefinite term of employment can terminate his employment without reasoning.

Any of the parties may terminate the employment relationship with immediate effect if the other party either willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or otherwise engages in conduct that would render the employment relationship impossible.

Termination of an employment relationship within the probationary period is also possible with immediate effect, but without reasoning.

Is there special protection against dismissal for certain groups of employees?

Employers cannot terminate an employment relationship by notice during the periods specified below:

- during pregnancy;
- during maternity leave;
- during paternity leave;
- during parental leave;
- during a leave of absence taken without payment for the purpose of caring for a child;
- during any period of actual reserve military service;
- in case of women, while receiving treatment related to human reproduction procedures, for up to six months from the beginning of such treatment, and
- during the period of exemption when providing personal care or support to a relative, or to a person who lives in the same household as the employee, and who is in need of significant care or support for a serious medical reason.

For the purposes of applying the restrictions above, the date of announcement of the notice shall be taken into account.

> These protections ensure job security during critical life circumstances."

Employees close to the pension age, parents of small children and disabled employees enjoy additional protection against dismissal as they can only be dismissed in the case of serious breach, or if the reason of dismissal is connected to the employee's ability or the operation of the employer, only if no similar position is available (or although it was offered the employee rejected it).

Unlike to the general case when notice period stars after the day when the notice was communicated when the below listed restriction exists the notice period shall only begin at the earliest on the day after the last day of the following periods:

- ☑ duration of incapacity to work due to illness, not to exceed one year following expiration of the sick leave period;
- ☑ absence from work for the purpose of caring for a sick child;
- ☑ leave of absence without pay for providing home care for a close relative.

Please note that the chairman of the works council also enjoys additional protection against dismissal.

What notice periods must be observed?

The notice period is minimum 30 days, which is extended depending on the duration of the employment as follows:

Years of service	Total Notice Days
3 - 5	35
5 - 8	45
8 - 10	50
10 - 15	55
15 - 18	60
18 - 20	70
over 20	90

By agreement of the parties the notice period may be extended by up to 6 months.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

If the other party either willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or otherwise engages in conduct that would render the employment relationship impossible. Such notice should be delivered within a period of 15 days of gaining knowledge of the grounds therefor, in any case within not more than 1 year of the occurrence of such grounds.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Formal requirements must be observed when giving notice of termination is in writing and delivered to the other party, or otherwise it shall be invalid. The employer must give a proper justification (reasoning) for the termination and the notice should signed by the person duly authorized to exercise the employer's rights. The justification shall clearly indicate the cause of the notice. In the event of a dispute, the employer should prove the reality and rationality of the reason for the notice.

Moreover, a termination notice that was delivered to the other party may only be revoked with his/her consent.

Regarding notices served by the employer, the employer shall exempt the employee from performing work for at least half the notice period. The employee shall be exempted from his/her duties, at least for the duration of half the notice period. The employer can, on its own discretion, exempt the employee from performing work for more than half of the notice period, even for the entire duration of the notice period.

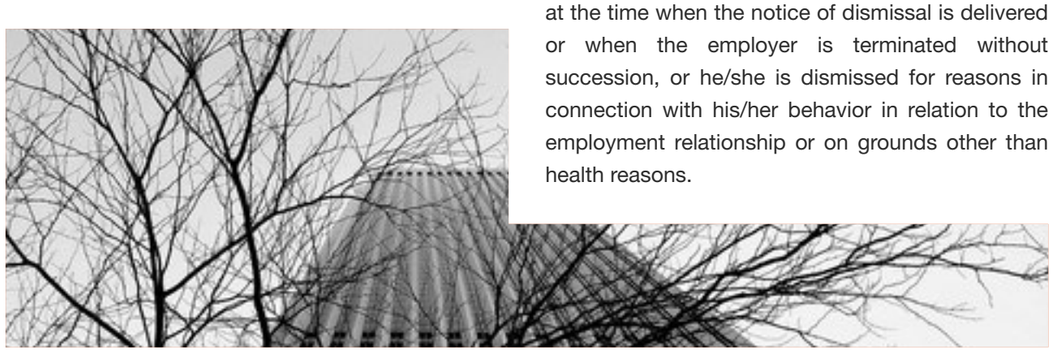
What measures must be taken in the event of a planned mass layoff?

In case of a mass layoff, the employer must inform the employment center about the intention and the decision in detail before issuing the planned termination notices.

A mass layoff occurs, if based on its operational or structural reasons and within 30 calendar days, an employer, based on the average statistical workforce for the preceding 6-month period, intends to terminate the employment relationship of at least (i) 10 employees, when employing more than 20 and less than 100 employees; or (ii) 10 % of the employees, when employing more than 100 but less than 300 employees; or (iii) 30 employees, when employing 300 or more employees.

Besides the employment center, the employer must inform the works council (if any) in good time and provide it with the relevant information in writing stating the reasons for the planned redundancies, the number and occupational categories of workers to be made redundant, the number and occupational categories of the workers normally employed, the period during which the redundancies are to take place, the criteria laid down for selecting the workers to be made redundant, the criteria provided for the calculation of any severance pay.

The Labor Code gives detailed and strict procedures and deadlines on how and when to notify the employment center, the work council and the concerned employees. Any failure to follow these rules may result in unlawful notices. (It is worth to mention that the employment center has no authority to stop the mass layoff, its role is administrative only.)



What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

A single termination of employment relationship by notice or with immediate effect in general shouldn't be consulted neither with the work council nor the trade union. Only exceptions are if the employee in question is the chairman of the works council or is a protected trade union representative, where employer has to obtain the work council's/trade union's consent prior to its termination by notice.

8. Is there an obligation to offer severance payment in the case of dismissal?

If the employer terminates the employment relationship by notice, the employee affected shall be entitled to severance payment. Such payment shall be the sum of the absentee pay due for:

- ☑ 1 month, in the case of at least 3 years;
- ☑ 2 months, in the case of at least 5 years;
- ☑ 3 months, in the case of at least 10 years;
- ☑ 4 months, in the case of at least 15 years;
- ☑ 5 months, in the case of at least 20 years;
- ☑ 6 months, in the case of at least 25 years of employment.

The amount of severance payment as specified above should be increased by 1 to 3 month's absentee pay, if the employee's employment is terminated within the 5-year period preceding his/her eligibility for old age pension, established according to the above-mentioned years of employment.

The employee shall not be entitled to receive severance pay if he/she is recognized as a pensioner at the time when the notice of dismissal is delivered or when the employer is terminated without succession, or he/she is dismissed for reasons in connection with his/her behavior in relation to the employment relationship or on grounds other than health reasons.

What legal protection options does the dismissed employee have and to what result do they lead?

If the employee is of the opinion that the dismissal is invalid, he/she must file an action for dismissal protection with the competent court within 30 days from receiving the notice. If the period for bringing an action is not observed, the termination is deemed to be effective and cannot be challenged. Disputes concerning invalid termination of employment are decided by the courts on the basis of causal jurisdiction and in accordance with the Civil Procedural Rules.

The employer shall compensate any damages of the employee caused by unlawful termination. The employee shall be compensated for any loss of income, other benefits and for damages in excess thereof. However, compensation for loss of income from employment payable to the employee may not exceed 12 months' absentee pay.

Upon the request of the employee the court may only reinstate the employment relationship, if it was terminated in violation of the principle of equal treatment or; if it was terminated in breach of the prohibition of the abuse of rights; or in violation of a prohibition on dismissal; or if the employer terminated the employment relationship of a protected trade union representative or chairman of the work council without prior consent of the trade union/work council; or if the employee served as an employees' representative at the time his employment relationship was terminated; or if the employee successfully challenged the termination of the employment relationship by mutual consent or his own legal statement therefor.

Italy

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For what reasons can an employer terminate the employment relationship?

In Italy all employees can be individually dismissed only for just cause (disciplinary reasons or serious breach of contract) or for objective reasons (due to economic or technical-organizational needs): all employees, regardless of the number of employees, are entitled to protection against unfair dismissal. If the employer employs less than 15 employees, the compensation in the event of a dismissal declared unfair by the labor judge is lower than in the case of an employer that employs more than 15 employees. Only domestic employees, professional sportsmen and women, and managers are excluded from the protection provided for all other employees.

Employees can also be dismissed for the following reasons: excessive duration of illness (as provided for in the National Collective Agreements) when it exceeds the maximum duration (usually 6 months); a total permanent incapacity to perform job tasks, if the degree of incapacity renders the employee unemployable; during the probation period.

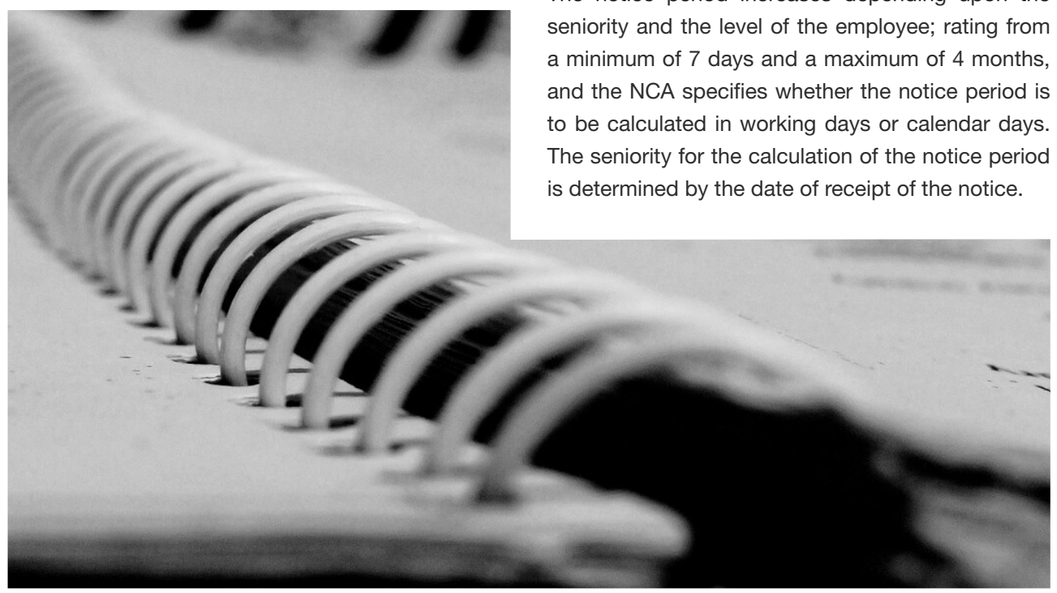
- A dismissal for personal reasons is possible if these reasons make further employment impossible because of lack of reliability even if this lack of reliability is not strictly related to the tasks performed by the employee. Typical examples of these situations are alcohol/drug abuse in the workplace, imprisonment for very serious crimes or usual dishonorable lifestyle (as gambling, prostitution or sexual misbehavior). It is required anyway that all not work-related behaviors have a negative influence on work related tasks (for example a truck driver who consumes alcohol or drugs off the job, a bank cashier caught in illegal gambling, or an elementary or middle school teacher involved in child abuses or kiddie porn).

- A dismissal for conduct-related reasons is also possible if the employee has violated a contractual obligation and the violation constitutes a serious breach of the employment contract. Examples of conduct-related reasons are being late frequently, rejection of work, unexcused absence, unauthorized start of vacation, theft, sexual harassment, insulting the supervisor or colleagues, competitive activity or unauthorized secondary employment, failure to present a medical certificate in case of incapacity to work, etc.

In the cases indicated above, any breach must be followed by a written warning of the employer to the employee, who has the right to be heard in his or her defense, including with the assistance of a trade union representative. The employer must give due consideration to the employee's defense before proceeding with dismissal. The Law and the National Collective Agreements regulate the deadlines of the “disciplinary proceeding”.

- Another reason for individual termination is the so called “dismissal for objective reasons”. “Dismissal for objective reasons” means that the employer needs to terminate an employment relationship because of a restructuring or reduction of employees due to an economic, technologic or production-related reason. The Supreme Labor Court ruled that the entrepreneurial decision to permanently reduce the employees may be based on a better and more profitable management of the company and not only to face a state of economic crisis for market reasons.

A dismissal for operational reasons is not possible if the dismissed employee can be reassigned to a vacant position in the company. The possibility of reassignment must therefore always be considered. If there are fewer vacant positions than employees to be dismissed, the vacant positions should be offered to those interchangeable employees (all the employees who have the same job level even if they are performing different tasks) who have heavier family burden and a longer seniority of service. If there are no vacancies, the employees can be dismissed according to the criteria. If the employees are not interchangeable and there are no vacancies the main criteria are related to economic or technical reasons.



Is there special protection against dismissal for certain groups of employees?

Pregnant women may not be dismissed from the beginning of pregnancy until the child is one year old even if the employer was not aware of the pregnancy but in this case the employee must send to the employer a medical certificate confirming the state of pregnancy within 90 days. The special protection against dismissal already applies even in the case of a marriage during the period between the request for the publication of the wedding and one year after the wedding. The ban only applies to the bride and not to the husband.

Some national collective agreements (such as the NCA Metalworkers) provide that a member of a company trade union delegation (RSU) may only be dismissed for justified reason or just cause only with the prior consent of the national trade union organization to which he or she belongs. After the consultation the dismissal of such employees is valid but can be the dismissal can be challenged if there is no justified reason or just cause as is the case for all other workers.

What notice periods must be observed?

The minimum duration of the notice period is not laid down by law but by National Collective Agreements. The notice period increases depending upon the seniority and the level of the employee; rating from a minimum of 7 days and a maximum of 4 months, and the NCA specifies whether the notice period is to be calculated in working days or calendar days. The seniority for the calculation of the notice period is determined by the date of receipt of the notice.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

An employment relationship may be terminated without notice for just cause , this kind of dismissal is usually given for disciplinary reasons if the employee commits serious and negligent breach of contract that does not allow the continuation of the employment relationship even during the notice period as: repeated and unjustified absence, or lack of punctuality; lack of discipline or disobedience at work; verbal or physical offence against the employer or fellow employees; defamation of the employer or managers (including through social media); any behavior of the employee (including outside of the office) that can breach mutual trust such as criminal conviction; regular drunkenness or drug use in the workplace and all cases provided in the NCA.

In these cases, the employer must comply with the “disciplinary proceeding” described above.

In all other cases when the employer dismisses the employee with immediate effect, the employer must pay compensation equal to the salary the employee would have received during the notice period.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The dismissal must be in written form to be valid and must specify the reasons for the dismissal; the date on which it will take effect.

For the employer with more than 15 employees, the dismissal for objective reasons (if the relationship started before March 7th. 2015) must be preceded by a mandatory conciliation procedure at the Labor Authority, the purpose of which is to reach an agreement between the parties of the employment relationship. The letter of dismissal must be delivered to the employee with evidence of delivery. The safest and most straightforward way is to hand it over directly to the employee.

What measures must be taken in the event of a planned mass layoff?

A collective dismissal is considered the termination of employment contracts promoted by the employer covering at least 5 employees (managers included) in a company that employs more than 15 within a period of 120 days in each autonomous production unit, or in several production units within the territory of the same province whenever such termination is due to a permanent reduction or transformation of work or business due to a decrease of demand, restructuring or technological changes. Is also considered a collective dismissal when a company that has been admitted to the extraordinary treatment of wage integration considers that it will not be able to guarantee the re-employment of all the suspended workers and cannot resort to alternative measures.

To carry out collective dismissals, the employer must initiate the proceedings by notifying employees’ representatives and the Labor Authority (National Labor Inspectorate) in writing of the intention to start the procedure of collective dismissals. The formal communication about the beginning of the procedure must specify in detail the reasons that determine the redundancy situation; the technical, organizational or production reasons for which it is considered that it is not possible to adopt appropriate measures to resolve the aforementioned situation and avoid, in whole or in part, collective redundancies; the number, company location and professional profiles of the redundant staff, as well as the staff usually employed; the timing of the of the staff reduction plan and any measures planned to deal with the social consequences of the implementation of redundancies.

The first step of the consultancy period with trade unions must not last more than 45 days. The second step of consultancy period, if the first fails, with the Labor Authority must not last more than 30 days. The consultative process may end with an agreement or without agreement: in the first case an agreement is subscribed between the parties and usually the employer pays a sum of money to employees who accept the redundancy that can be from 3 up to 10/12 monthly wages; in the second case the employer may go ahead with dismissals. The employer must notify the Labor Authority of the commencement and the outcome of the consultation period with the workers’ representatives. The employer must also notify the dismissals carried out. If the consultancy ends without an agreement no further severance is paid but except what is paid in all cases of termination of the employment relationship.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The trade unions' representatives must be consulted only in the event of collective dismissals as described in point 6 above. In the event of disciplinary dismissal as described above, the employee that has been charged can defend himself with the assistance of a trade union representative.

Before any individual dismissal for objective reasons, if the employer employs more than 15 employees (if the employee has been hired before March 7th, 2015), the employer must promote a mandatory attempt at settlement before a special conciliation commission set up at the Labor Inspectorate. In this conciliation phase, the employee may be assisted by a trade union representative or by a lawyer.

Is there an obligation to offer severance payment in the case of dismissal?

Italian law does not provide a general legal obligation to pay a compensation in the event of a dismissal in addition to the benefits due in any case of termination of employment such as severance pay, residual paid leave or paid holidays.

However, severance payments may arise from a judicial or a bargaining agreement signed within the trade union in the event of the employee contesting the dismissal. In court cases concerning the legitimacy of dismissal, the law provides that when the parties first appear before the judge, the judge shall attempt to reach an agreement between them to avoid the risks of litigation. In such cases the severance payments are usually measured based on the size of the employer in relation to the number of employees employed, length of service or reasons for dismissal.

Severance payments are also agreed as part of termination agreements based on the common will of the parties. In this case, it is up to the parties to negotiate the amount of the severance payment, which is regularly based on the length of service.

What legal protection options does the dismissed employee have and to what result do they lead?

Italian labor law grants the employee a severance pay protection in the event of an invalid or unlawful termination. If the termination is declared unlawful, the employee is entitled to be reinstated in the workplace or to be compensated for the economic loss caused by the dismissal. The payment of a compensation is calculated based on:

- ☑ If the employer employs more than 15 employees: 2 months of salary per year of service from 6 up to a maximum of 36 months if the relationship started after March 7th. 2015. Before that date the compensation is from 12 to 24 month’s wage.

- ☑ If the employer employs less than 15 employees: 1 month of salary per year of service from 3 up to a maximum of 6 months if the relationship started after March 7th. 2015. Before that date the compensation is from 2.5 to 6 months.

On November 8th, 2018, the Constitutional Court ruled that between the above minimum and the maximum compensation, the judge will be no more bound to calculate the compensation based only on the length of the employment.

Latvia

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Legal reasons

In Latvia, there are strict regulations governing the termination of employment relationships from the employer's side. These regulations specify not only the circumstances under which an employer may terminate an employment contract but also outline the specific procedure, necessary steps before termination, and other conditions.

An employer may terminate employment in three ways: **(1) by giving the employee notice of termination; (2) by filing a claim in court to terminate the employment; or (3) by concluding a mutual agreement.**

An employer can terminate an employment contract only on grounds related to the employee's conduct, abilities, or due to the implementation of economic, organizational, technological or similar measures in the company, in the cases provided by law.

- Situations related to employee conduct:
  (i) The employee has significantly violated the employment contract or established work procedures without a justified reason; (ii) the employee, when performing work, has acted illegally and therefore has lost the trust of the employer; (iii) the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment relationship; (iv) the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances; (v) the employee has grossly violated labor protection regulations and has endangered the safety and health of other persons.

Before deciding to terminate employment on these grounds, a written explanation must be requested from the employee. The employer must consider the explanation provided, and assess the severity of the violation, the circumstances under which it occurred, as well as the employee's personal qualities and past performance, in accordance with the principle of proportionality. The employer must assess whether all the elements required by law and case law or the Latvian courts are present and must provide an assessment of these elements in the written notice. In the event of a dispute, the court will assess the justification provided in the notice, for example, determining whether the violation is serious enough to render the continuation of employment impossible.

The employer may terminate the employment contract due to the employee's violation not later than 1 month from the date the violation was discovered (excluding the employee's justified absence), but not later than 12 months from the date the violation was committed.

- Situations related to employee's abilities:
  (i) the employee lacks adequate occupational competence for the performance of the contracted work; (ii) the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a medical opinion.

  The employer may terminate the employment contract in these cases if it is not possible, with the employee's consent, to transfer the employee to another position suitable to his or her abilities and qualifications.

- Situations related to economic, organizational, technological, or similar measures:
  (i) The employee previously performing the job has been reinstated; (ii) Reductions in the workforce; (iii) The employer—a legal entity or partnership—is being liquidated.

  When justifying a termination notice with a reduction in the workforce, the justifying circumstances, the employer's decision or order has to be issued regarding the economic, organizational, technological or other similar measures which has cased the downsizing. In addition, such measures, leading to workforce reduction, must be urgent, and urgency must be substantiated.

  In cases of workforce reduction, the employer must evaluate each employee's right to continue employment. If the performance and qualifications of employees in similar positions do not differ significantly, preference should be given to the employee who meets the legally specified social criteria.

  In both workforce reduction cases and when reinstating a previous employee, the employer is obligated to assess whether any suitable open positions within the company can be offered to the employee. Termination is permissible only if it is not possible to employ the employee in another position that aligns with their skills and qualifications, with their consent (except in cases where the employer is being liquidated).

- An employer also has the right to terminate an employment contract due to an employee's prolonged temporary incapacity if the employee has been continuously unable to work for more than 6 months, or if the incapacity recurs intermittently, accumulating to 1 year over a 3-year period. Notably, this period excludes pregnancy and maternity leave, as well as any incapacity due to work-related accidents or occupational disease.

  In all cases where employment is terminated by employer's notice, the employer must provide the employee with written notice detailing the factual and legal grounds for termination. This notice must include a thorough justification and assessment based on the specific circumstances of the termination. In Latvia, there is a well-established case law regarding termination, and conclusions expressed by the Supreme Court are often referenced in resolving disputes.

- The Labor Law also allows for termination under exceptional, previously unmentioned circumstances if there is a significant reason, based on considerations of morality and mutual good faith, that renders the continuation of employment impossible. In such cases, the employer may file a claim in court within 1 month from discovering such circumstances to terminate employment.

- Employment may also be terminated by written mutual agreement. The content of this agreement is at the discretion of the parties.

- Employer may issue a termination notice to the employee during the probationary period without giving any reasoning for termination.

> Termination must follow legal procedures to ensure fairness and compliance."

Special protections

The Latvian Labor Law specifies certain groups of employees with whom an employer is either prohibited from terminating employment or has limited rights to do so.

Generally, an employer is prohibited from terminating the employment contract with a pregnant employee, a woman during the postnatal period up to one year, and, if she is breastfeeding, throughout the breastfeeding period, but no longer than until the child reaches two years of age. This restriction applies unless there are legally justifiable reasons for termination related to the employee's behavior or if the employer is being liquidated.

The employer also cannot terminate the employment contract during an employee's justified absence, such as during a vacation. This prohibition does not apply if the employer is being liquidated.

Additionally, the employer is prohibited from terminating an employment contract during an employee's period of incapacity. This prohibition does not apply in cases where the employer has the right to terminate the contract due to the employee's prolonged incapacity, not related to pregnancy, maternity leave, an occupational disease, or a work-related accident. However, if the incapacity is due to a workplace accident or an occupational disease, the employer is forbidden from terminating the contract until the employee regains work capacity or is granted disability status.

Notice period

Under Labor Law, the notice period for terminating an employment contract primarily depends on the legal basis for termination:

- **3 days** – during the probationary period applicable to the employee;
- **10 days** – if an employment contract is terminated due to a significant violation of the employment contract or work procedures, serious violations of safety regulations, behavior contrary to good morals, or prolonged incapacity;
- **1 month** – if the employer is liquidated, due to workforce reduction, reinstatement of a former employee, or if an employee lacks the professional qualifications for the job;
- **2 months** – if the employment contract is terminated with a person with a disability due to workforce reduction, prolonged incapacity, or because a former employee is reinstated to the position;
- **3 months** – if the employment relationship was established by July 31, 2021
- **Immediately** – in certain cases (see below).

A longer notice period can be specified in the collective agreement or employment contract. An employee who receives notice of termination may agree in writing with the employer to terminate the employment contract before the end of the notice period. Upon the employee's request, the period of temporary incapacity during the notice period is not included, unless the employment relationship is being terminated due to the employee's prolonged incapacity.

In certain cases of termination specified by law, the employer is required, upon the employee's written request, to allocate time within the agreed working hours for the employee to seek alternative employment.

Absence of notice period

Under Latvian Labor Law, an employment contract may be terminated immediately, meaning on the same day the notice is issued, if termination is due to the employee's unlawful conduct, resulting in a loss of the employer's trust; if the employee is intoxicated while performing work duties; or if the employee, according to a medical assessment, is unable to perform the agreed-upon job due to health reasons.

Immediate termination is also applicable if the employment relationship is ended as part of an insolvency proceeding, as stipulated by a separate provision in the Insolvency Law of Latvia.

In any such case, the employer must still provide the employee with reasoned written notice.

Formal requirements

According to the Labor Law, the employer can notify the employee of the termination of the employment contract in one of the following ways:

- by handing the written notice to the employee in person by the employer's authorized representative;
- by delivering the written notice through a courier, including a sworn bailiff;
- by mail as a registered postal item;
- by sending it electronically to the email address, if the employment agreement specifically allows this form of notice.

For the notice to be considered valid when sent via email, the notice must be signed with a qualified electronic signature with a qualified time stamp in compliance with REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

Additionally, such a method of notice may only be used if both parties have specifically agreed to it in the employment contract or collective agreement.

The method of notification determines when the notice is considered to be received and, therefore, when the employment relationship is terminated and when the statutory time limit for filing an employee's claim in court begins.

A notice sent to the employee via registered mail is considered received on the seventh day after it was handed over to the postal service, regardless of the actual receipt date. Meanwhile, a notice sent electronically to the employee's email is considered received on the second working day after it was sent, regardless of the actual receipt date.

Collective dismissals

A collective dismissal occurs if within 30 calendar days a certain number of employees are being laid off on the employer's initiative (termination or mutual agreement):

- at least 5 employees if the employer usually employs more than 20 but less than 50 employees; or
- at least 10 employees if the employer usually employs more than 50 but less than 100 employees; or
- at least 10 per cent of the number of employees if the employer usually employs at least 100 but less than 300 employees; or
- at least 30 employees if the employer usually employs 300 and more employees.

Before the planned dismissal, the employer is required to inform employee representatives in writing about the planned collective dismissal and, no later than 30 days in advance, must notify the State Employment Agency and the local municipality where the company is located. The employer must also send a copy of the notification to the employee representatives.

According to the Labor Law, the employer must inform the employee representatives about the reasons for the collective dismissal, the number of employees to be dismissed, including their professions and qualifications, the period in which the collective dismissal is expected to take place, the procedure for calculating severance pay etc. The purpose of the consultation process is to agree on the number of employees to be subject to redundancies, the conduct of collective dismissal, and the social guarantees for the dismissed employees.

The employer can begin the collective dismissal process no earlier than 30 days after submitting the notification to the State Employment Agency unless the State Employment Agency has decided to extend the commencement period of collective redundancy.

Employees' representatives and state authorities

In Latvia, labor unions provide initial supervision in the process of termination if the employee to be dismissed has been a member of the labor union for more than 6 months at the time of termination notice. Before giving notice, the employer is obliged to find out whether the employee is a member of the labor union for over 6 months. If the employee confirms it, the employer is prohibited from terminating the employment contract without the prior consent of the labor union, unless there are specific legal exceptions.

In cases where the employment contract is to be terminated due to the employee's inability to perform the agreed work because of health reasons or prolonged incapacity, the employer must inform the labor union in advance and consult with them.

The labor union evaluates the employer's request and within seven working days after receiving the employer's request informs the employer of its decision to approve or reject the dismissal.

If the labor union approves the dismissal, the employer can terminate the employment contract no later than 1 month after receiving the approval. However, if the union disagrees with the dismissal, the employer can file a lawsuit within 1 month of receiving the union's response to terminate employment. In such a case, the court will evaluate the grounds for termination, and if the court finds the employer's request justified, the employment relationship will be terminated by a court decision.

In addition to ensuring that the employer follows the legal procedure for terminating the employment, the State Labor Inspectorate oversees the process. It is important to note that the Inspectorate has the right to hold the employer administratively accountable for any violations but cannot intervene in a labor dispute, which falls under the jurisdiction of the courts, including disputes regarding the justification of the dismissal.

Severance payment

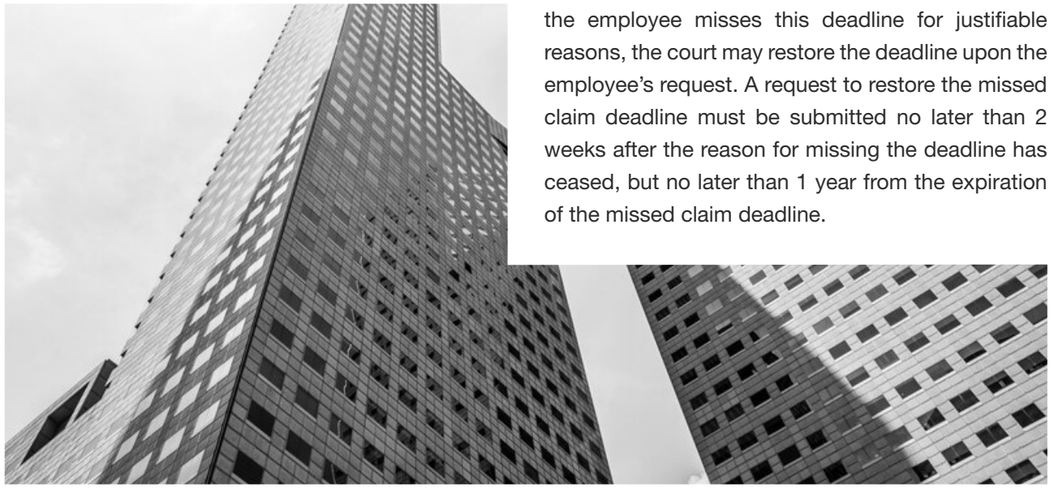
The employer is obligated to pay the employee a severance payment if the employment contract is terminated on the following grounds: (i) the employee lacks sufficient professional skills to perform the agreed work; or (ii) the employee is unable to perform the agreed work due to health reasons, as confirmed by a medical opinion; or (iii) an employee who previously performed the job is reinstated; or (iv) the number of employees is reduced; or (v) the employer is being liquidated; or (vi) the employee is dismissed due to prolonged incapacity.

The employer is also obligated to pay severance if the employee terminates the contract for an important reason that the employer agrees with.

The Labor Law sets the minimum amount of severance pay, which depends on the employee's employment period:

- 1 month's average earnings if the employee has been employed for less than 5 years;
- 2 months' average earnings if the employee has been employed for 5 to 10 years;
- 3 months' average earnings if the employee has been employed for 10 to 20 years;
- 4 months' average earnings if the employee has been employed for more than 20 years.

The collective agreement or employment contract may provide for a larger severance payment.



In case of a mutual agreement, no severance payment is obligatory, but the parties can agree on any amount.

When terminating an employment relationship, the employer must pay all amounts owed to the employee on the day of dismissal, including any unpaid remuneration, compensation for unused annual paid leave, and a severance payment, if applicable.

Legal protection for the employee

The employee may file a claim in court requesting: (i) the employer's termination notice to be annulled, (ii) the reinstatement of the employee to his / her previous position, (iii) the payment of average earnings for the entire period of forced employment delay (time of litigation). Upon the employee's request, the court may decide that the judgment, which includes reinstatement and the payment of average earnings for the entire forced employment delay, is enforceable immediately regardless of the appeal.

The employee can file a claim in court within 1 month of receiving the termination notice. In other cases where the employee's rights to continue the employment relationship have been violated, the employee may file a claim for reinstatement within 1 month of the day of dismissal. If the employee terminates the employment contract for important reasons, he / she may file a claim for severance payment within 1 month from the dismissal day. If the employee misses this deadline for justifiable reasons, the court may restore the deadline upon the employee's request. A request to restore the missed claim deadline must be submitted no later than 2 weeks after the reason for missing the deadline has ceased, but no later than 1 year from the expiration of the missed claim deadline.

Employees are exempt from paying court fees in claims arising from or related to employment relationships. However, they are responsible for their own litigation fees related to hired counsel.

The burden of proof that the termination of the employment contract is legally justified and complies with the prescribed procedure for termination lies with the employer. In other cases, when the employee has filed a claim for reinstatement, the employer must prove that, dismissal of the employee, did not violate the employee's rights to continue the employment relationship.

The Labor Law also specifies that the right to withdraw the employer's notice is determined by the employee if not otherwise stipulated in the collective agreement or employment contract.

It should be noted that according to case law if the employee has filed a claim in court for the annulment of the termination notice and for the reinstatement, this automatically grants the employer the right to withdraw the termination without requiring additional consent from the employee.

Liechtenstein

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In the sense of a preliminary remark: Liechtenstein adopted the law on individual employment contracts from Switzerland in the 1970s. Even though the laws are not completely congruent and there are certain deviations, the relevant Swiss doctrine and jurisprudence can be referred to according to the case law of the Liechtenstein Constitutional Court.

For what reasons can an employer terminate the employment relationship?

In Liechtenstein in principle, either party to an employment contract can ordinarily terminate it at any time, with or without cause, provided that the statutory or contractually agreed notice period is observed. Under Liechtenstein labor law, groundless dismissals are effective on the basis of the principle of freedom of termination. However, giving reasons is possible and, in the case of extraordinary terminations without notice, also necessary. Possible reasons for employees to hand in their notice include: changing jobs to work for a different company, dissatisfaction with their tasks, working environment or career options, health reasons, change of residence, changes in their family circumstances etc. Possible reasons for termination by the employer are: changes in the company that make job cuts necessary, misconduct by an employee (previous written warning required), employee does not meet work targets or only meets them insufficiently etc. However, the employee is protected from dismissal during certain periods (so-called "blocking periods"). In addition, the employer must ensure that the dismissal cannot be considered unlawful *(missbräuchlich)*.

Even during the notice period, the contractual obligations of the employer and the employee remain in force and there is no requirement to tolerate any and all behavior. Each case is different, and it must be considered in each case whether the conditions for a permissible subsequent extraordinary termination are met.

Is there special protection against dismissal for certain groups of employees?

During the so-called blocking periods, the employer may not terminate the contract, for example:

- during the employee's inability to work, through no fault of his or her own, due to illness or accident, from work due to illness or accident, for a period of 30 days in the first year of service, 90 days from the second to the fifth year of service and 180 days from the sixth year of service;
- during pregnancy and in the 16 weeks following childbirth;

A notice of termination issued by the employer during a blocking period is null and void. It must therefore be reissued after the respective period has expired.
If an employee becomes ill during their notice period, the notice period is extended by the number of sick days (but no longer than the applicable statutory waiting period). Since an employment relationship cannot end in the middle of a month, the period is also extended until the end of the next month.

The reasons for which a termination is considered unlawful are listed in the Liechtenstein General Civil Code. For example, a termination of an employment relationship is unlawful if it is based on one of the employee's inherent characteristics, such as age, race, gender, origin or other, if the employee exercises a constitutional right, such as political activity or religious belief, etc.

Unlike a termination by the employer during a blocking period, an unlawful termination is valid. The employee has no right to continued employment. However, an employer who unlawfully terminates an employee is obliged to pay the employee compensation. This is determined by the court and may not exceed six months' salary for the employee.

> Unlike a termination by the employer during a blocking period, an unlawful termination is valid."

What notice periods must be observed?

The probationary period for permanent employment relationships is at least one month and at maximum three months depending on the parties' agreement. During the probationary period, the employment relationship can be terminated by either party at any time with a notice period of seven calendar days to the end of a working week. If the probationary period is effectively shortened due to illness, accident or the fulfilment of a legal obligation that is not voluntarily assumed, the probationary period will be extended accordingly.

After the probationary period, the statutory notice periods are one month in the first year of service, two months in the second and up to and including the ninth year of service, and three months thereafter. The parties are free to determine the duration of the notice period in writing, although the notice period may not be less than one month (special provisions apply to employees with a collective labor agreement).

These periods may be modified by written agreement, standard employment contract or collective agreement; however, they may only be reduced to less than one month by collective agreement and only for the first year of service.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Either the employee or the employer can terminate the employment relationship at any time with immediate effect for good cause. Good cause for termination is any circumstance in which the terminating party cannot reasonably be expected to continue the employment relationship in good faith. Only serious misconduct that destroys mutual trust can give the other party the right to terminate the contract without notice. In the case of minor or moderate breaches of contract, good cause shall only be deemed to exist if the breach occurs repeatedly despite a warning.

Doctrine and case law recognize criminal acts as good cause. However, persistent refusal to work can also constitute good cause, in which case the employer must issue a warning in advance. Another recognized good cause is disloyalty towards the employer, such as denigrating the employer in front of customers.

Terminating an employment contract with immediate effect is generally a last resort and should therefore be used sparingly.

If the proper notice of termination has already been given, additional requirements for termination with immediate effect must be met. After proper notice of termination has been given, doctrine and case law assume that it is generally reasonable for the employer to continue the employment relationship until the proper notice period has expired.

However, the situation is different if the employee allows himself to be guilty of serious misconduct after the termination with notice has taken place.

In certain circumstances, subsequent extraordinary termination is permissible if there is good cause. If the employee grossly violates his or her duties under the employment contract during the notice period – i.e., after receiving the notice of termination – and as a result the employer cannot reasonably be expected to continue the employment relationship until the end of the employment contract, the employer may issue extraordinary termination.

If the employer has already released the employee from work, the requirements for a subsequent termination without notice are even higher. It is quite rare for the employer to be able to issue the extraordinary notice of termination during the notice period and to stop salary payments. The unreasonableness of continuing the employment relationship usually arises in the event of personal confrontation, which does not apply to employees who no longer appear at work. However, in the case of particularly serious misconduct, such as blatant disloyalty to the employer or embezzlement, the admissibility of termination without notice is also recognized in such cases.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The law merely states that an open-ended employment relationship can be terminated by either party. There is therefore no formal requirement in the law, although a collective employment agreement or the written individual employment contract often imposes one (e.g. in writing or by registered letter). Internally, the employer determines who is authorized to issue a notice of termination and in what form. In the external relationship with the employee, any representative(s) of the employer with signing power(s), which is evident from the commercial register, may give notice of termination on behalf of the employer.

The notice of termination as such does not have to include any reasons. The terminating party must state the reasons for the termination in writing if the other party requests it, regardless of whether it is a regular termination or a termination without notice.

What measures must be taken in the event of a planned mass layoff?

If 20 or more employees are made redundant for operational reasons within a period of 90 days, this is considered a mass dismissal in Liechtenstein. In this case, special provisions must be observed.

Internal information

As soon as an employer has to part with at least 20 of its employees, but before the final decision is made, the employee representative body must be informed immediately of the planned mass dismissals. Before the first dismissal is announced, the employer and the employee representative body will discuss how to proceed. If there is no employee representative body, the employer will consult directly with the employees.

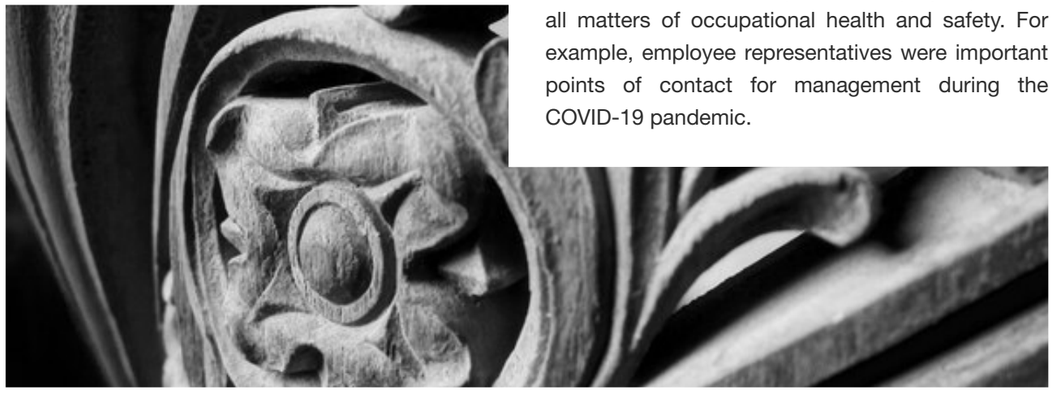
What information is required?

The employer must provide the employee representative body with all relevant information in a timely manner and, in particular, provide written information on the following points:

- ☑ What reasons led to the planned mass dismissal?
- ☑ How many employees are affected?
- ☑ Which category do they belong to and what are the reasons for their selection?
- ☑ How many employees are usually employed at the employer?
- ☑ For what period are the mass dismissals planned?
- ☑ What does the social plan, or the procedure look like that determines the severance payments?

External information

The Office of Economic Affairs must then be informed in writing of the impending mass redundancies. This information must include all relevant details of the intended mass redundancies as well as the results of the consultation with the employee representative body. A copy of the information shall be sent to the employee representative body. An employment relationship that is terminated as part of a mass redundancy will generally not end until at least 30 days after the Office of Economic Affairs has been informed.



What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The employee representative body represents the interests of the employees to the management. The Participation Act regulates the participation of employees. In Liechtenstein, employees have the right to form an employee representative body in companies with at least 50 employees. The Participation Act provides a basic definition of how to appoint such an employee representative body. If the threshold is reached, the employer must actively approach the employees and consult with them.

The participation of the employee representative body includes the right to be informed and heard.

Information is the passing on of information from the employer to the employee representative body. Hearing means the establishment of a dialogue and exchange of views between employer and employee representative body. In the context of the hearing, the employee representative body has in particular the right to submit a statement, which is to be duly acknowledged by the employer. The employer shall arrange the timing, form and content of the information in such a way that the employee representative body can adequately examine the information and, if necessary, prepare for the hearing. With the Participation Act, the Liechtenstein legislature established a small framework for when employee representatives should be informed or consulted. The law only provides for actual co-determination in the event of mass redundancies, the transfer of ownership of an employer , and in all matters of occupational health and safety. For example, employee representatives were important points of contact for management during the COVID-19 pandemic.

Is there an obligation to offer severance payment in the case of dismissal?

In Liechtenstein, no general severance payment duty arises in the event of a justified dismissal although the following clarification must be made:

If the employment relationship of an employee aged 50 or over ends after 20 or more years of service, the employer shall pay him a severance grant. The amount of compensation may be determined by written agreement, standard employment contract or collective employment agreement, but may not be less than the amount corresponding to the employee's salary for two months. If the amount of compensation is not determined, it shall be fixed by the court at its discretion. The compensation may be reduced or cancelled if the employment relationship is terminated by the employee without good cause or is terminated by the employer with immediate effect for good cause, or if the employer would be placed in an emergency because of the payment of the compensation.

If the employer dismisses the employee with immediate effect without good cause, the employee is entitled to compensation for what he would have earned if the employment relationship had been terminated in compliance with the notice period or upon expiry of the specified contract term. The court may order the employer to pay the employee compensation, which it shall determine at its discretion, taking into account all the circumstances; however, such compensation shall not exceed six months' salary of the employee.

If the employee does not take up the job without good cause or if he leaves it without notice, the employer is entitled to compensation equal to a quarter of the salary for one month; in addition, he is entitled to compensation for further damages.

> Understanding severance rights ensures fairness and compliance in employment relationships."

What legal protection options does the dismissed employee have and to what result do they lead?

In Liechtenstein, disputes arising from the employment relationship shall be settled by the ordinary courts.

In property disputes, if the sum of money claimed in the action or the value of the subject matter of the dispute does not exceed the sum of 5,000 francs, or if the plaintiff declares that he wishes to accept a sum of money not exceeding 5,000 francs instead of the subject matter claimed in the action (small claims), the small claims provisions apply. The purpose of the small claims procedure is to simplify and economize civil proceedings in the case of particularly minor disputes.

The acceleration of the proceedings is achieved, among other things, by the classification of small claims as holiday cases, the oral pronouncement of the judgment (immediately after the conclusion of the hearing), the effectiveness of the judgment pronounced orally in the presence of both parties at the time of pronouncement, as well as the restrictions on the right of appeal and the inadmissibility of an appeal to the Superior Court. An appeal to the Court of Appeals can only be made on the grounds of nullity of the judgment, procedural or documentary irregularities, and incorrect legal assessment, but not on the grounds of incorrect assessment of evidence.

Any person who wishes to claim compensation for unlawful termination (see question 2) must, at the latest by the end of the notice period, file a written objection to the notice of termination with the terminating party. If a valid objection has been made and the parties are unable to reach an agreement on the continuation of the employment relationship, the party who has been dismissed may claim compensation. If no legal action has been taken within 180 days of the termination of the employment relationship, the claim shall be forfeited.

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For what reasons can an employer terminate the employment relationship?

The Labor Code of the Republic of Lithuania ("Labor Code") provides for a total of six grounds for termination of an employment contract: (i) by agreement of the parties; (ii) at the initiative of one of the parties; (iii) at the will of the employer; (iv) in the absence of the will of the parties; (v) in the event of the death of a party to the employment contract - a natural person; and (vi) in accordance with the procedure established by the Minister of Social Security and Labor of the Republic of Lithuania, if it is not possible to locate the employer - the natural person or the employer's representatives.

Dismissal of an employee at the employer's will is subject to the following grounds and conditions stipulated in the Labor Code:

☑ Termination of the employment contract **at the initiative of the employer through no fault of the employee.**

In this case, the employer has the right to terminate an open-ended or fixed-term employment contract prematurely on the following grounds:

✓ the job function performed by the employee becomes redundant for the employer due to changes in the organization of work or other reasons related to the employer's activities, i.e. the employer changes the need for the employee's work and the job function performed by the employee becomes redundant. It is important that this reason is real and has a direct causal connection with the fact that the employee's job function has become redundant for the employer;

✓ the employee fails to achieve the agreed performance results in accordance with the performance improvement plan. Before this ground for dismissal can be used, the employee must be given a written explanation of the shortcomings in performance and the failure to achieve personal results, together with a performance improvement plan covering a period of not less than two months;

✓ the employee refuses to work under modified essential or additional terms and conditions of employment, or to change the type of working time or the location of the workplace. It is important that the employer's proposal to change the terms and conditions of employment is based on substantial reasons of economic, organizational or industrial necessity;

✓ the employee does not accept the continuity of the employment relationship in the event of a transfer of the company or part of it;

✓ a court or an organ of the employer takes a decision which results in the employer being dismissed.

☑ **Termination of the employment contract at the employer's initiative due to the employee's fault.**

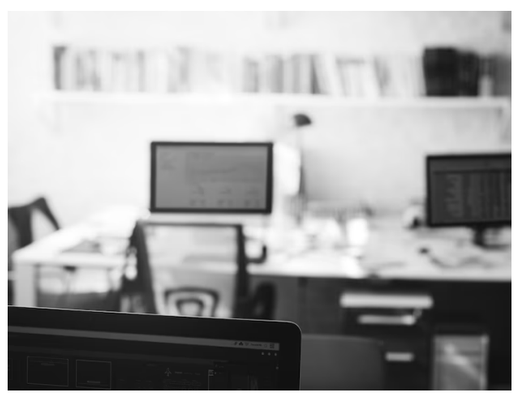
In this case, the employer has the right to terminate the employment contract without notice and without payment of compensation if the employee, by an act or omission, breaches the obligations imposed by labor law or the employment contract. Such a termination can only be made if the employee is in culpable breach of duty and only if the breach is of a duty imposed by the contract of employment or by labor law. These rules may be contained in national legislation as well as in local regulations.

Reasons for termination may include:

✓ serious breach of the employee's duties, such as (i) absence from work for a full working day or shift without a valid reason; appearing at the workplace during the working day or shift drunk or under the influence of narcotic, toxic or psychotropic substances, unless such intoxication is caused by the performance of professional duties; refusal to undergo a medical examination where such examination is compulsory under labor law; violence or harassment, including psychological and gender-based violence or harassment, acts of discrimination or offence to the honor and dignity of other employees or third parties in the course of employment or at the workplace; intentional damage to the employer's property or an attempt to intentionally cause damage to the employer's property; an act committed in the course of employment or at the workplace that has been found to be a criminal offence; or any other act that constitutes a serious breach of the employee's duties. In deciding whether a breach of employment obligations is serious, the nature of the breach, the extent to which the employee's duties have been clearly defined, the consequences of the breach, the practice in the workplace of dealing with such or similar breaches, etc. must be assessed;

✓ the second identical breach of employment obligations committed by the employee during the previous 12 months. An employment contract may be terminated for a second breach of the same employment obligation by the employee only if the first breach has been discovered, the employee has been given the opportunity to explain the breach and the employer has notified the employee of the possibility of dismissal for the second breach within one month of the date on which the breach was discovered.

Thus, in all cases, the employer must assess the circumstances surrounding the breach of employment obligations, listen to the employee's point of view, i.e. request a written explanation from the employee, and terminate the employment contract only if the employer is satisfied that there are sufficient grounds for doing so and that it would be proportionate to do so.



- **Termination of employment contract at the will of the employer**.

  This reason is a more flexible way of terminating an employment relationship with an employee. Termination on this ground is usually the result of the employer's subjective decision not to continue the employment relationship with the employee with whom it has become impossible to do business, i.e. the reason for terminating the employment contract may be related to the employee's personality, behavior at work, qualifications, position of the employer, etc., but it must be a real, legitimate and sufficient reason to justify the termination of the contract.

  Although the employer can make such a subjective decision unilaterally, it must comply with these conditions:

  - terminate the employment agreement with the employee for reasons other than those specified in the Labor Code, i.e. point 1) above;
  - give three working days' notice to the employee;
  - pay the employee severance pay equal to at least six months' average salary.

  The three conditions set out above are required for a lawful termination of employment on this ground. In the case of dispute, the employer must prove and substantiate the existence of a real reason.

  In addition to the above, the employment contract cannot be terminated for the following reasons: (i) providing information about a violation under the Whistleblower Protection Act; (ii) participating in a lawsuit against an employer accused of violating the law; (iii) complaints to administrative bodies on the grounds of gender, race, nationality, citizenship, language, origin, social status, religion, beliefs or opinions, age, sexual orientation, disability, ethnicity, religion, marital and family status, intention to have a child, membership of political parties, trade unions and associations; (iv) the fact that the employee exercises or has exercised the rights provided for in the Labor or any other discriminatory reasons.

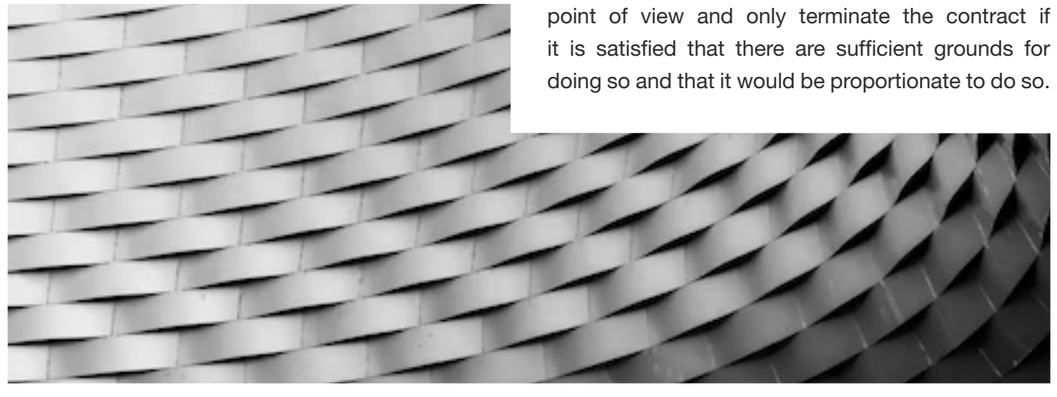
Is there special protection against dismissal for certain groups of employees?

Yes, the Labor Code provides for restrictions on termination of employment.

- a pregnant employee's contract of employment may not be terminated at the employer's will during her pregnancy until her child reaches the age of four months, except at the will of the parties, at the employee's initiative, at the employee's initiative during her probationary period, or in the absence of the will of the parties to the employment contract, and in the event of the expiry of the fixed-term contract or a court decision or decision of the employer's body resulting in the termination of the employment relationship. From the day the employer learns that the employee is pregnant until the child reaches four months of age, the employer may not give the pregnant employee notice of impending termination of her contract. If an employee is granted maternity leave or parental leave during the period before her child reaches four months of age, the employment contract may only be terminated at the end of this leave;
- employees with a child under the age of three may not have their employment terminated at the initiative of the employer, unless the employee is at fault;
- employees on maternity, paternity or parental leave may not have their employment terminated at the will of the employer;
- similarly, it is prohibited to dismiss an employee who has been called up for compulsory military service, voluntary temporary military service or alternative national defense service at the employer's initiative without the employee being at fault or at the employer's will.

What notice periods must be observed?

- if the employer wants to terminate the employment contract through no fault of the employee, the employment contract must be terminated by giving the employee one month's notice, or two weeks' notice if the employment relationship has lasted less than one year. These notice periods are doubled for employees who are less than five years from the statutory retirement age and tripled for employees who have a child under the age of 14 or a disabled child under the age of 18, pregnant employees, disabled employees, employees who have a certificate for an illness included in the list of serious illnesses approved by decree of the Minister of Health, and employees who are less than two years from the statutory retirement age;
- in the case of termination of the contract at the employer's initiative due to the employee's fault, the employer is not obliged to give notice to the employee. In this case, however, it is important to note that the employer must take the decision to terminate the employment agreement on the grounds of the employee's breach within one month from the date of discovery of the breach and within six months from the date of the breach. The latter period is extended to two years if the employee's irregularity comes to light as a result of an audit, inventory or performance review;
- If the employer intends to terminate the contract at his own initiative, the employer must give the employee three working days' notice.



Under what circumstances is an extraordinary termination without respecting a notice period possible?

The Labor Code provides for the employer's right to terminate an employment contract without notice and without payment of compensation if the employee, through his fault or omission, violates the obligations imposed by labor law or the employment contract. The grounds for termination may be: (i) a serious breach of the employee's duties; (ii) a second identical breach of the employee's duties within the last twelve months.

In this case, the essential condition for the termination of the contract is the breach of the employee's employment obligations. Such a breach may be either an act, i.e. the performance of an act which the employee is prohibited from performing under the rules of employment law or the contract of employment, or an omission, i.e. the failure to perform the duties imposed by the rules of employment law or the contract of employment.

A further condition for the application of this ground is that the employee is guilty of misconduct. Misconduct may be a culpable act or omission, and the form of misconduct (intentional or grossly negligent) is generally irrelevant, unless a particular form of misconduct is expressly provided for by law. It should also be noted that a breach of employment obligations (even if serious or repeated in the last twelve months) does not in itself mean that the employee can be dismissed on that ground only. In all cases, the employer must assess the circumstances surrounding the breach of employment obligations, listen to the employee's point of view and only terminate the contract if it is satisfied that there are sufficient grounds for doing so and that it would be proportionate to do so.

The Labor Code also provides for other cases in which an employment contract may be terminated without notice:

- the entry into force of a judgement or court order imposing a sentence that prevents the employee from working;
- if an employee is deprived by law of special rights to perform a particular job or function;
- in the case of an employee under the age of sixteen, if the employee is requested to terminate the contract by a parent or legal representative of the child, or by the doctor attending to the child's health, or, during the school year, by the school in which the child is enrolled;
- if the employee is no longer fit for the post or work in question on the basis of the opinion of the health authority and does not agree to be transferred to another vacant post or work in the establishment;
- the reinstatement of the employee to the position to which the dismissed employee was recruited;
- at the request of a competent official of the authority responsible for controlling illegal employment, if a case of illegal employment of a foreigner is established;
- if the employment contract is in breach of the law and these breaches cannot be remedied and the employee does not accept or cannot be transferred to another vacant post in the same establishment.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

If the Labor Code or other laws stipulate the employer's obligation to notify the employee of the termination of the employment contract, the notice must be given in writing. Thus, it is the employer's obligation.

Lithuanian law provides for the following formal requirements to be included in the notice: (i) the reason for termination of the employment contract; (ii) the provision of law under which the employment contract may be terminated; and (iii) the date on which the employment relationship ends. The notice must be given to the employee without delay.

It should be noted that if the employee disputes the lawfulness of the dismissal, the employer has the burden of proving that the notice was given.

It should also be noted that if the employee is temporarily incapacitated or on leave at the time of the expiry of the notice period, the expiry of the notice period will be postponed until the end of the period of incapacity or leave.

What measures must be taken in the event of a planned mass layoff?

According to Lithuanian law, collective dismissal is the termination of an employment contract at the initiative of the employer, without the fault of the employee, at the will of the employer, or by agreement between the parties to the employment contract, initiated by the employer, within a period of no more than thirty calendar days, or in the case of dismissal as a result of the employer's bankruptcy:

- ten or more employees in a workplace where the average number of employees is between twenty and ninety-nine;
- ten per cent or more of the employees in a workplace where the average number of employees is between one hundred and two hundred and ninety-nine;
- thirty or more employees in a workplace where the average number of employees is three hundred or more.

When planning mass layoffs, companies must consider the average number of employees in the company, the reasons for the layoffs, the number of planned layoffs and the expected duration of the layoffs.

If dismissals are made in stages during the month, they commence when five dismissals are made. Dismissals are considered to have started when the notice of dismissal is given. This requirement means that each notice of dismissal served automatically initiates the dismissal procedure, as the decision to dismisses has already been taken.

Employers often fail to realize that when they dismiss a group of employees, they have an additional obligation to inform and consult the works council (or, if there is no elected works council, the trade union) before taking a decision. In this case, it is important to note that the information and consultation procedures must take place before the employer takes the decision to dismiss a group of employees, so that the employees' representatives can make comments and suggestions on how to mitigate the negative consequences for the employees and influence the decision.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

If the contract of employment is terminated at the initiative of the employer through no fault of the employee, in this case due to a change in the organization of work or other reasons related to the employer's activities, and if the redundant job function is performed by a number of employees and only part of the employees are dismissed, the criteria for selecting the employees to be dismissed shall be determined by the employer in consultation with the works council or, if there is no works council, the trade union. In this case, the selection is made by a committee set up by the employer, which must include at least one member of the works council, and the proposals for dismissal are made by the employer.

In addition, as mentioned above, in the case of group dismissals, the employer must inform the works council, if there is no works council, before deciding to terminate or initiate the termination of the employment contract, - the trade union at the employer's level and consult it on measures to mitigate the consequences of the future dismissal of group employees (retraining, redeployment, changes in working time arrangements, higher severance payments, extension of notice periods, time off work to look for a new job, etc.). During the consultation process, the parties must try to agree on a realistic mitigation of the possible negative consequences.

Is there an obligation to offer severance payment in the case of dismissal?

There are provisions for the payment of severance to employees for certain reasons of dismissal at the initiative of the employer.

- in the event of termination of the employment contract at the employer's initiative without fault on the part of the employee, the dismissed employee must be paid severance pay equal to two times his average salary and, if the employment relationship has lasted less than one year, severance pay equal to half his average salary. However, the dismissed employee shall receive an additional long-term employment allowance in accordance with the procedure laid down by law, taking into account the employee's uninterrupted service with the employer;
- in the case of termination at the employer's will, the employer is obliged to pay the employee severance pay of at least six months' average salary;

- also in cases where the employment contract must be terminated without notice, where: 1) if, in the opinion of the health authority, the employee is no longer able to perform the duties or work in question and does not agree to be transferred to another vacant post or work in the same place of employment which corresponds to the employee's state of health, or if there is no such post or work in the same place of employment, he shall be entitled to severance pay equal to two months' average salary (or, if the contract of employment is for less than one year, to one month's average salary); 2) upon reinstatement of the employee to replace the dismissed employee, and if the employment contract is in conflict with the law and the conflict cannot be resolved, and the employee does not accept or cannot be transferred to another vacant position with the same employer, severance pay equal to one month's average monthly salary (or half a month's average monthly salary if the employment contract is for less than one year).

What legal protection options does the dismissed employee have and to what result do they lead?

A party to an employment relationship who believes that his or her rights have been violated by another party to the relationship, in cases of alleged wrongful termination, may submit a claim to the Labor Disputes Commission (LDC) for resolution.

A claim for wrongful termination must be filed with the Labor Disputes Commission within one month from the date on which the claimant knew or should have known of the alleged violation of their rights, i.e. unfair dismissal. The filing deadline may be extended upon determination by the Labor Disputes Commission. In such cases, the request for extension must provide the reasons for the missed deadline, and the Commission may grant the extension if it finds the reasons to be valid.

Should the Labor Disputes Commission decline to reinstate the filing deadline, the claimant may file an action in court to resolve the dispute. This must be done within one month of the Commission's decision not to reinstate the deadline.

Malta

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For what reasons can an employer terminate the employment relationship?

Termination during the Probation Period

During probation, the employment may be terminated by either party without giving any reasons. However, if the employee is pregnant and the employer terminates her employment, the employer is obliged to provide her with reasons in writing justifying the dismissal and that it is not related to the employee's pregnancy.

Indefinite term contract

Following the end of the probation period, indefinite contracts may be terminated by the employer for one of three reasons:

- A good and sufficient cause – No statutory definition is provided of a good and sufficient cause under Maltese law and this has been subject to the interpretation of the Industrial Tribunal. However, examples of an unfair dismissal are provided under the law which include:

  - the employee was a member of a trade union at the time of the dismissal, or is seeking office as, or acting or has acted in the capacity of an employees' representative;

  - the employee no longer enjoys the employer's confidence, except in the case of private domestic employees;

  - the employee is getting married;

  - the employee is pregnant or on maternity leave;

  - the employee acts as a whistleblower by disclosing information to a designated public regulatory body about alleged illegal or corrupt activities that are being carried out by the employer or by persons acting on the employer's name and interests;

  - the employee has filed a complaint or is participating in proceedings against the employer involving an alleged violation of laws or regulations or is having recourse to competent administrative authorities;

  - the employer's business has been transferred to another owner, unless it is proven that the termination is necessary for any economic, organizational or technical reasons entailing changes in the workforce.

  However, the Maltese courts have repeatedly stated that dismissal for a good and sufficient cause should be a case of last resort. It is always recommended that employee be warned of the specific issues, which will eventually lead to the dismissal for a good and sufficient cause, as otherwise it may be deemed to be an unfair dismissal.

- Redundancy – the employer is to terminate the employment of that person who was engaged last in the class of employment affected by such redundancy. As an exception to this rule, if the employer, which is not a limited liability company or a statutory body, is related to the employee by consanguinity (i.e. by blood) or affinity (i.e. by marriage) up to the third degree, the employer may, instead of terminating the employment of such person, terminate that of the person next in line.

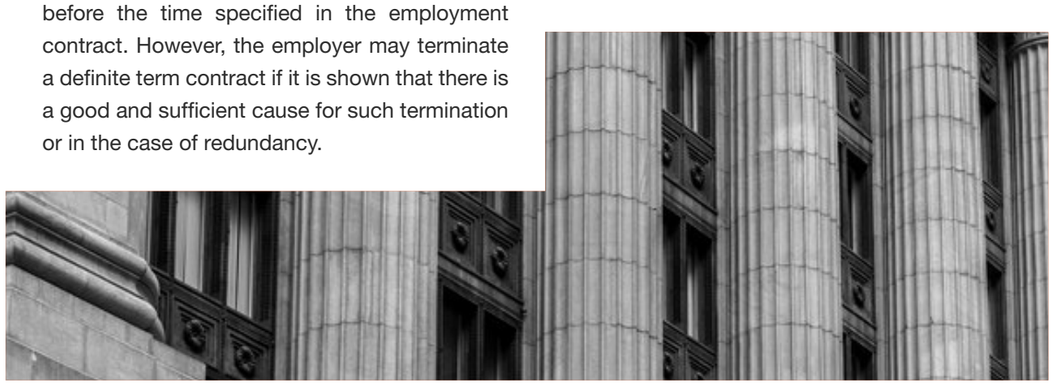
- The employee has reached the retirement age – as a rule, the retirement age in Malta is 65 years. However, there are certain exceptions as follows in relations to persons:

  - born on or before the 31st December 1951, the retirement age is 61 years, with the exception of women whose retirement age is 60 years;
  - born during the calendar years 1952 to 1955, the retirement age is 62 years;
  - born during the calendar years 1956 to 1958, the retirement age is 63 years;
  - born during the calendar years 1950 to 1961, the retirement age is 64 years.

- Definite term contract

  Following the end of the probation period, the definite term contracts will be terminated upon the expiration of the term set in the contract.

  Definite term contracts may not be terminated before the time specified in the employment contract. However, the employer may terminate a definite term contract if it is shown that there is a good and sufficient cause for such termination or in the case of redundancy.



Is there special protection against dismissal for certain groups of employees?

Under Maltese law, the dismissal of an employee is deemed to be unfair when:

- the employer's termination of that employee's indefinite contract (other than during the probationary period) is not done on the grounds of redundancy or for a good and sufficient cause according to law;

- the termination is made in contravention of the provisions of the law which protect employees who carry out acts in furtherance of a trade dispute and according to a directive issued by a trade union, whether the employee member of such trade union or not;

- although the termination is made on the grounds of redundancy or for a good and sufficient cause, it is deemed to be discriminatory. This includes any failure by the employer to re-employ within 1 year from the date of termination of the employment if the post formerly occupied by the employee is available again;

- termination of fixed term contracts before their expiry date ,unless there is a good and sufficient cause.

Furthermore, in relation to the termination based on a good and sufficient cause, as outlined above, although no definition is provided and it is subject to the interpretation of the Industrial Tribunal, protection is also given to a special category of persons where the law provides examples of an unfair dismissal.

What notice periods must be observed?

When the employment is terminated during the probation period, if 1 month has passed from the beginning of the employment, a 1-week notice is applicable.

Where an indefinite contract extends beyond the probation period, notice must be given before the employment is terminated. The notice is given by the party who intends to terminate the employment relationship. The notice period is calculated based on the employee's continuous length of service, as follows:

Length of Service	Notice Period
For more than 1 month but not more than 6 months	1 Week
For more than 6 months but not more than 2 years	2 Weeks
For more than 2 years but not more than 4 years	4 Weeks
For more than 4 years but not more than 7 years	8 Weeks
For more than 7 years	Additional 1 week for every subsequent year of service or part thereof up to a maximum of 12 weeks

The employer and the employee may agree on longer periods in cases of technical, administrative, executive or managerial positions. In other cases, the established notice period cannot be extended.

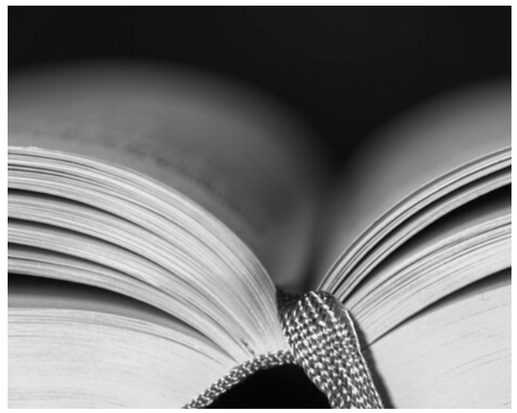
The notice period begins on the next working day after the other party has been notified.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Whether the termination is done by the employee or by the employer, the notice period established by law is waived off when there is a good and sufficient cause for such termination. These include, for instance, an employer's termination of the employment for disciplinary reasons or when the employee terminates the employment for medical reasons.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

When giving a notice of termination, the employer is obliged to state the reasons for the termination. On the other hand, employees are not required



to provide reasons for their termination of the employment upon giving notice of termination.

Furthermore, under Maltese law, no formal requirements exist when giving notice of termination, apart from the notice period established by law. However, the Industrial Tribunal has held on several occasions that 3 prior warnings must be given to the employee before dismissing that employee based on a good and sufficient cause.

Upon the termination of employment, the employer is responsible for informing Jobsplus of the termination of such employment as well as the reason for such termination.

What notice periods must be observed?

A collective redundancy is the termination of the employment by an employer for reasons of redundancy, over the period of thirty days. To qualify as a collective redundancy, the law lays down the minimum number of employees which must be dismissed, according to the number of employees in the establishment, as follows:

Number of Employees in the Establishment	Minimum Number of Employees Dismissed
21 – 99	at least 10
100 – 299	at least 10% of the employees
300 or more	at least 30

Duty to notify Employees' Representatives

The employer must notify the employees' representatives in writing of the termination of employment contemplated by him before terminating the employment of such employees. Within 7 working days of such notification, the employer and the employees' representatives shall consult between themselves, which consultations shall cover ways and means of avoiding the collective redundancies or reducing the number of employees affected by such redundancies and for mitigating the consequences thereof.

Duty to provide information to Employees' Representatives

Within the 7-day period mentioned above, the employer must also provide the employees' representatives with a written statement which shall include the below information:

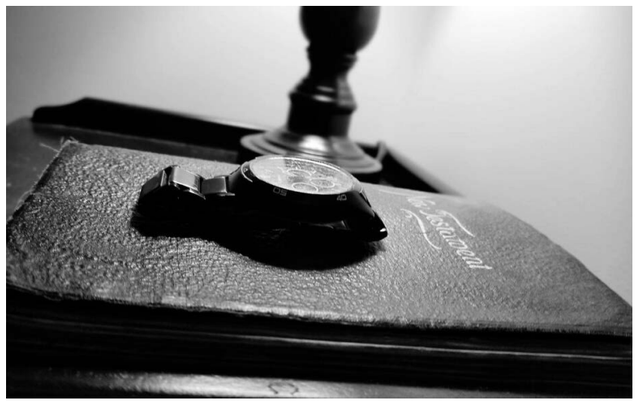
- ☑ The reasons for the redundancies:
- ☑ The number of employees the employer intends to make redundant;
- ☑ The number of employees normally employed by the employer;
- ☑ The criteria proposed for the selection of the employees to be made redundant;
- ☑ Details regarding any redundancy payments which are due; and
- ☑ The period over which redundancies are to be affected.

Duty to inform the Director responsible for Employment and Industrial Relations ('DIER')

The employer shall send a copy of the written notification, and a copy of the written statement mentioned above to DIER on the same day that they are sent to the employees' representatives.

If the collective redundancy proposed concerns members of the crew of a seagoing ship, the employer shall also notify the Registrar General of Shipping and Seamen.

This obligation does not apply if the collective redundancy is a result of a judicial decision.



When Redundancies are to Take Effect

The notice period of termination of the employment may start from the date of commencement of consultations with the employees' representatives.

Nonetheless, the employer may only terminate the employment of employees after any projected collective redundancies are notified to DIER and such termination may only take effect 30 days after such notification. In exceptional circumstances, DIER may grant the employer a shorter notice period. Furthermore, DIER may extend this period by a second 30-day period, if it appears that such extension may provide further opportunity to resolve the reasons for the redundancies or to find solutions to the benefit of those employees to be made redundant. If such an extension is granted, the employer will be informed of such extension in writing prior to the expiration of the initial period.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Once an employment is terminated, the employer must complete a termination form, which form must be submitted within 4 days of the termination of employment to Jobsplus.

As outlined above, the employer must make the required notifications to DIER in cases of collective redundancies.

Furthermore, if the employee whose employment was terminated held a position which was approved by the Malta Financial Services Authority ('MFSA') such as a director on a company holding an MFSA license, the employee must inform the MFSA of such termination and the effective date.

The employer is not required to obtain the authorization of any government authorities in case of termination of employment.

Is there an obligation to offer severance payment in the case of dismissal?

Maltese law does not impose an obligation of on either party to make severance payment upon termination of the employment for any reason. Nevertheless, should the parties agree otherwise, they both may enter into a settlement agreement upon termination of employment, where severance pay may be agreed upon.

In specific circumstances, the law stipulates a payment which needs to be made by one party to the other, upon the termination of the employment relationship.

Termination of Indefinite Contract – Notice Given by the Employee

If the employee abandons the employment and/or fails to give notice of termination, the employee is liable to pay to the employer a sum equal to half of the wages that would be payable in respect of the notice period not worked.

If the employee, whilst working during the notice period, decides not to continue working until the end of the notice period, the employee is liable to pay to the employer a sum equal to half of the wages that would be payable in respect of the remaining notice period not worked.

If the employer decides not to allow the employee to work during the notice period, or not to continue working for the remainder of the notice period, the employer is obliged to pay to the employee a sum equal to the full wages that would be payable for the remainder of the notice period not worked.

Termination of Indefinite term contract – Notice Given by the Employer

Once the employee receives the termination notice from the employer, the employee may either decide to work the notice period and be paid the full wages, or else, the employee may choose not to work the notice period, and the employer would pay the employee a sum equal to half of the wages that would be payable in respect of the notice period

not worked. This would also apply if the employee decides not to continue working the notice period, even though part of the notice period has already been worked by the employee.

If the employer decides not to allow the employee to work during the notice period, or not continue to work the remainder of the notice period, the employer is obliged to pay to the employee a sum equal to the full wages that would be payable in respect of the remainder of the period not worked.

Termination of Definite term contract

Once the probation period has passed, the party terminating the agreement prior to its expiration term, needs to pay the other party half of the wages which would have been due to the employee for the remaining duration of the contract.

Termination on the Basis of a Good and Sufficient Cause

If the employment is terminated based on a good and sufficient cause, the person terminating the employment need not pay any compensation to the other party for such termination.

Settlement of Outstanding Dues

The employee is entitled to be paid for all entitlements upon termination, proportionally to the period of employment. Dismissed employees must receive all remuneration due to them including wages, statutory bonuses, monetary settlement for leave not availed of, overtime payments, and any other payments due to them by the employer, by the next payment date following the termination of the employment. If not paid by such date, the employee must inform the employer. If no action is taken, the employee must report such matter to DIER.

What legal protection options does the dismissed employee have and to what result do they lead?

Out of Court Settlement

The dismissed employee may also enter into a settlement agreement with the employer for such termination of employment. This may be done both before or during the proceedings before the Industrial Tribunal.

Recourse to the Industrial Tribunal

If the employee believes that the termination of employment was unfair, the employee may initiate proceedings before the Industrial Tribunal. The application must be made through a referral in writing by the employee alleging the breach, or by another person acting on behalf of such employee. The referral must be made by means of a declaration, outlining the facts of the case and filed to the Registry of the Industrial Tribunal. The referral must be made within 4 months from the effective date of the alleged unfair dismissal.

The Industrial Tribunal will issue its decision within 1 month of the referral. However, this period may be extended if the Chairperson of the Industrial Tribunal deems it necessary for a valid reason which must be stated and registered in the proceedings of the Tribunal.

If the Industrial Tribunal feels that the grounds for the unfair dismissal complaint are well- founded, if the employee stated that he wishes to be reinstated or re-employed with the employer, the Tribunal may accede to this request. If the Tribunal does not accede to this request or if the employee did not request to be reinstated or re-employed with the employer, the Tribunal will award the employee compensation to be paid by the employer in respect of the dismissal, which compensation shall be calculated on the basis of the actual damages and losses incurred by the employee who was unjustly dismissed, as well as other circumstances, including the employee's age and skills, which may affect the employee's employment potential.

Republic of Moldova

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For what reasons can an employer terminate the employment relationship?

According to the legal regulation in Moldova, the employer is entitled to dismiss an employee only for "cause". Termination "at will" is not allowed, except for the manager/head of a private legal entity.

The reasons representing a "cause" for dismissal are expressly regulated by the Labor Code. It depends on these reasons whether the dismissal qualifies as a disciplinary one (culpable violation of the work discipline by the employee) or non-disciplinary (for reasons non-attributable to the employee).

As a rule, a single violation of the work discipline by the employee does not represent sufficient legal ground for being disciplinarily dismissed. Legal exceptions of this rule refer to the unfounded absence from work for more than 4 consecutive hours (lunch break not included) during the working day of the employees with a daily working time of no less than 8 working hours or half of the daily duration of the working time of the employees whose daily working time is less or larger than 8 working hours; attendance to work in alcoholic, narcotic or toxic condition confirmed by medical certificate; committing a contravention (administrative offence) or a crime against the property of the employer; misconduct of the employee who directly manages the financial means or has access to the information systems of the employer serving for the employer to lose confidence in the employee; signing by the manager, deputy or by the chief accountant of the unfounded document which damaged the employer; serious violation of the work discipline (e.g. breach of confidentiality duty); submission of fake documents at employment, etc.

Before proceeding with any disciplinary dismissal, the employer shall follow the legal procedure to investigate the violation of the work discipline and ascertain the employee's guilt.

The reasons leading to non-disciplinary dismissal (not related to employee misconduct) include the unsatisfactory result of the probationary period; liquidation of the employer; staff redundancy; the unsatisfactory result of medical examination confirmed by medical certificate; finding of unsatisfactory fulfilment, repeatedly, during a year, of the individual performance indicators in which case dismissal can be resolved only after the prior evaluation of the employee under the evaluation procedure of the employer, provided that the employer gave the employee the appropriate instructions, written warning, and reasonable period of time to improve; change the founder of the employer (applicable for the manager, deputy and the chief accountant); transfer of an employee to another employer; holding the retirement status for the age limit, etc.

The employment contract with the manager / head of the private legal entity may provide for additional reasons for dismissal.

Is there special protection against dismissal for certain groups of employees?

No employee is protected in case of dismissal due to the liquidation of the employer (resulting in state deregistration of the legal entity).

For the other reasons, the employer cannot dismiss the employee if: being in annual paid holiday, study leave, sick leave; paternity leave, leave to care of a sick family member, leave to care of disabled child, performing state or public duties; or being temporarily detached to another employer. Except for certain disciplinary violations, employees being in maternity or child care leave; or leave for adoption or foster care, pregnant women and women with children up to 4 years are protected against dismissal.

The minor employees (under 18 years) also benefit from special protection against dismissal. For this purpose, the employer shall obtain the consent of the employment agency.

The employees elected as members of union members' bodies can be subject of non-disciplinary dismissal only one year after the expiration of their elective attributions.

What notice periods must be observed?

A notice prior to dismissal is mandatory for the employer in the following cases: liquidation of the employer or staff redundancy procedure – 2 months before termination; unsatisfactory result of the evaluation procedure – 1 month before termination; non-disciplinary termination of a manager / head of the private legal entity – 1 month before termination; expiration of the term in case of an employment contract entered into for less than 2 months – 3 calendar days before termination; seasonal work employment – 7 calendar days before the employment termination; and holding the retirement status for age limit – 14 calendar days before termination.

The employment contract, the internal rules of the employer, the collective bargaining agreement, if any, may provide for a longer period of notice and/or a notice in case of dismissals that are different from the legal requirements. In this case, the employer will be obliged to comply with the notice's provisions that are more favorable to the employees.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

No notice period is applicable for disciplinary dismissal.

The Labor Code does not regulate the right of the employee to disregard the notice period when it is mandatory and/or provide pay in lieu of notice.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The notice of termination shall be given by the employer in written form and brought to employees' acknowledgement with confirmation of their signature. In addition to the "signature" of the employees, their notification by the employer is valid if the notice is: handed over to the addressee; delivered to the postal address indicated by the addressee for the notification purpose, or in its absence, to the individual's domicile; sent by email to the addressee or other legal rules on sending and receiving an electronic document; is otherwise made available to the addressee in a place and in a manner that reasonably enables the addressee to access it without delay.

There is a specific rule in the Labor Code on notice of termination in case of staff redundancy. If the employees are not dismissed after the expiration of the 2 months' notice period, the initiated procedure cannot be closed and repeated during the same calendar year. The medical, study and annual leave of the employee is not included in the notification period.

No restrictions are regulated by law for revoking the notice on termination already given to the employee. However, the dismissal is the right and not the obligation of the employer to unilaterally terminate the employment. The employer may therefore either revoke the notice on termination or resolve not to issue the termination resolution after expiration of the notice period.

What measures must be taken in the event of a planned mass layoff?

The Labor Code provide for additional formalities in case of planned mass layoff.

Employment termination by the employer due to the reasons not depending on the employee will be treated as mass layoff if, within 30 days, the number of dismissals constitutes: (i) at least 10 for the employer having between 20 and 99 employees; (ii) at least 10% from the number of the employees of the employer having between 100 and 299 employees; (iii) at least 30 for the employer having 300 employees and more.

The employer planning to initiate mass layoff is obligated to notify 3 months in advance the employees' representatives and the employment agency and initiate consultation with the employees' representatives to reach an agreement.

To allow the employees' representatives formulating their suggestions, the employer shall provide them, at least 5 working days prior to the commencement of the consultation, the information about the reasons of the planned dismissal; number and categories of the employees to be dismissed; number and categories of the employees hired by the employer; the period when the dismissal will take place; criteria to select the employees to be dismissed and other information relevant to the consultation.

If there is no labor union or elected representative of the employees, the relevant information could be sent to emails of the relevant employees and/or uploaded on website of the employer and/or published on the notice board with a general availability at the registered office of the company or its branch(es). These employees are entitled to participate at the consultation with the employer or to elect their representative(s) in this regard. The employees and their representative are held to a duty of confidentiality towards the information obtained during the consultation with the employer.

The consultation will last until an agreement between the employees' representative and the employer is reached, but no more than 30 calendar days as from the date when the employees' representatives have been informed about the planned mass layoff.

If the parties do not reach an agreement and the employer continues with the planned mass layoff, such a decision shall be communicated to the employees' representatives and employment agency.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Provided that there is a "cause" for dismissal, Moldovan employers are quite autonomous in their decisions to unilaterally terminate an employment. Participation of the labor union or employees' representatives in dismissal process is mandatory when there is an express legal provision or an obligation is undertaken by the employer in this regard. Dismissal of a labor union's member is subject to prior consultation (and not approval) of the labor union.

In case of dismissal due to staff redundancy procedure and liquidation of employer, the employment agency shall be informed about the employees who will be released at least two months before the termination date. The notice on mass layoff will be submitted by the employer to the employment agency 3 months in advance.

Is there an obligation to offer severance payment in the case of dismissal?

Under the Labor Code, the employee is entitled to a severance payment only for certain dismissal reasons.

The severance payment in case of staff redundancy or liquidation of the employer is divided in three parts as follows: (i) for the first month, the severance payment shall amount one weekly average salary of the employee for each full year of the employment with the employer, but no less than 1 monthly average salary and not more than 6 monthly average salaries; (ii) for the second month, the severance payment shall amount 1 monthly average salary of the employee if he/she has not been employed; (iii) and for the third month, the severance payment shall amount 1 monthly average salary of the employee if the person is still unemployed.

In case of liquidation of the employer, the severance payment for the 3 months can be paid as one lump-sum at dismissal based on the written agreement of the employer and the employee.

In case of the employee is hired for the secondary job (has the basic workplace with another employer), the severance payment in an amount of 1 monthly average salary only will be paid in connection with the liquidation of the employer or staff redundancy or termination of the secondary employment when another employee is hired in the same position but for the main job.

A severance payment of 2 weekly average salaries is due by the employer to the employee who is dismissed as a result of non-performance confirmed under an evaluation procedure; or refusal of the employee to be transferred in other locality when the address of the employer changes; or the reinstatement by court of an employee who previously performed the relevant work.

Managers shall benefit from a severance payment in an amount of at least 3 monthly average salaries in all cases of non-disciplinary dismissal.

The individual employment contract or the collective bargaining agreement, if any, may provide for a longer period to pay the severance payment and/or a severance payment in a higher amount than the legal ones. In this case, the employer will be held to comply with the rules on severance payment that are more favorable to the employees.

What legal protection options does the dismissed employee have and to what result do they lead?

If the employer does not comply with the legal requirements of dismissal, the employees, unhappy with their termination, are entitled to appeal it in the court. If it is founded that the dismissal is not legal, the court will reinstate the employee in the previous position with the obligation of the employer to pay the salary for the entire period of forced absence from work of the employee (but no more than 12 monthly average salaries of the employee), the related penalties, moral loss and legal fees. Instead of reinstatement, the employer and the employee may enter into a settlement agreement; in case of a court dispute, the employer shall pay compensation in an amount of at least 3 monthly average salaries to the employee who does not want to be reinstated.

The employees and/or their representatives are also entitled to submit complaints on dismissal to the labor inspectorate which is the primary authority overseeing compliance with labor law. If the labor inspectorate ascertains a violation of dismissal procedure, it executes a protocol and issues the recommendations mandatory for the employer. Except for certain contraventions when this authority is entitled to apply sanctions, the main legal prerogative to enforce the labor laws and apply sanctions for their violations belongs to the courts.

Thus, the employer could ultimately be held liable for the same unlawful dismissal in administrative procedure and sanctioned with a fine (payable to the state budget) for a contravention of labor law violation as well as in employment dispute under the Labor Code and be obligated to recover the damage (pecuniary and moral loss) to the relevant employee. The legal term to appeal a dismissal in court is 3 months as from the date when the employee found out about the infringement of his/her right. The burden of proof that the dismissal is compliant with the Labor Code is on the employer *(in favorem principle).*

The employees are exempted from the state fee in case of employment court dispute. There are regulated limited deadlines for courts to examine these cases (the first preliminary court hearing – 10 working days as from the registration of the statement of claim; examination the case on the merits – 30 working days and delivery of the ruling – 3 working days) in the Labor Code.

Ruling on reinstatement of the employee and payment of one average salary are to be immediately enforced.

Poland

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For what reasons can an employer terminate the employment relationship?

There are three ways of terminating employment contracts in Poland: (i) termination by mutual consent, (ii) termination with notice and (iii) termination without notice.

An employer who intends to terminate a contract with or without notice should present the relevant statement in writing. A statement of termination of employment for an indefinite term or for a fixed period of time or a statement of termination without notice should identify the reason for termination. The declaration of termination of contracts concluded for a trial period does not need to state the reason of termination - however, in certain cases, an employee on a trial period may request that the employer provide the reason for the termination.

The regulations do not define reasons for termination of the employment contract by the employer with notice. When formulating reasons for termination, the employer should remember that they must be valid, concrete and true. Court decisions provide numerous reasons underlying termination of employment by notice and it is impossible to list them all. For example, the employer may refer to lack of care and diligence in performing duties by the employee, engaging in activities competitive to the employer both if they are a breach of a non-competition agreement and if no such agreement was concluded, loss of trust in the employee, assisting a competitive company, alcohol/drug addiction, failure to perform or improper performance of the employee's duties, disorganization of work due to the employee's long-term absence, refusal to sign a non-competition agreement, liquidation of the workplace, reduction of employment.

If a lawsuit is filed, the court may examine whether the cause was presented in a way comprehensible for the employee. During the proceedings, the employer may only invoke the reasons for termination of employment indicated in the termination statement. This means that the employer will not be able to justify the decision to terminate the contract under any circumstances other than those described in the termination statement.

Employers may terminate employment without notice if the employee has grossly violated his/her duties, or has committed an offence which prevents their continued employment. Similarly in a situation where the employees, through their other fault, are deprived of the license required to do their job, or are unable to work for a prolonged time due to an illness. The employment contract may also be terminated if the employee has been absent for longer than 1 month for reasons other than mentioned above. For more details about extraordinary termination without notice see sec. 4.

The Polish Labor Code also entitles the employer to change the conditions of employment and make them less favorable for the employee. A notice of such a change can also lead to termination of the employment contract if the employee does not accept the new conditions offered.

Is there special protection against dismissal for certain groups of employees?

Under the Polish Labor Code, giving notice to certain employees and - in some cases - termination of an employment contract without notice is prohibited.

The prohibition applies to employees who are in a specific situation or who are members of a specific group.

Generally, employers may not give a notice of termination to employees during their leave or during any other justified absence from work.

Also, female employees are protected during their pregnancy or maternity leaves, unless there are reasons justifying termination without notice due to the employee's fault, and the trade union representing the employee has consented to termination of the employment contract. Termination of an employment contract, either with or without notice, is also prohibited from the moment the employee eligible to a childcare leave submits a request for the leave, until the end of the leave.

Protection measures also apply to employees who are going to reach their retirement age in less than 4 years, if the length of their employment makes them eligible to a retirement pension upon reaching this age.

Protection is also afforded to union activists. Consent of the union's managing board is required for the employer to terminate employment (with or without notice) with a member of the union's managing board authorized to represent the union before the employer, and to change his/her conditions of employment or pay. In addition, a specially protected employee (e.g., a union activist) can request a court order for continued employment by the employer until the legal proceedings reach a final conclusion.

What notice periods must be observed?

The length of the notice period depends on the type of contract. The shortest notice periods apply to employment contracts for a trial period, and they are: (i) 3 working days if the contract is concluded for less than 2 weeks; (ii) 1 week if the contract is concluded for more than 2 weeks but less than 3 months; (iii) 2 weeks if the trial period is 3months.

For employment contracts concluded for an indefinite term and a fixed term, the length of the notice period depends on the length of employment and is (i) 2 weeks if the employee has been employed with the employer for less than 6 months; (ii) 1 month if the employee has been employed with the employer for minimum 6 months but less than 3 years; (iii) 3 months if the employee has been employed with the employer for at least 3 years.

If the employment contract is terminated because the employer is declared bankrupt or is being liquidated, or due to other reasons not attributable to the employee, the employer may shorten the 3-month period of notice to no less than 1 month. In this case, the employee retains the right to compensation equal to the remuneration for the remaining notice period.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

The employer may terminate employment contracts without notice if the employee is at fault **(dismissal)** and also if **the employee is not at fault.**

The dismissal may be caused by a serious breach of the employee's basic duties (for example drinking alcohol at work, leaving the workplace with no valid reason, refusing to carry out the assigned task), commission of a crime during the effective term of the employment contract (provided that the crime is obvious or has been confirmed in a final judgment) and the employee being deprived, by their own fault, of the right to do their job.

Termination without notice through the fault of the employee is not possible if more than 1 month passed from the moment the employer became aware of the circumstances justifying termination of the employment contract.

Termination without notice is also possible if there is no fault on the employee's part but the employee is unable to work as a result of an illness: (i) for more than 3 months - if the employment period with the employer is less than 6 months; (ii) for longer than the overall period during which the employee has been receiving welfare and sickness benefits on that account, and rehabilitation allowance for the first 3 months if the employment period with the employer is minimum 6 months, or if the incapacity to work was caused by an accident at work or an occupational disease; and if the employee has been absent from work for reasons other than specified above for more than 1 month.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The employer must give notice of termination in writing. The statement must contain all of the following elements: the place and date, the employer's and the employee's details, the date of conclusion of the employment contract, the statement of employment termination by notice indicating the date of its expiry, the employer's signature, information about the right to appeal to the labor court, signature and date of receipt of the letter by the employee. If the employee refuses to sign the statement, it is advisable to note down this fact. This will serve as a proof to the court that the employee did not want to sign the statement even though it was given to him.

If the employment contract is concluded for a fixed term or an indefinite term, the employer is also obliged to identify the grounds for termination of the contract. Moreover, if the employee is represented by a trade union, the employer must inform the trade union in writing about the intended termination. If the trade union decides that the notice is unjustified, it may present justified written objections within 5 days of receipt of the notice. However, the final decision is taken by the employer.

Upon termination by the employer, the employee is also entitled to time off to seek another job, which does not affect their earnings. The time off is 2 or 3 days, depending on the length of the notice period. Additionally, after termination, the employer must issue an employment certificate and deliver it to the employee.

What measures must be taken in the event of a planned mass layoff?

If the employer plans a mass layoff, the Act on detailed rules for termination of employment for reasons not attributable to employees applies. The Act is applicable to enterprises which employ at least 20 employees.

The term "mass layoff" (collective redundancy) is a situation where employment contracts must be terminated for reasons not attributable to employees and, during a period of maximum 30 days, the redundancies affect as a minimum (i) 10 employees, if the headcount is 20-99, (ii) 10% of employees, if the headcount is 100-299, (iii) 30 employees, if the headcount is more than 300+.

The procedure consists of several steps. First, the employer must inform and consult with the trade unions or other employee representatives, and inform the local Employment Office about the reasons for the planned mass layoff, the number and occupational categories of employees to be made redundant, the number and occupational categories of employees normally employed, the period during which the mass layoff is to be carried out, the criteria adopted to select employees to be laid off, the order in which the employees are to be laid off and the proposal for resolving employment matters.

Within 20 days of informing the trade unions or other employee representatives, the employer and the said unions or representatives should conclude an agreement governing the mass layoff and establishing other rules for resolving employment issues. In the case of no agreement, the employer establishes the conditions in written regulations. Next, the employer must again inform the local Employment Office about the mass layoff agreement, or the regulations established by the employer in this regard. Finally, the employer may terminate the employment contracts under the mass layoff procedure no earlier than 30 days after sending the second notification to the local Employment Office.

Once the agreement with the trade unions or other employee representatives is concluded, or written regulations on mass layoff are established, and the second notification to the local Employment Office is sent, the employer may start serving termination notices to the selected employees.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The employer must deliver a written notification to the internal trade union representing employees of the intended termination of employment contracts concluded for an indefinite or fixed term with notice, and must provide grounds for the termination.

As regards a mass layoff, the employer must consult its decisions with trade unions or other employee representatives and inform them about reasons for the layoff. The intended layoff must also be communicated to the local Employment Office. An agreement must be concluded with the above parties, which should specify e.g. the period over which the mass layoff is to be carried out, including the start date and the criteria for selection of employees to be laid off. The local Employment Office must be informed about the intended mass layoff and the agreement or written regulations concluded/established in this respect.

Is there an obligation to offer severance payment in the case of dismissal?

Severance payment shall be made by employers who employ at least 20 people and only in two situations: (i) if the termination of employment is classified as a mass layoff; (ii) for individual terminations of employment - if the termination is not attributable to the employee (e.g. position canceled).

The amount of the severance money corresponds to the length of employment with the employer and is equivalent to: (i) 1-month salary if the employee has been employed for less than 2 years; (ii) 2-month salary if the employee has been employed between 2 and 8 years; (iii) 3-month salary if the employee has been employed for more than 8 years.

What legal protection options does the dismissed employee have and to what result do they lead?

Employees may appeal against termination with notice and without notice within 21 days of the termination notice or termination without notice. The employee may file one of the following claims against the employer in court: (i) to be reinstated at work (and if the notice period is still running – for the termination notice to be declared ineffective) and for payment for the time out of work (usually limited to 3 times the monthly salary); (ii) to be paid compensation (remuneration due for the notice period).

The labor court may reject the employee's request for declaring the notice ineffective or for reinstating the employee, if it finds the request pointless; in this case the court may award compensation.

Portugal

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Legal reasons

In Portugal, the employees enjoy a very strong protection against dismissal. Therefore, dismissal without just cause is, generally, expressly prohibited. Only very specific methods of termination do not require a just cause. The possibilities of terminating an employment contract under the Portuguese Labor Code may be divided, in general terms, in the following categories: (i) Disciplinary dismissal; (ii) Collective dismissal; (iii) Dismissal due to extinction of the work position; (iv) Dismissal due to non-adaptation of the employee.

- A disciplinary dismissal is possible when there is a just cause for dismissal. It is considered that just cause for a disciplinary dismissal exists when there is a wrongful conduct of the employee which, due to its severity and consequences, makes the maintenance of the employment relationship immediately and practically impossible.

  These are some examples of employee behavior that may be considered sufficient to constitute just cause: - Illegitimate disobedience to orders given by hierarchically superiors; (i) violation of the employees' rights and guarantees; (ii) repeated provocation of conflicts with company employees; (iii) disinterest for the fulfillment, with due diligence, of obligations inherent to the exercise of the position to which the employee is assigned; (iv) serious damage to the company's assets; (v) false statements regarding the justification of absences; (vi) unjustified absences from work that directly determine or cause serious damage and risks to the company, or whose number reaches, in each calendar year, five consecutive or ten non-consecutive days' absences regardless of injury or risk; (vii) non-compliance with safety and health rules at work; (viii) practice, within the company, of physical violence, injuries or other offenses punishable by law on another company employee, member of the corporate bodies or individual employer, their delegates or representatives; (ix) kidnapping or general crime against the freedom of the persons mentioned in the previous item; (x) non-compliance or opposition to compliance with a judicial or administrative decision; (xi) abnormal reduction in productivity.

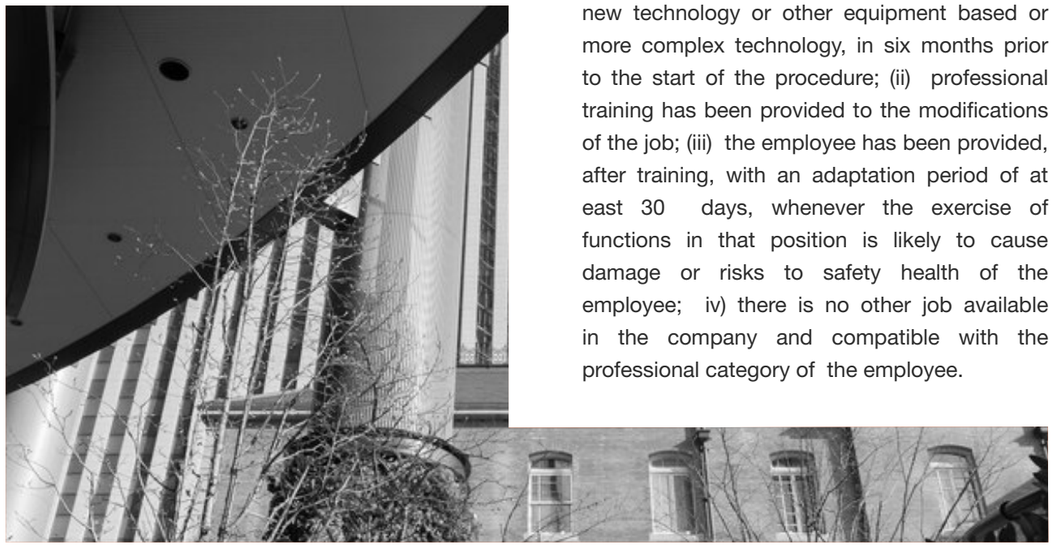
- Collective dismissal is defined as the termination of employment contracts initiated by the employer and carried out simultaneously or successively over a period of 3 months, covering at least 2 employees, if the company has less than 50 employees, or 5 employees, if the company has 50 or more employees.

  Faced with a closure of one or more sections of the Company, or an equivalent structure, or with a reduction in the number of employees, the employer may terminate several employment contracts (according to the minimum number mentioned above) under a collective dismissal, as long as such

dismissals are based on objective grounds related to the company.

Accordingly, these reasons may be, market grounds (namely, reduction of the company's activity due to the foreseeable decrease in the demand for its services or goods), structural grounds (namely, economic or financial imbalance, change of area of activity, restructuring of organization, replacement of product) or technological grounds (among others, changes in the techniques or procedures of production, automation of production, control, computerization of services, automation of means of communication).

- ☑ Dismissal due to extinction of the work position is permitted if such extinction is based on objective reasons related to the employer. As already stated in the item above, these objective reasons may be market reasons, structural reasons or technological reasons. The applicable method of dismissal (collective dismissal or dismissal due to extinction of the work position) will depend on whether the number of employment contracts to be terminated reaches the number mentioned in the previous item (2 employees if the company has fewer than 50 employees, or 5 employees if the company has 50 or more employees).



Dismissal due to extinction of the work position may only take place if the following specific requirements are met: (i) the reasons given for the redundancy are not caused by deliberate conduct of the employer or employee; (ii) the maintenance of the work relationship must be practically impossible; (iii) there are no fixed-term employment contracts in the company for the same tasks as those of the work position that is to be extinguished; (iv) collective dismissal does not apply.

- ☑ Dismissal due to non-adaptation of the employee is based on the supervening non-adaptation of the employee to the job position. Non-adaptation occurs when there is, namely, continued reduction in productivity or quality, repeated failures in the means assigned to the workplace, risks for the safety and health of the employee, of other employees or third parties, and such makes it practically impossible to maintain the employment relationship. There is also a non-adaptation of an employed person in charge of technical or managerial complexity when the previously agreed objectives are not fulfilled.

Notwithstanding exceptions expressly established by law, this dismissal may only occur if, cumulatively: (i) there have been modifications in the workplace resulting from changes in production processes or marketing, new technology or other equipment based or more complex technology, in six months prior to the start of the procedure; (ii) professional training has been provided to the modifications of the job; (iii) the employee has been provided, after training, with an adaptation period of at east 30 days, whenever the exercise of functions in that position is likely to cause damage or risks to safety health of the employee; iv) there is no other job available in the company and compatible with the professional category of the employee.

Special protections

Labor Code provides increased protection against dismissal for certain categories of employees, namely pregnant employees, employees who have recently given birth or are breastfeeding, or employees on parental leave.

The dismissal of employees in the situations mentioned in the previous paragraph requires the prior favorable opinion of the competent authority in the area of equal opportunities for men and women, currently CITE *(Comissão para a Igualdade no Trabalho e no Emprego)*. As such, if a dismissal of such employees is carried out without the legally required prior opinion or if the referred opinion is unfavorable to the dismissal (and without a court decision recognizing the existence of a justification for the dismissal), the dismissal will be considered unlawful.

Additionally, employees who are union representatives are also entitled to special guarantees in case of dismissal.

Notice period

In general, the notice period depends on the seniority of the employee.

In collective dismissals, dismissals due to extinction of the work position and dismissals due to non-adaptation of the employee, if the employee has less than a year of seniority, the notice period is 15 days; if the employee has a seniority equal or greater than 1 year and less than 5 years, the notice period is 30 days; if the employee has a seniority equal or greater than 5 years and less than 10 years, the notice period is 60 days; lastly, if the employee has a seniority greater than 10 years, the notice period is 75 days.

In disciplinary dismissals, without prejudice to the verification of the legal deadlines set out for the different phases of the procedure, the final communication of the dismissal by the employer is immediately effective on the date the employee receives it.

Absence of notice period

In dismissals where a minimum prior notice period is applicable, it is not possible to substitute this prior notice period by an immediate termination, even if an additional amount is paid to the employee. The employer cannot, unilaterally, determine that the employee should not work during the prior notice period, under penalty of breach of the obligation of effective occupation of the employee. With the request of the employee and, consequently, by agreement between the parties, it may be possible to, during the prior notice period, exempt the employee from work.

Mutual termination agreements (employment contract revocation agreements) do not provide for the application of a minimum notice period; unless otherwise agreed by the parties, the termination agreement shall take effect immediately. Additionally, as mentioned in the previous question, in a disciplinary dismissal, the final communication of the dismissal decision will be effective immediately upon receipt by the employee.

Formal requirements

The dismissal must be in written form to be valid and the letter of dismissal must be delivered to the employee. The formal procedure of all types of dismissals also includes the need to carry out several communications to the employee, namely initial communications (specifying the grounds or reasons for the intended dismissal) and final decisions.

Collective dismissals

A mass layoff occurs when employment contracts are terminated by the employer, simultaneously or successively, over a period of 3 months, covering at least 2 employees if the company has fewer than 50 employees, or 5 employees if the company has 50 or more employees.

To carry out collective dismissals, the employer must initiate the proceedings by notifying the employees and the workers' committee or, in its absence, the inter- union committee or the union committee, in writing, regarding the reasons that justify the dismissal, the list of the company staff, the selecting criteria of employees to be dismissed, the number of employees to be dismissed and respective professional categories, duration of the dismissal procedure, the method of calculation of the severance payment and any other labor credits due to the employee and the date of termination of the contract.

On the date of the referred notification, the employer must also send a copy of the notification to the competent entity of the Labor Ministry *(DGERT - Direção Geral do Emprego e Relações de Trabalho),* entrusted with the monitoring and promotion of collective bargaining. In the next 5 days, the employer promotes an information and negotiation phase *(supervised by DGERT)* with the workers' representative structure, aiming at an agreement on the scale and effects of the measures to be applied.

Once an agreement has been reached or, in its absence, after 15 days from the initial notification, the employer must issue the final Collective Dismissal decision. The employer must communicate its decision, by copy or transcript, to the employee involved (and, the employee is a union representative, to the respective union), to the works ' committee (or, in its absence, to the inter-union committee or union committee) and also *to DGERT,* in compliance with the required notice period. To be legally valid, the decision must be exhaustive and comprehensive, and it must expressly specify the grounds for the collective dismissal.

Employees' representatives and state authorities

Under the Portuguese Labor Code, in case of dismissals initiated by the employer, the employer may be required to carry out communications to the representative structures of the employees if such structures exist.

In disciplinary dismissals, after the conclusion of the instruction phase, the employer must submit a full copy of the disciplinary procedure to the workers council (if existent in the company) and to the trade union (if the employee is a union representative). If the company chooses to dismiss the employee, this decision must also be communicated to the workers council (if existent) or to the trade union (if the employee is a union representative).

In collective dismissals, the initial communication of the employer should also be sent to the workers council (if existent in the company) or to the inter-union commission or trade union commissions of the company (if one or more of the employees are affiliated with trade unions). It is also necessary to carry out a communication to the competent entity of the Labor Ministry *(DGERT)*, which shall supervise the whole procedure, as well as intervene and participate in it.

In dismissals due to extinction of the work position and dismissals due to non-adaptation of the employee, the initial communication of the employer should also be sent to the workers council (if existent in the company) or to the inter-union commission or trade union commissions of the company (if the employee is affiliated with a trade union). The employer must communicate the dismissal decision to the service with the inspection authority of labor area *(ACT – Autoridade para as Condições do Trabalho)*. This public authority may intervene in the procedure at the request of the employee.

On a general note, a number of communications to public authorities may have to be taken into account upon termination of the employment contract, namely communication of the termination of the employment contract to the Social Security.

Severance payment

In general, the employee is entitled to a severance payment for the termination of the employment contract (in addition to labor credits, which are due in all types of termination).

The right of the employee to compensation for the termination of the employment contract does not depend on the seniority of the employee or on the duration of the employment contract (this will only have a reflection on the calculation of the severance payment and therefore on the amount of the same).

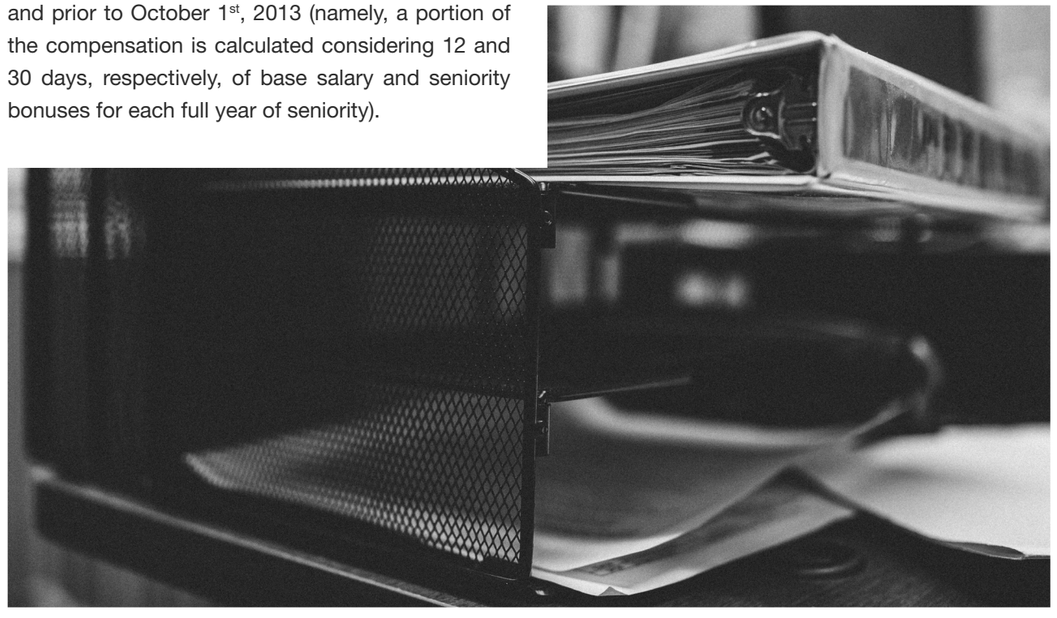
The methods of termination under which an employee is entitled to this severance payment include collective dismissals, dismissals due to extinction of the work position and dismissals due to non-adaptation of the employee. Disciplinary dismissals do not entitle employees to severance payment.

In collective dismissals, dismissals due to extinction of the work position and dismissals due to non-adaptation of the employee, employees are entitled to compensation corresponding to at least 14 days' basic salary and seniority bonuses for each full year of seniority (proportional in the case of fractions of a year). There are special rules in place for employees who were hired prior to May 1st, 2023, and prior to October 1st, 2013 (namely, a portion of the compensation is calculated considering 12 and 30 days, respectively, of base salary and seniority bonuses for each full year of seniority).

Legal protection for the employee

Portuguese labor law grants the employee the right to access unemployment benefits when a situation of involuntary unemployment occurs (it is considered involuntary unemployment when it arises from a collective dismissal, from a dismissal due to extinction of the work position and from a dismissal due to non-adaptation of the employee).

Under the terms of the Labor Code, an employee can challenge the legality of the termination in court. If the employee judicially challenges the lawfulness of the termination of the employment contract and the court considers that the same was unlawful, the employee may be entitled to: (i) indemnity for all damage suffered, pecunary and non-pecuniary; (ii) the remunerations which they would receive since the dismissal until the final decision of the court that declares the illegality of the dismissal; (iii) reinstatement in the same position of the company, without prejudice to its category and seniority. However, the employee may request compensation in substitution of the reinstatement, whereby the employee will be entitled to a compensation ranging from 15 to 45 days of base salary and seniority bonuses for each full year or fraction of seniority, considering the amount of the remuneration and the degree of illegality.



Romania

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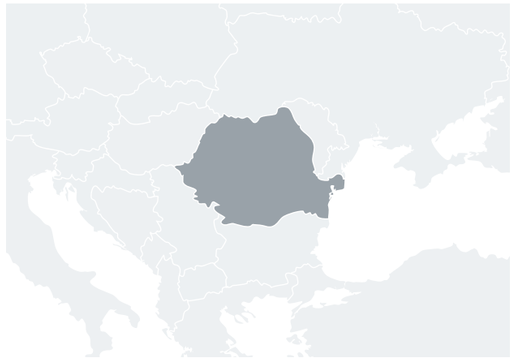


For what reasons can an employer terminate the employment relationship?

In Romania, the employment agreement can only be terminated by the employer in specific and limited cases as provided by the Labor Code, always ensuring that procedural requirements are met. Romanian law recognizes two main categories of dismissals, for causes unrelated to the employee (i.e. restructuring, redundancy – cf. under a.) and dismissal for causes related to the employee (cf. under b.).

☑ Under Romanian Law, dismissing the employee for redundancy reasons cannot be made discretionary, but only if actual and serious grounds require the restructuring measure. The mentioned grounds may refer to implementation of new organizational concepts, activity reduction, costs optimization, financial loses etc. The conduct or performance of the employee cannot validly support the restructuring of his/her job position. The restructuring should be real and effective – i.e. the employer is not allowed to use restructuring as pretext for actually getting rid of or replacing the employee.

The reasoning behind the restructuring process has to be detailed within an internal report. Such internal report needs to be formally approved by the company's competent corporate body to decide on the structure of the company. Then based on such report, the competent corporate body needs to issue a written decision to approve the removal of the redundant positions from the organizational chart of the company. Following such decision, the company may issue and hand over to the employees the written prior notices to dismissal.

☑ Dismissals for causes related to the employee is possible in case of poor professional performance (cf. under i.), for disciplinary reasons (cf. under ii.) and of the employee who is taken into preventive custody or under house arrest, for a period exceeding 30 days, under the rules of criminal procedure (cf. under iii.) or decision of the competent medical investigation authorities, which establishes the physical unfitness and/or mental incapacity of the employee (cf. under iv.)

✓ The right of the employer to dismiss the employee for poor professional performance is recognized under the Romanian Law in those cases where it is proven that the employee does not meet the reasonable professional requirements or expectations relating to the job position held within the employer's organization.

From the perspective of the current practice, the professional unfitness needs to be sustained by facts or events imputable to the employee and revealing that the employee is unable to observe the job duties resulting from the job description or entrusted to him / her within the limits of the job description.

The reasons need to show that the employee is not capable to fulfil the mentioned duties. Lack of professional results or failure to achieve the performance targets set out by the employer shall not be retained as reasons entailing the employer to dismiss the employee, should such events or bad results were triggered by facts that cannot be imputed to the employee (e.g. the economic context, the lack of cooperation or performance of other employees expected to contribute to the achievement of targets, the lack of performance of the employer, the employer's policies, etc.) or because the performance targets were unreasonable or unrealistic.

The professional appraisal of the employees must be conducted according to a procedure expressly provided under the Internal Regulation applicable within the company, by taking into consideration the professional objectives (targets/KPIs) communicated to the employees and by taking into consideration the evaluation criteria that must be provided under the individual employment contracts/job descriptions.

✓ Employers are recognized the right to set out disciplinary rules at company level and to apply disciplinary sanctions (including disciplinary dismissal) to those employees failing to observe the mentioned rules. Aside from the above, employees' failure to comply with the job duties and tasks received from the employer, could also be regarded as disciplinary misconducts entailing the application of disciplinary sanctions.

According to the law, dismissing the employee based on disciplinary reasons is possible if serious or repeated misconducts were perpetrated. The seriousness of the misconduct shall be assessed following a specific disciplinary investigation procedure by a disciplinary committee appointed by the employer. Such assessment should take into consideration the explanations/reasons provided by the employee during the disciplinary investigation, the circumstances of the disciplinary breach, the degree of guilt of the employee, the consequences of the disciplinary breach, the general behavior of the employee and the eventual disciplinary measures previously taken against the employee.

✓ Dismissal of the employee who is taken into preventive custody or under house arrest, for a period exceeding 30 days, under the rules of criminal procedure, is a provision that aims to protect the employer against the harmful effects the long absence of the employee could have over the company's business. In case it is ascertained that the employee is not guilty the employer who legally dismissed him/her is not obliged to reinstate the employee. The damages will be paid by the state according to the rules of criminal procedure.

✓ The employer may dismiss the employee under the Labor Code if, following a decision of the competent medical investigation authorities, the physical unfitness and/or mental incapacity of the employee is established, which prevents the latter from accomplishing the duties related to his/her workplace.

Is there special protection against dismissal for certain groups of employees?

The Labor Code in force forbids the employer to dismiss the employee during the time of temporary incapacity to work, or during quarantine, ascertained by medical certificate.

Pregnant women may not be dismissed as long as the employer is informed about the pregnancy, prior to issuing the dismissal decision. Pregnant women also benefit from special protection against dismissal during the maternity leave, which is divided into two periods, namely 63 days before the due birth date and 63 days after the birth date, but not less than 42 days after the birth date.

Employees are protected against dismissal during parental leave. Employees (male and female) have the right up to 2 years of parental leave, or, of up to 3 years in case of a disabled child. The special protection against dismissal continues for another 6 months after returning to work from child raise leave. The prohibition to dismiss the employee who is in one of the abovementioned situations is not applicable in cases of dismissal for reasons due to the employer's judicial reorganization or bankruptcy, according to the law.

Dismissal is also excluded during the sick childcare leave for a sick child up to the age of 7 or, in case of a disabled child, until he reaches the age of 18, due to recurrent episodes of illness, ascertained by medical certificate.

Lastly, employees cannot be dismissed while on holiday. However, dismissal may be resumed from the date of cessation of the situations mentioned above.

What notice periods must be observed?

Under the law, the statutory prior notice is of 20 business days. However, longer prior notices may be agreed under the individual employment agreement or applicable collective bargaining agreements. Following the expiry of the prior notice, the employer may issue and hand over to the employee the dismissal decision. The employment contract will be terminated once the dismissal decision is communicated to the employee.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

The notice period shall not be observed in case of dismissing the employee for disciplinary reasons or when the employee is arrested for more than 30 days.

Further, during the probation period, both the employer and the employee are entitled to unilaterally terminate the employment contract by simply serving to the other party a written notification which does not have to provide for any reasons or explanations. The employment contract shall be considered terminated as of the date the termination notice is served to the other party (hence, no prior notice to termination is required). In other words, during the probation period, the employer or the employee may terminate the contract at any time, without reason.

Probation period can be of maximum 90 calendar days for the employees hired on non-management job positions and of maximum 120 calendar days for the employees hired on management positions.

The employer cannot, however, extend the probation period at his or her sole discretion beyond the limits set forth by the law.

> Clear rules for extraordinary termination ensure transparency and legal certainty for both parties."

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The dismissal decision must be issued in writing and must include the following elements: (i) the reasons for terminating the employment agreement, (ii) the legal grounds for issuing the dismissal decision, (iii) the duration of the notice period (if any), (iv) the selection criteria in case of collective redundancies and (v) the timeframe for challenging the dismissal decision and the competent courts of law to judge the appeal.

Furthermore, the dismissal decision must meet all requirements stipulated under the Labor Code. Therefore, failure to observe and identify the reasons for restructuring, the duration of notice the employees were entitled to, selection criteria observed by the employer when establishing which job positions were made redundant (e.g. professional performance), all vacancies within the company offered to the employee, may trigger the annulment of the dismissal decision in court.

What measures must be taken in the event of a planned mass layoff?

Under Romanian Labor Law, a mass layoff occurs if within a timeframe of 30 calendar days, the employer dismisses a number of (i) at least 10 employees if the employer has more than 20 employees, but less than 100 employees, (ii) at least 10 percent of employees if the employer has at least 100, but less than 300 employees or (iii) at least 30 employees if the employer has at least 300 employees. The number of employees also include staff whose employment termination, initiated by the employer, is made upon mutual consent of the parties, if this applies to at least 5 employees.

The employer shall notify the relevant decision-making body (i.e. general manager, board of directors etc.) of the company on reasoning and convenience for restructuring the activity, including the organizational chart proposed indicating the abolished job positions.

Further, the competent decision-making body shall issue a decision on the initiation of the restructuring process and approval of the new organizational chart.

If the redundancies involve a collective dismissal, the consultation of the trade union or elected employees' representatives, as the case may be, must be performed within a reasonable amount of time before the first dismissal takes effect.

A written notification to be submitted to the trade unions or employee's representatives, as the case may be, as well as to the Territorial Labor Inspectorate ("ITM") and County Employment Agency ("AJOFM") shall comprise all the mandatory elements set out under the Labor Code, including the total number and the categories of employees within the company, the reasons underlying the intention to perform collective redundancies, the number and categories of employees affected by the collective redundancy measure, the estimated date when the dismissals are to become effective, the selection criteria, etc. The notice shall also include an invitation to the trade union/ employee's representatives to submit, within 10 calendar days, any potential comments/ suggestions regarding potential measures to mitigate the consequences of dismissal/measures to avoid dismissals.

Insofar as the employees submit suggestions or comments regarding the intention to perform collective redundancies within the term indicated in the notice, the company shall either reply in writing to the trade union, indicating the reasons for such action, or shall organize a consultation meeting with the trade union/ employee's representatives, where all the issues raised by them shall be addressed.

The motivated reply/consultation meeting shall take place within 5 calendar days following receipt of the suggestions/comments from the trade union/ employee's representatives. The discussions held during the consultation meeting shall be recorded in minutes.

Further to the consultation with the employees, a decision shall be made regarding the approval of the restructuring plan and suppression of the redundant positions. The restructuring decision shall also approve the new organizational chart resulting further to reorganization. It is advisable that the restructuring decision resumes the reasons underlying the restructuring procedure, and the outcome of the consultations with the employees.

The decision shall also approve the contents of the Notice of decision to perform collective redundancies.

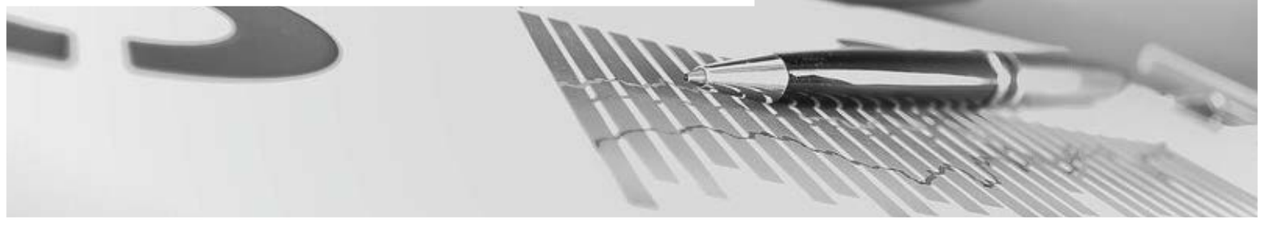
The notice shall be submitted to ITM Bucharest, AJOFM Bucharest and, as copy, to the trade union or employees' representatives, as the case may be.

The employees to be dismissed shall be selected from the ones who occupy positions identical to the restructured positions. The selection shall be made on the basis of the (latest) professional evaluation, according to company's procedure and by taking into account the evaluation criteria applicable to the positions in question. In absence of a selection procedure based on objective criteria (such as the one provided under Article 69(3) of the Labor Code), it will be difficult for the employer to demonstrate the real and serious cause of dismissal to the dismissed employees.

If there are vacant positions in the company, which are compatible with the professional training of the restructured employees, the employer should offer such positions to them. If the employees refuse the offered positions, or if there are no vacant positions to be offered, the employer shall notify the local agency for the occupation of labor force thereof.

The company shall issue and deliver the prior notice to each restructured employee. The statutory prior notice term is 20 business days. The disabled employees who are supposed to be dismissed are entitled to a prior notice of at least 30 business days. Longer prior notices than the statutory ones can be provided by the individual employment contracts, internal regulations or collective agreements.

The prior notices shall be delivered in person, subject to a signature of receipt. If the employees refuse to acknowledge receipt, the delivery can be made by post mail, with the acknowledgment of receipt, or by the court bailiff. Failure to deliver a prior notice of dismissal triggers the nullity of the dismissal decision.



The employer shall issue and deliver an individual dismissal decision to each restructured employee, which shall comprise, in addition to the identification details of the employer and, respectively, the employee, the reasons underlying the suppression of the position, the selection criteria that were taken into account (if any), the competent court and the term within which the employee may challenge the dismissal decision, the prior notice term and the period in which the employee benefited of the prior notice term, the possibility of filling vacancies, and the legal provisions underlying the dismissal decision.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

If a works council or trade unions exist, they must be heard in case of massive layoffs, as provided in our answer to question 6 above.

Is there an obligation to offer severance payment in the case of dismissal?

Pursuant to the Labor Code, the employees who are dismissed for redundancy reasons may be entitled to compensations. The level of compensations is set forth under the applicable collective bargaining agreements.

If there is no collective bargaining agreement applicable to the employees to be dismissed, compensations may be provided by the internal regulations or internal policies or even by individual employment agreements or in the internal regulations.

From a strict interpretation of the law, if none of the documents mentioned above contain provisions on the employees' right to be compensated in case of dismissal for redundancy reasons, the employer is not actually under the obligation to grant such compensation.

In the absence of any contractual obligation, the amount of compensation to be granted to the dismissed employees is up to the employer's decision.

What legal protection options does the dismissed employee have and to what result do they lead?

Employers' failure to comply with the procedures provided in the Labor Code may trigger the annulment of the dismissal decisions in court. The same sanction shall apply if the employers cannot prove that the causes for dismissal are real and fall within the categories recognized by the Labor Code as entitling employers to perform dismissals.

Following the proceedings, if the court determines that the employee was dismissed without a legal basis, the court may decide the reinstatement of the employees, if the employees require so, and indemnify them with the equivalent of salaries they would have had as of the dismissal date until the annulment date of the dismissal or until their reinstatement, as the case may be.

The above salary is equal to the indexed, increased, and updated salaries and other rights the employee would have enjoyed prior to the dismissal.

Compensation shall be possible by reducing the number of salaries the employee received from the employer as compensation when terminating the employment agreement, if it is the case.

Serbia

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For what reasons can an employer terminate the employment relationship?

An employer may terminate the employee's employment contract for just cause which relates to employee's work ability and his conduct, such as:

- If he does not achieve the work results or does not have the necessary knowledge and skills to perform his duties;
- If he is legally convicted of a crime in the workplace or related to workplace;
- If he does not return to work for the employer within 15 days of the expiry of the time period of stay of employment under Article 79 of the Labor Law (dormancy of employment relation), or unpaid absence under Article 100 of the Labor Law.

The employer may terminate the employment contract of the employee who on his own fault commits a breach of a work duty, as follows:

- If he is negligent or reckless in performing the work duty;
- If he abuses his position or exceeds authority;
- If he unreasonably and irresponsibly uses means of work;
- If he does no use or uses inappropriately allocated resources and personal protective work equipment;
- If he commits other breach of work duty as determined by the general act or employment contract.

The employer may terminate the employment contract of an employee who does not respect labor discipline, as follows:

- If he unreasonably refuses to perform work and execute the orders of the employer in accordance with the law;
- If he does not submit a certificate of temporary incapacity for work in terms of Article 103 of the Labor Law;
- If he abuses the right to leave due to temporary incapacity for work;
- If comes to work under the influence of alcohol or other intoxicating substances, or uses alcohol or other intoxicating substances during working hours, which has or may have an impact on the work performance;
- If he gave incorrect information that were critical for concluding the employment relation;
- If the employee works in jobs with higher risk, for which a specific health condition is a special requirement for work, refuses to undergo a health condition test;
- If he does not respect labor discipline prescribed by an act of the employer, or if his conduct is such that he cannot continue to work for the employer.

The employer may instruct the employee to undertake an appropriate analysis at a designated medical facility chosen by the employer, at his own expense, to determine the circumstances mentioned in paragraph 3, items 3) and 4) above or to determine the existence of the above circumstances otherwise in accordance with the general act. Refusal of an employee to respond to the call of the employer to carry out the analysis shall be considered as a breach of labor discipline that represents termination reason.

Additionally, employee's employment relation may be terminated if there is a valid reason relating to the employer's needs, as follows:

- If as a result of technological, economic or organizational changes the need to perform a specific job ceases, or there is a decrease in workload (i.e. redundancy);
- If he refuses to conclude the annex of the contract pursuant to Article 171, paragraph 1, items 1-5) of this law (for transfer to another suitable job position, transfer to another place of work, assignment to work with another employer, application of measure of new employment in case of redundancy, changes in salary).

Is there special protection against dismissal for certain groups of employees?

Special protection against cancellation of employment contract is prescribed under Article 187 and 188 of the Serbian Labor Law. According to Article 187, in the course of pregnancy, maternity leave, leave of absence for nursing a child and leave of absence for special care of a child, the employer cannot cancel the employment contract of the employee. Additionally, the period of employment of the employee employed for a definite period of time referred to in previous sentence (in the course of pregnancy, maternity leave, leave of absence for nursing a child and leave of absence for special care of a child) shall be extended until the expiry of the right to use the leave of absence.

The resolution on termination of employment contract is null and void if at the day of adopting the resolution on termination of the employment contract the employer was aware of the existence of circumstances referred in the text above (pregnancy etc.), or if the employee, within 30 days of termination of employment relationship, informs the employer of the existence of the circumstances and submits the appropriate confirmation of an authorized physician or other competent authority.

According to Article 188, the employer can neither cancel the employment contract, nor in any other way put the employee in a disadvantageous position because of his status or activity as an employee representative, trade union member, or because of his participation in trade union activities. The burden of proof that the cancelling of the employment contract or placing an employee in a disadvantageous position is not a consequence of the status or activities as an employee representative, trade union member, or because of his participation in trade union activities, is on the employer.

What notice periods must be observed?

Serbian law does not provide a general legal obligation to observe certain notice period in the event of a dismissal by employer. The Labor Law prescribes notice period only in case of dismissal for professional inadequacy. In that case an employee will be entitled to a notice period of between 8 and 30 days (depending on the total amount of time for which the employee has been a member of the social security system). The employee and the employer may agree to shorten or cancel such notice period on the condition that the employee is fully compensated for the entire duration of relevant notice period. Also, in case of termination of employment in the course of probation period each party (employer or employee) can terminate employment with at least 5 working days prior written notice.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

In Serbia, employment termination by employer without notice period is a rule. Only exceptionally, employer is obliged to provide employee with a notice period, as explained in the text above.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Termination procedure entails: 1) adoption of written warning notice which needs to state legal basis for termination, facts and evidences; 2) time period for employee's reply to warning notice not shorter than 8 days, 3) adoption and delivery of written termination notice which needs to contain reasoning and instruction on legal remedy. Delivery procedure is formal and has to be obeyed.

Employee may attach to his reply to warning notice the opinion of the trade union whose member he is, within the given time period for reply. The employer shall be obliged to take into account the attached opinion of the trade union.

General time-bar for employment termination notice is 6 months as of information on the grounds for dismissal but not later than a year as of those grounds occurred. In case of a criminal act as a ground for dismissal, termination notice may be executed at the latest until the expiry of the statute of limitation for this criminal act.

What measures must be taken in the event of a planned mass layoff?

The employer is entitled to terminate the employment contract if due to technological, economic or organizational changes, performance of a particular job becomes unnecessary, or the work load becomes reduced. The law provides for two different redundancy procedures depending on a number of employees whose contracts are to be terminated.

The employer is bound to prepare the redundancy program in cooperation with the National Employment Service ("NES") and a trade union (if there is a trade union formed with that specific employer) if within a 30 day period it plans to terminate employment of at least:

- ☑ 10 employees whereby the employer employs more than 20, and less than 100 employees engaged on a permanent contract (i.e. indefinite term contract);
- ☑ 10% of employees whereby the employer employs a minimum of 100, and a maximum of 300 employees engaged on a permanent contract;
- ☑ 30 employees whereby the employer employs more than 300 employees engaged on a permanent contract.

The program has to be prepared also by an employer who plans to make redundant at least 20 employees on permanent contract within a 90 day period (regardless of the total number of employees with the employer).

The employer must communicate its proposed program (and the proposed change to the Rules on organization and systematization of job positions) to the representative trade union(s) at the employer (if any) and the NES within a maximum of 8 days from the date the program was developed.

Such bodies will communicate their opinion to the employer within a maximum of 15 days from the date of receipt and the employer will, in its turn, issue a position with regards to such proposals within 8 days from receipt.

Prior to the termination of employment based on redundancy and in case that no measure of new employment of a redundant employee can be applied, the employer is obliged to pay to the employee a severance payment in the amount established by the employment bylaws (Collective Bargaining Agreement or Employment Rules) or employment contract. Such severance payment however could not be lesser than the amount provided for by the Labor Law: one third (1/3) of the employee's salary (average salary for the preceding three months before the payment of severance) for each full year of the employment service realized at the specific employer (including time spent in employment relation with the entity consider employer's predecessor in case of status change and change of employer and /or entity considered as affiliated company with the specific employer in accordance with the law).

Termination procedure entails adoption and delivery of written termination notice, which needs to contain reasoning and instruction on legal remedy. Delivery procedure is formal and has to be obeyed.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

Employee may attach to his reply to warning notice the opinion of the trade union whose member he is, within the given time period for reply. The employer shall be obliged to take into account the attached opinion of the trade union.

In case of collective layoffs, the employer must communicate its proposed program (and the proposed change to the Rules on organization and systematization of job positions) to the representative trade union(s) at the employer (if any) and the NES within a maximum of 8 days from the date the program was developed. Such bodies will communicate their opinion to the employer within a maximum of 15 days from the date of receipt and the employer will, in its turn, issue a position with regards to such proposals within 8 days from receipt.

Is there an obligation to offer severance payment in the case of dismissal?

Serbian law does not provide a general legal obligation to pay a severance in the event of a dismissal. The Labor Law requires payment of severance in case of dismissal due to redundancy and in case of employment termination due to employee's retirement.

What legal protection options does the dismissed employee have and to what result do they lead?

If the employee is of the opinion that the dismissal is invalid, he must file a lawsuit against the resolution on employment termination within 60 days as of its receipt.

- If the court during the proceedings determines that the employee employment relation terminated without legal basis, the court shall, at the request of the employee, decide that the employee shall return to work and be compensated for damages and that his corresponding contributions for compulsory social insurance shall be paid for the period in which the employee has not worked.

- The compensation of damages referred to in (1) above shall be determined in the amount of lost salary, which shall contain the corresponding taxes and contributions in accordance with the law, but which shall not include meal and vacation allowance, bonuses, awards and other income based on contribution to business success of the employer.

- The compensation of damages referred to in (1) above shall be paid to the employee in the amount of lost salary, which shall be reduced by the amount of taxes and contributions that are calculated based on salary in accordance with the law.

- Taxes and contributions for compulsory social insurance for the period in which the employee has not worked shall be calculated and paid on a specified monthly amount of the lost salary referred to in (2) above.

- If the court during the proceedings determines that the employee's employment relation was terminated without legal basis, and the employee does not require to return to work, the court shall, at the request of the employee, obligate the employer compensate the employee for damages in the amount of up to 18 employee's salaries, depending of time spent in employment relation with the employer, the employee's age and number of dependent family members.

- If the court during the proceedings determines that the employee's employment relation was terminated without legal basis, but during the proceedings the employer proves that the circumstances exist which reasonably indicate that the continued employment, taking into account all the circumstances and interests of both sides in the dispute, is not possible, the court shall deny request of the employee to return to work and order the employer to compensate employee's damages in the amount which equals a double amount determined in accordance with (5) above.

- If the court does determine that there were grounds for termination of employment relation, but that the employer acted contrary to the law which prescribes the procedure for termination of employment, the court shall reject the request of the employee to return to work, and shall order the employer to compensate the employee's damages in the amount of up to employee's six months salaries.

- Salary under (5) and (7) above shall be considered as salary which the employee earned in the month preceding the month in which his employment relation was terminated.

- Compensation from (1), (5), (6) and (7) above shall be reduced by the amount of income that the employee earned working after termination of employment relation.

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For what reasons can an employer terminate the employment relationship?

According to the Labor Code, an employment relationship may be terminated in the following ways: (i) termination by agreement, (ii) termination by notice, (iii) immediate termination, (iv) termination during the probationary period, (v) termination based on the legal regulation (i.e., upon the occurrence of a legally anticipated event, including the death of the employee), and (vi) termination of a fixed-term employment relationship.

For some of the methods of termination, the existence or specification of a reason for termination is not required, such as in the case of termination by agreement. If the employer and the employee agree to terminate the employment relationship, it will end on the agreed date, and this agreement must be in writing. The reasons for termination must be stated in the agreement only if requested by the employee, or if it involves specific reasons where the Labor Code directly requires the reason to be stated, such as organizational reasons.

Similarly, in case of termination by the employee, termination of a fixed-term employment relationship, and termination during the probationary period (except for legally specified exceptions aimed at protecting maternity and parenthood, where the law requires the reason to be stated, but this reason cannot be the protected interest itself, such as the fact that the employee is pregnant), it is not necessary to state the reason for termination.

If the employment relationship is to be terminated based on notice by the employer, immediate termination (by either the employee or the employer), and in some cases of termination during the probationary period (as mentioned above), there must be a legally specified reason; otherwise, the termination is invalid.

The Labor Code specifies the exact reasons for which an employer is authorized to terminate an employment relationship by notice, which can be categorized as follows:

- organizational reasons on the part of the employer – i.e., if the employer or a part of it is being dissolved, if the employer is relocating, or if the employee has become redundant due to the employer's decision,

- reasons related to the employee – particularly if the employee loses the ability to perform work due to health reasons, or if the employee does not meet or has ceased to meet the prerequisites for the agreed work,

- disciplinary reasons on the part of the employee – particularly in cases of breach of work discipline by the employee or unsatisfactory performance of work tasks.

Also, in the case of immediate termination of employment by the employer or the employee, there must be legally regulated reasons (for more details see Section 4).

Is there special protection against dismissal for certain groups of employees?

The Labor Code stipulates so-called protected period, in which an employer may not give a notice; the reasons can be divided into these categories: (i) health reason – for example when the employee is acknowledged temporarily incapable for work due to disease or accident, (ii) service in army (extraordinary or voluntary) – i.e. in the event of a call-up to perform extraordinary service during a state of crisis, (iii) protection of maternity and care of children – for example within the period of an employee's pregnancy, when an employee is on maternity/paternity leave and (iv) public reason - within the period when an employee is released for execution of a public function for a long term.

An employer may give notice to an employee with a health disability only with the prior consent of the relevant office of labor, social affairs and family otherwise notice shall be invalid. Such consent shall not be required if it is stipulated by law (for example where notice was given to an employee who has reached the age entitling him/her to a senior pension or in the case of termination of employment for the reason of the organizational changes).

An employer cannot immediately terminate the employment relationship with specially protected groups of employees, for example with pregnant employees, employees on maternity/paternity leave or on parental leave, with single employees taking care of a child younger than three years of age.

However, an employer may terminate employment relationship with them by giving notice, except for the employee on maternity or paternity leave and male employee on parental leave, for reasons that an employer was lawfully sentenced for committing a willful offence or was in serious breach of labor discipline.

The Labor Code also sets out special conditions for terminating the employment of adolescent employees. Information on the notice given to adolescent employees and immediate notice of an adolescent employee from the part of the employer shall also be submitted to their legal representatives.

If the employment relationship is terminated by notice from an adolescent employee, by immediate termination of the employment relationship, in the probation period or if the working relationship is to be terminated by agreement, the employer shall be obliged to request the opinion of the legal representative (an employee younger than 18 years of age shall be deemed as an adolescent employee).

The employer may give notice to or terminate immediately the employment of a member of the relevant trade union body, a member of a works council or a works trustee only with the prior consent of these employees' representatives. If the employees' representatives refuse to grant such consent, the notice or immediate termination of the employment relationship on the part of the employer shall be deemed invalid. The above equal conditions of protection shall apply to the employees' representatives for safety and health protection at work pursuant to a special regulation as well.

What notice periods must be observed?

The notice period is at least one month regardless of whether it is given by the employee or the employer.

The notice period of an employee to whom a termination notice is given by employer for a specific reason (for example for organizational reasons on the part of the employer as mentioned above), is at least (i) two months, if the employment of the employee with the employer has lasted at least one year and less than five years on the day of delivery of the termination notice, (ii) three months, if the employment of the employee with the employer has lasted at least five years on the day of delivery of the termination notice.

In other cases, the notice period of an employee to whom a termination was delivered by the employer shall be at least two months if the employment of the employee with the employer has lasted at least one year on the day of delivery of the termination notice.

If an employee who has been employed by the employer for at least one year as of the date of delivery of the notice gives notice of termination, the notice period is at least two months.

The notice period shall commence on the first day of the calendar month following delivery of the termination notice and ends on the last day of the calendar month.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

An immediate termination of the employment relationship could be done by the employer or the employee.

An employer may terminate an employment relationship immediately, only in cases where the employee (i) has been lawfully convicted of an intentional criminal offense or (ii) has seriously breached work discipline.

The deadline for immediate termination of employment by the employer is two months from the date on which he became aware of the reason for immediate termination, however the termination cannot be later than one year from the date on which the reason for immediate termination arose.

An employer cannot immediately terminate the employment relationship with specially protected groups of employees such as a pregnant employee, an employee on maternity/paternity leave or on parental leave.

The employees may immediately terminate the employment relationship only if (i) they cannot perform their current work due to health reasons and the employer has not reassigned them to other work, (ii) the employer has not paid wages and other benefits within 15 days of their due date, or (iii) the employee's life or health is immediately endangered.

An adolescent employee may also immediately terminate an employment relationship, also in the case if such an employee is incapable of performing his work without jeopardizing his morals.

An employee may immediately terminate an employment relationship only within a term of one month from the day when the employee became acquainted with the reason for immediate termination of the employment relationship.

Immediate termination of the employment relationship must be in writing, stating the reasons, which cannot be subsequently changed.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Employment may be terminated with notice either by the employer or the employee. Such notice must be made in writing and delivered, or it shall be invalid.

The employer may terminate employment with notice only for the reasons set out in Labor Code. The factual reason for termination must be specified in clear terms that avoid confusion with any other reason, or the termination shall be invalid. The reason for termination cannot not subsequently be changed.

Another legal requirement is that the notice must be delivered to the addressee. The Labor Code provides for the delivery of notices in person or by a postal service, but in the case of an employer, only in the employee's own hands. The employer must deliver all documents related to the commencement, modification, or termination of the employment relationship (i.e. including the notice of termination) either at the workplace, at the employee's permanent residence address, or at any other place where the employee can be reached.

If the notice has already been delivered, it can only be revoked with the consent of the other party.

In order for the notice to be valid, it is also required to discuss it with the representatives of the employees who work for the employer (more details on this in Section 7).

What measures must be taken in the event of a planned mass layoff?

In order to reach an agreement, the employer shall be obliged, at least one month before the mass layoff starts, to discuss with the representatives of the employees the measures to prevent or reduce the mass layoff, in particular, to negotiate the possibility of placing them in appropriate employment at the employer's other workplaces, even after prior preparation, and measures to mitigate the negative consequences of the mass layoff on employees.

An employer who does not have employee representatives is obliged to negotiate directly with the affected employees.

According to the negotiation with the employees/ employee representatives, the employer shall be obliged to provide all necessary information required by the law and to inform them in writing, in particular about (i) the reasons for the mass layoff, (ii) the number and structure of the employees whose employment is to be terminated, (iii) the total number and structure of employees employed by the employer, (iv) the period over which the mass layoff shall be implemented, (v) the criteria for selecting the employees to be made redundant.

The employer shall deliver a copy of the above-mentioned written information together with other information required by law to the respective Labor office to find a solution for the problems connected with the mass layoff.

After discussing mass layoff with employee representatives (or affected employees), the employer is obliged to deliver written information on the outcome of the National Labor Office and employee representatives. The employees' representatives may submit comments relating to mass layoff to the National Labor Office.

The employer may give notice to employees at the earliest upon expiry of one month from the day of delivery of above-mentioned written information to the National Labor Office.

If the employer violates its obligations in relation to procedure regarding mass layoff, the employee with whom the employer terminates the employm ent relationship is entitled to a wage refund at least in the amount of twice average salary. This is a kind of satisfaction for the employee and sanctions against the employer, which should primarily act against the employer to consistently fulfill all legal obligations related to mass layoff.

The sanction above does not apply to an employer in case of the termination of an employment relationship concluded for a certain period of time at the end of the agreed period. It neither applies to employers who have been declared bankrupt by a court.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

With the view of securing satisfactory working conditions, employees shall participate in decision-making of the employer concerning their economic and social interests, either directly or by means of a competent trade union body, of the works council or the works trustee; all employees' representatives shall mutually cooperate closely.

Generally, the Labor Code distinguishes between discussing specified facts with the employee representatives and reaching an agreement with the employee representatives, or by granting consent on their part by performing a certain act. It is necessary for the employer to distinguish these facts correctly and proceed accordingly. Also, if the consent of employees' representatives or an agreement with them is required, an employer in whose enterprise employees' representatives do not operate may act independently. This shall not apply if according to the law an agreement with the employees' representatives cannot be replaced by a decision of the employer.

The consent of employees' representatives may be required most often in the following cases:

- ☑ collective redundancies,

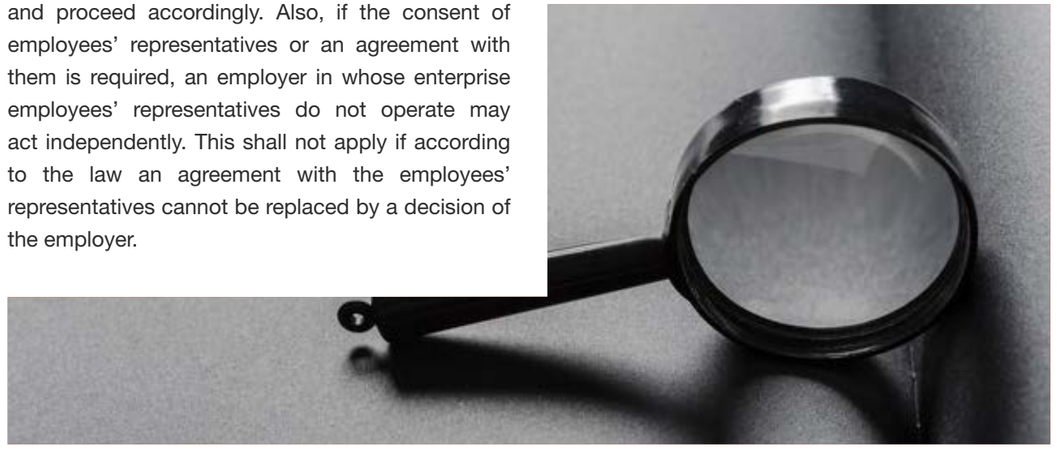
  termination of employment relationship – the termination of employment relationship with notice or immediate termination of employment relationship shall be invalid if it was not negotiated in advance between the employer and employee´s representatives otherwise (i.e. consent is not required for the termination to be valid, only negotiation is sufficient, even if the employees' representatives expressly disagree with the termination of the employee's employment relationship, except in cases where the law does not state otherwise)

- ☑ when scheduling working hours

- ☑ draw of paid holiday (in such a way that the employee may normally draw his/her paid holiday as a whole and by the end of the calendar year)

- ☑ work rules; these rules are invalid without the prior consent of the employees' representatives, etc.

The employer is also obliged to fulfill specified obligations towards state authorities, for example in the case of mass redundancies (see Section 6), or when the employment relationship with certain protected groups of employees is terminated (see Section 2).



Is there an obligation to offer severance payment in the case of dismissal?

Under Slovak legislation, there are two kinds of payments connected to the termination of the employment relationship – severance payment and redundancy payment.

An employee is entitled to severance payment and/or redundancy payment only in specific circumstances. The method of termination of the employment relationship (i.e. in this case by agreement or termination by notice by the employer) does not affect the entitlement to redundancy payment, but it does affect its amount.

An employee is entitled to redundancy payment if his employment relationship ends by agreement or termination for reasons determined by law, namely:

- ☑ the employment relationship ends because the employer, or a part of it, is terminated or relocated, and the employee does not consent to the new location
- ☑ an employee becomes redundant due to the employer's written decision to alter job functions, technical equipment, staffing levels, or other organizational changes. This also applies if the employer is a temporary employment agency, and the employee becomes redundant due to the end of an assignment before the expiration of a fixed-term contract
- ☑ the employment relationship ends because the employee has permanently lost the ability to perform his/her previous duties due to health conditions, as confirmed by a medical assessment.

An employee is entitled to severance payment if it is the first termination of the employment relationship after entitlement to old-age pension, early old-age pension or disability pension, if the decrease in the ability to perform gainful activity is more than 70%. The employer does not have to provide severance payment if the employee's employment was terminated immediately.

What legal protection options does the dismissed employee have and to what result do they lead?

The employee and employer have the right to challenge an invalid termination of employment in court. In cases of invalid termination, this represents a relative invalidity, which can only be claimed by the party directly impacted by the grounds for invalidity.

Disputes over invalid terminations are resolved by the courts, following causal jurisdiction as outlined in the Civil Procedure Code. Each party in an employment relationship has a two-month limitation period to file a claim for invalid termination, starting from the day the employment relationship would have ended based on the legal act in question (this period can be extended under certain legal conditions on the part of the employee). Claims of invalid termination apply only to cases where the employment relationship was ended based on a legal act. Until a final court ruling is issued, the employment relationship is considered validly terminated. For an employer to claim an invalid termination, the employee must first notify the employer that he/she insists on continuing his/her employment.

Slovenia

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Legal reasons

In Slovenia, the employer can terminate the employment relationship in the way and in cases as established by the Employment Relationships Act. A termination is only valid if it is caused by one of the five valid reasons prescribed by the Act, that prevents the continuation of the employment under the conditions of the employment agreement. Valid reasons to terminate the employee's employment agreement are the business reason (cf. under a.), the incapacity reason (cf. under b.), the at-fault reason (cf. under c.), the disability reason (cf. under d.) and the unsuccessful completion of a probationary period (cf. under e.).

- ☑ A dismissal due to a business reason is possible if the need for the performance of a certain work under the conditions of the employment contract has ceased due to economic, organizational, technological, structural or similar reasons on the employer's side. These reasons must not be connected with the person, actions or the abilities of the employee.
- ☑ A dismissal due to the reason of incapacity is possible either (i) in case the employee fails to attain the expected performance results because he/she has failed to carry out the work in due time, professionally or with due quality (subjective incapacity), or (ii) in case of failure to fulfill the job requirements prescribed by a legislative act or other regulations issued on the basis of a legislative act, due to which the employee cannot fulfill or is unable to fulfill the contractual or other obligations arising from the employment relationship (objective incapacity).
- ☑ A dismissal due to at-fault reason is possible if the employee has violated his/her contractual or other obligations from the employment relationship. Due to the nature of this reason the employer can terminate the employment contract only if the employee has violated his/her obligations with intent or with negligence.
- ☑ A dismissal due to the disability reason is possible if the employee is incapable of carrying out the work under the conditions set out in the employment contract due to a disability.
  Provision of the regulations governing pension and disability insurance and the regulations governing vocational rehabilitation and the employment of disabled persons must also be observed, meaning, amongst other, that the employer must first obtain the approval of a special independent body to the planned dismissal due to employee's disability.
- ☑ A dismissal due to unsuccessful completion of a probationary period is possible at any time during the duration of the probationary period.

> Defined termination reasons safeguard fairness and flexibility."

Special protections

Members of the works council and certain other employee representational bodies cannot be dismissed without the consent of the works council or other representative body if the employee has acted in accordance with the law, collective agreement and his/her employment agreement.

The special protection against dismissal continues for 1 year after the expiration of the term of office. Protection is not granted if the employee was offered and has declined a new employment contract in the procedure of termination of his/her employment contract due to a business reason and in case of winding up of the employer.

Older employees, i.e., employees over the age of 58 and employees with less than 5 years to retirement cannot be dismissed due to a business reason without their consent. The special protection continues until the employee obtains the right to retirement. This protection is not granted if the employee is entitled to the right of monetary compensation for the period until retirement, if the employee is offered a new employment contract and in case of winding up of the employer.

Pregnant women and women nursing a child up to 1 year of age enjoy special protection against all types of dismissal. A dismissal is also excluded during and 1 month after the parental leave. Only in very exceptional cases, i.e., in case of extraordinary termination or closure of operations, the employer may terminate the employment agreement of such employees, subject to prior approval of the competent authority.

Employees with a work disability can only be dismissed due to a business reason and due to disability if the special independent body has given its consent to the termination and by following the special procedure as prescribed by the pension and disability regulations and vocational rehabilitation regulations. Employees on sick leave are protected against termination at the expiry of the notice period when dismissed due to a business reason or due to incapacity. This protection is granted during the employee's absence due to sick leave, however not more than 6 months after the expiry of the notice period. The above protection is not granted in case of closure of operations.

Notice period

Notice periods differ depending on the reason for termination. In case of termination due to unsuccessful completion of a probationary period the notice period is 7 days.

In case of termination due to a business reason and due to incapacity reason, the notice period depends on the length of employment with the employer. Notice period is 15 days if the employee was employed with the employer for up to one year, and 30 days if the employee was employed with the employer more than 1 year and up to 2 years. After 2 years of employment the notice period increases for 2 additional days for each full year of employment over 2 years, up to a maximum of 60 days. After 25 years of employment the notice period is 80 days if not prescribed differently by the branch collective agreement, however no less than 60 days. The seniority for the calculation of the notice period is determined by the date of receipt of the notice. Previous employment with the employer's predecessors is counted.

In case of termination due to at-fault reason the notice period is 15 days.

The above statutory periods of notice are only minimum notice periods. The parties may agree to payment in lieu of notice period. Such an agreement must be in a written form.

Absence of notice period

An employment relationship may be terminated without a notice period only due to reasons explicitly listed in the Act and if, considering all circumstances of the individual case and weighing the interests of both contractual parties, the employment relationship cannot be continued until the expiry of the notice period or until the expiry of the definite employment agreement. Act lists eleven reasons for extraordinary termination which are all conduct related (i.e. breach of contractual or other employment relationship-related obligations committed with intention or with gross negligence).

An extraordinary termination can only be made within a period of 30 days from finding out the reason and within a maximum period of 6 months from the day of occurrence of the reason. In certain cases (i.e., if the employee's conduct has also all of the elements of a criminal act) the employer may forbid the employee to come to work during the termination procedure during which the employee is entitled to a salary compensation in the amount of only ½ of his/her average salary (average of the last 3 months prior to commencement of the termination procedure).

Formal requirements

Termination due to at-fault reason may only be commenced if the employer has provided the employee with a written warning for a previous violation in which the employee was warned that his/her employment may be terminated if the employee breaches his/her employment obligations again within the next year from being served with the written warning letter. The employer must issue the written warning within 60 days from being aware of the violation and within the maximum period of 6 months from the occurrence of the violation. The written warning can be served also electronically to the email address provided to the employee by the employer.

Prior to ordinary termination due to incapacity or due to at-fault reason and prior to extraordinary termination the employer must inform the employee in writing on the alleged violation or on the alleged

incapacity reason and hear the employee's defense. The employee must be given at least 3 working days to prepare his/her defense. The information on the alleged violation can be served also electronically to the email address provided to the employee by the employer.

Upon employee's demand also a union representative or other authorized person must take part in the termination procedure.

A negative opinion of the union does not prevent the employer from dismissing the employee.

The employer must specify the actual reasons for termination in the letter of dismissal, taking into account also the employee's defense. The reasons must be specified to the degree that individualization of the cause is possible. The dismissal letter must also include a legal notice to the employee (i.e., instruction on legal remedies against the termination, on unemployment insurance benefit rights and on obligation to register oneself into the employment seekers record). Incorrect or omitted legal notice does not affect the rights of the employee or the validity of the termination, however the employer may be held liable for damages and subjected to a fine due to faulty legal notice.

The dismissal must be in a written form to be valid. The electronic form is excluded. The letter of dismissal must be served personally to the employee. The safest and most straightforward way is to hand it over directly to the employee upon a written confirmation of receipt. The dismissal should always be signed by an authorized representative of the employer. Otherwise, the employee may immediately reject the dismissal and the dismissal is null and void.

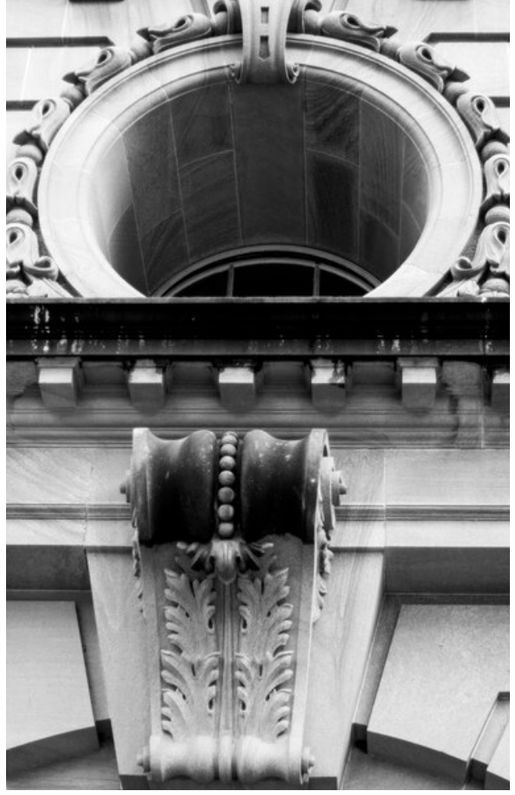
Collective dismissals

In case of a mass layoff, the employer must inform the employment agency in detail at least 30 days before issuing the planned dismissals. A mass layoff occurs, if within 30 calendar days; (i) at least 10 employees in an establishment of 20 to 100 employees; or (ii) at least 10% of employees in an establishment of 100 up to 300 employees; or (iii) at least 30 employees in an establishment of 300 or more employees are to be dismissed due to business reasons. Other terminations of the employment relationship initiated by the employer shall be deemed equivalent to dismissals. In case of a mass layoff, the employer is obliged to make a program of dismissal of the redundant employees.

Prior to the notification to the employment agency, the employer must, as soon as possible, inform the works council at the employer and provide it with the relevant information in writing stating the reasons for the planned redundancies, the number and occupational categories of employees to be made redundant, the number and occupational categories of the employees normally employed, the period during which the redundancies are to take place and the criteria laid down for selecting the employees to be made redundant. The employer and the works council must, with the intent of reaching an agreement, discuss ways of avoiding or limiting redundancies and mitigating their consequences.

The notification of mass layoffs to the employment agency must include the information on the consultation performed with the works council. The employer must send a copy of the notification, sent to the employment agency, to the works council.

The employer must take into consideration the employment agency's suggestions on ways of avoiding or limiting redundancies and mitigating their consequences. The employment agency may prohibit the dismissals for up to 60 days from the notification to the employment agency. If the mentioned requirements are not met, all dismissals are invalid.



Employees' representatives and state authorities

Upon the employee's explicit demand, the union of which the employee is a member of, must be heard before the dismissal. If the employee is not a member of a union, the employer must, upon the request of the employee, inform the works council or other representative body. Otherwise, the dismissal is invalid. The notification made to the union or works council should include a copy of the notification on the alleged violation.

The union or works council cannot prevent a dismissal. If the union or works council objects to the dismissal, it must state its reasons for the negative opinion regarding which the employer must take a position in the termination letter. The works council has consultation rights in case of mass layoffs as mentioned in previous chapter.

The Employment Service of Slovenia must be involved in the case of mass layoffs. In the case of disabled employees and employees on maternity and parental leave, the approval of the competent state authority must be obtained prior to dismissal.

Severance payment

In case the employer terminates the employee's employment agreement due to business reasons or due to incapacity, the employer must pay a statutory severance payment. The base of calculation of the severance payment is the employee´s average monthly salary received in the last 3 months prior to termination.

The severance payment amounts to; (i) 1/5 of the base for each year of employment with the employer, if employed for more than one and up to 10 years with the employer; (ii) ¼ of the base for each year of employment with the employer, if employed for more than 10 and up to 20 years with the employer and (iii) 1/3 of the base for each year of employment with the employer, if employed for more than 20 years with the employer. Work with the legal predecessor of the employer is counted in.

The amount of the severance payment must not exceed 10 times the base, unless agreed differently in the collective bargaining agreement. In case of composition proceedings, the employer and employee may agree to a lower amount of severance payment if a larger number of work posts would be endangered at the employer due to payment of the full severance.

Unless agreed otherwise in the collective bargaining agreement, the severance must be paid at the termination of the employment relationship.

Employees at retirement are also entitled to a severance payment in the amount of 2 average monthly salaries, either employee's or state average, whichever is higher, unless agreed otherwise with the collective bargaining agreement.

The parties may agree to a higher than statutory severance payment at consensual termination of the employment agreement, however amounts higher than 10 times the base are taxed same as salary.

Legal protection for the employee

If the employee is of the opinion that the dismissal is invalid, he/she must file an action for dismissal protection with the Labor Court within 30 days of being served with the termination. If the period for bringing an action is not observed, the termination is deemed to be effective and the employment relationship ends after the expiry of the ordinary period of notice.

The employee's action for protection against unfair dismissal is seeking a declaration that the employment relationship was not terminated by the notice of termination and that it will continue with unchanged terms beyond the date of termination.

Upon request of either of the parties the court may, in case the court finds the termination invalid, declare the continuation of the employment only until the date of the court decision and grant, upon consideration of the circumstances of the termination, the employee with the right to an adequate monetary compensation in the amount no higher than 18 monthly salaries (average of the last three months prior to termination).

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For what reasons can an employer terminate the employment relationship?

In accordance with the Spanish Labor Act, there are different reasons that may lead the employer to terminate an ordinary, indefinite term contract once the probationary period has expired.

The two basic causes for unilateral termination by the employer are: (a) objective reasons and (b) disciplinary reasons.

Objective dismissal

An individual objective dismissal exists when the employer decides to dismiss an employee due to one of the following grounds:

- ☑ The inability of the employee to work, whether known or arising after his/her effective hiring by the company, taking into account that the inability existing prior to the end of a probationary period may not be alleged after this period has been completed;
- ☑ The lack of adaptation to technical modifications relevant to his/her role when these modifications are reasonable;
- ☑ A redundancy due to economic, technical, organizational and/or production grounds, which affects a number of employees below the legal threshold for collective redun-dancy.

Disciplinary dismissal

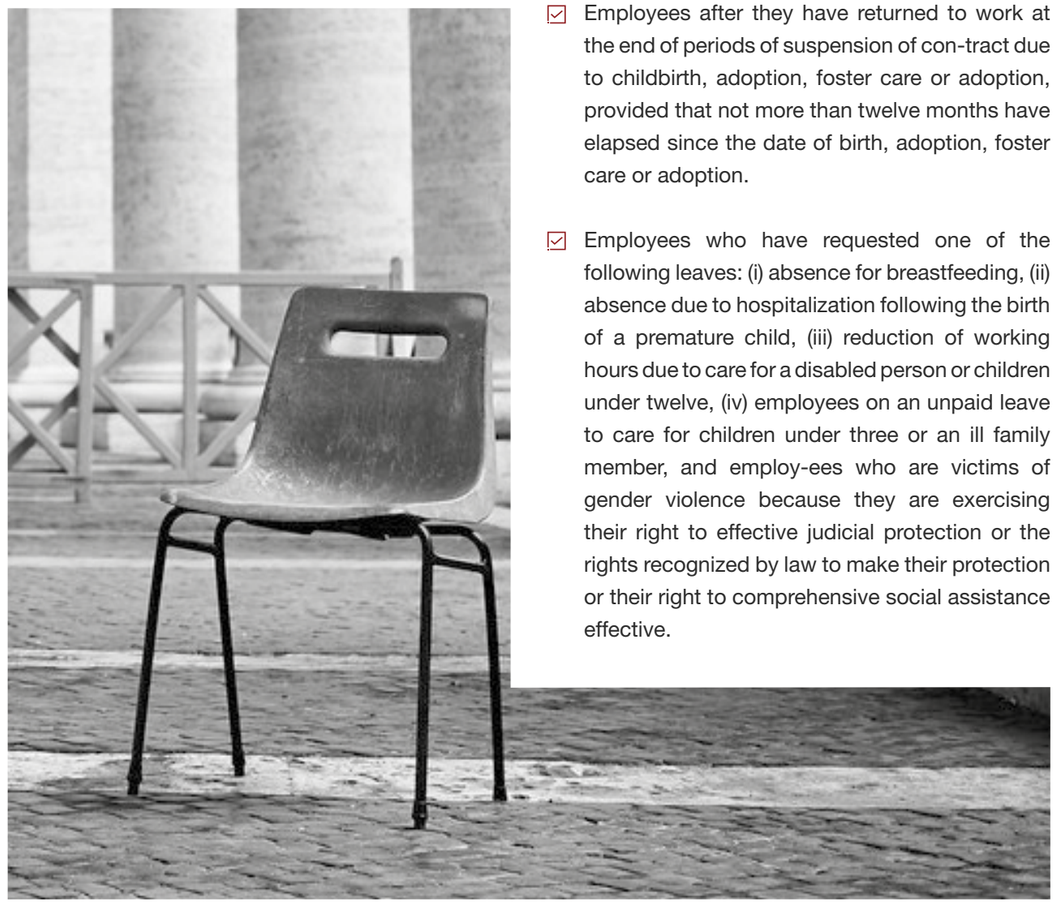
Disciplinary dismissals shall be based on the employee's gross misconduct, defined as a significant and intentional breach of the employment duties, consisting, amongst others, of:

- ☑ repeated and unjustified lack of attendance or punctuality to work;
- ☑ indiscipline or disobedience at work;
- ☑ verbal or physical offenses against the employer or persons working in the company or family members residing with them;
- ☑ breach of contractual good faith, as well as the abuse of trust in the performance of work;
- ☑ voluntary and continued decrease of normal or agreed work performance;
- ☑ regular drunkenness or drug addiction if it negatively affects the work performed;
- ☑ harassment due to racial or ethnic origin, religious beliefs or ideology, disability, age or sexual orientation and sexual or gender-based harassment of the employer or any person rendering services in the company;
- ☑ Any other breach established in the applicable collective bargaining agreement.

Likewise, it should be noted that, according to existing case law from the Spanish Supreme Court, any disciplinary action taken by the employer shall be proportional to the misconduct of the employee. Hence, the disciplinary grounds for the dismissal indicated above shall be serious enough to justify the termination of the employment contract, as this is the most severe disciplinary measure against the employee.

In the event of definite-term employment contracts, they will generally terminate on the agreed date of expiration, and the employee shall be entitled to a severance compensation of twelve days of salary for each year of service.

Finally, it must be taken into consideration that termination of top executives is subject to specific rules, as it is a special employment relationship.



Is there special protection against dismissal for certain groups of employees?

Employees under the following circumstances are especially protected against dismissal:

- ☑ Pregnant employees, from the date of the beginning of the pregnancy until the beginning of the period of suspension of the work contract due to childbirth.
- ☑ Employees during periods of suspension of the employment contract by reason of child-birth, adoption, guardianship for the purpose of adoption, fostering, risk during pregnancy or risk during breastfeeding, or due to illness caused by pregnancy, childbirth or breast-feeding, parental leave of eight weeks or where the decision is notified on a date such that the period of notice granted ends within these periods.
- ☑ Employees after they have returned to work at the end of periods of suspension of con-tract due to childbirth, adoption, foster care or adoption, provided that not more than twelve months have elapsed since the date of birth, adoption, foster care or adoption.
- ☑ Employees who have requested one of the following leaves: (i) absence for breastfeeding, (ii) absence due to hospitalization following the birth of a premature child, (iii) reduction of working hours due to care for a disabled person or children under twelve, (iv) employees on an unpaid leave to care for children under three or an ill family member, and employ-ees who are victims of gender violence because they are exercising their right to effective judicial protection or the rights recognized by law to make their protection or their right to comprehensive social assistance effective.

Moreover, if the dismissal is based on the grounds of discrimination prohibited by the Spanish Constitution or by law, or in violation of fundamental rights and public freedoms of the employee it will be considered null and void (for instance, when the dismissal is considered a retaliation for the employee having exercise his/her employment rights against the employer).

Employees under the above circumstances can be terminated like other employees, but if a labor court finds that insufficient causes existed for the dismissal (either disciplinary or objective causes) or that the required formalities were not followed, the dismissal will automatically be considered null and void, and not unfair.

If the dismissal is considered null and void, the employer must reinstate the employee in his/her position with back pay.

Further, employee representatives enjoy special protection against dismissal, since if they are dismissed or otherwise disciplined, there is a risk that the decision will be considered null and void for infringement of the right to freedom of association. This protection applies from the time they are included on the list of candidates to 12 months after their term expires. In addition, if the dismissal is deemed to be unfair, they have the right to choose between being reinstated with back pay or receiving the statutory severance compensation for unfair dismissal.

What notice periods must be observed?

The notice period depends on the type of dismissal to be effected.

In case of individual objective dismissal and collective redundancy, the dismissal letter must be delivered 15 days in advance of the actual date of termination. However, the employer may pay a compensation in lieu of notice. Collective redundancies also include a mandatory consultation period between the employer and employee representatives.

In the event of a disciplinary dismissal, no notice period is required.

Lastly, employers and employees may agree a contractual notice period that generally does not apply to disciplinary dismissals.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Even in cases of mandatory notice periods for certain terminations, the employer may pay a compensation in lieu of said notice.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

The employer must produce and deliver a letter of dismissal addressed to the employee describing in detail the objective or disciplinary reasons upon which the termination is based, as well as the actual termination date.

It shall be noted that the Spanish Supreme Court has recently ruled that, in accordance with Section 7 of Code 158 of the International Labor Organization, employees have a right to be heard before being dismissed for disciplinary reasons.

The above regulations do not establish a specific procedure or deadline to be observed in the relation to this employee's right, and there is no relevant case law clarifying these aspects. However, it may be advisable granting a minimum 48-hour period to the employee to submit allegations before delivering the letter of dismissal. Failure to comply with this formal obligation may result in the dismissal being considered unfair (or null and void in cases of employees protected against dismissal).

The applicable collective bargaining agreement may also establish additional formal requirements when effecting disciplinary dismissals that employers must observe.

Together with the above requirements, in the event of dismissal for objective reasons, upon notifying the dismissal to the employee, the employer must simultaneously pay the statutory severance compensation of 20 days of salary per year of service,

any period of less than one year of service being pro-rated by months, capped at 12 months of salary. Failure to comply with this formal requirement would result in the dismissal being considered unfair (or even null and void in case of protected employees).

With respect to objective dismissals, the employer must provide the employee representatives with a copy of the letter of dismissal, preferably on the same date this letter is delivered to the employee.

What measures must be taken in the event of a planned mass layoff?

A collective dismissal process must be followed when the employer intends to implement redun-dancies based on economic, technical, organizational and/or production grounds affecting, within a 90-days reference period, at least:

- ☑ 10 employees in companies with less than 100 employees;
- ☑ 10% of workforce in companies with 100-300 employees;
- ☑ or 30 employees at companies with 300 employees or more; or
- ☑ the entire workforce of the employer if there are more than 5 employees as a consequence of the total cessation of its business activity.

Not only redundancies/objective dismissals are computed for the above legal thresholds, but also any other terminations by the employer, excluding the valid termination of fixed-term employment contracts and justified disciplinary terminations.

It is important to take account that, although the Spanish Labor Act refers to the company as a unit for determining the relevant thresholds, according to EU case law (CJEU 30-4-15, C-80/14, Usdaw Case; 13-5-15, C-392/13, Rabal Cañas Case), if a single work center exceeds the above-mentioned thresholds, provided that said work center regularly employs at least 20 employees, the collective dismissal process must also followed.

However, if the number of employees affected does not reach these thresholds, the individual objective dismissal procedure must be followed.

> Compliance with dismissal procedures safeguards both employee rights and employer obligations."

Objective dismissal grounds could be summarized as follows:

- Economic grounds are defined as a negative economic situation of the company with, among others, (i) registered or expected losses or (ii) a continued decrease in sales or ordinary revenues (during at least three consecutive quarters in comparison with the same periods of the previous year);
- Technical grounds are considered when there are changes in the company's production means;
- Organisational grounds occur in relation to changes, among others, in the work methods or systems or in the way that production is organized; and
- Production grounds would be considered when there are changes, among others, in the demand for the company's products or services.

The collective dismissal procedure formally commences with the delivery, by the employer, of a formal notice to the employee representatives informing them about its decision to start said pro-cedure and requesting the appointment of a negotiating committee made up of both employer and employee representatives.

The employee representatives that will negotiate with the employer during the consultation period shall be appointed within certain deadlines. If these deadlines are not met, the employer may start the consultation period described below.

Following the appointment of the above-mentioned committee, the employer must formally inform the employee representatives who are members of the said committee and the competent labor Authority of the commencement of the consultation period, as well as provide them with certain mandatory information that will vary depending on the redundancy grounds.

The consultation period will last a maximum of 30 days, or 15 days in companies with less than 50 employees, and will focus on the possibilities of avoiding the proposed redundancies and/or miti-gating their consequences through social benefits (i.e. outplacement, professional training).

During this consultation period, the parties must negotiate in good faith, but there is no obligation to reach an agreement during this period in order to effect the proposed redundancies.

The employer must inform the labor authority about the outcome of the consultation period, i.e. whether or not the employer and the employee have reached an agreement.

Employees must be notified of the dismissals individually and 30 days must elapse between the start of the consultation period and the actual termination date.

It must be taken into account that in case of collective dismissals involving employees aged 50 or over, the employer could have to pay specific economic compensations to the Spanish Public Treasury. Also, specific social security contributions shall be paid with respect to affected employ-ees aged 55 or over.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

A mandatory consultation period between the employers and the employee representatives must be followed in the event of a collective dismissal. In addition, the employer must inform the relevant labor authority and the labor inspection must issue a report in relation to the collective dismissal procedure.

Employee representatives have the right to challenge the collective dismissal decision if no agreement is reached during the consultation period.

It should be noted that, in cases of individual objective dismissal and collective dismissal, employ-ee representatives have "last to go" rights. Also, an agreement between the parties may be reached establishing different priorities of certain collective of employees to remain in favor of other groups, such as employees with family responsibilities, older employees or people with disa-bilities.

Is there an obligation to offer severance payment in the case of dismissal?

In case of individual objective dismissal, a statutory severance compensation of 20 days of salary per year of service, capped at a maximum of 12 months of salary, must be paid to the employee upon notification of the dismissal.

According to Spanish Labor regulations, in case of a collective dismissal, the employer may effect the dismissals by paying the above-mentioned statutory severance compensation. However, in order to reach an agreement during the consultation period and avoid litigation, it is common prac-tice to agree an enhanced severance compensation.

If either the individual dismissals (either objective or disciplinary) or the collective redundancy pro-cedure is declared fair (i.e. if there are sufficient grounds and the employer has complied with the formalities of the procedure), the affected employees would not be entitled to any additional sev-erance compensation.

However, if the dismissals are deemed to be unfair by a labor court, the statutory severance com-pensation is calculated at a rate of 33 days of salary per year of service capped at a maximum of 24 months of salary.

A special severance formula applies to employees hired prior to 12 February 2012, as their sever-ance compensation is calculated as the sum of (i) 45 days of salary per year of service up to 11 February 2012, and (ii) 33 days of salary per year worked as from 12 February 2012.

If the employee was hired before 12 February 2012, the total severance compensation is subject to a maximum of the greater of the following caps:

- 720 days of total salary; or
- the amount of 45 days of salary per year of service up to 11 February 2012, capped at 42 months of salary

The amount corresponding to the statutory severance for objective dismissal, i.e. 20 days of sala-ry per year of service, is included in the above statutory severance compensation for unfair dis-missal.

Notwithstanding the above, it must be noted that labor courts may grant the employee an addi-tional severance compensation (on top the statutory one) in the event of unfair dismissals under certain circumstances.

What legal protection options does the dismissed employee have and to what result do they lead?

Spanish labor law grants the employee protection in case of dismissal. The employee may chal-lenge the termination within 20 working days by filing a claim before the labor court.

The dismissal will be declared fair if the grounds for dismissal are proven by the employer and are considered sufficient and the legal formal requirements have been met.

If the dismissal is considered unfair, the employer, within five days from receiving the court judg-ment, must choose between reinstating the employee in his/her position with back pay or paying the employee the statutory severance compensation for unfair dismissal.

If the dismissal is considered null and void, the employer must reinstate the employee in his/her position with back pay. Moreover, the labor court may grant the employee a compensation for damages.

Sweden

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For what reasons can an employer terminate the employment relationship?

In Sweden, an employer can terminate the employment for two main categories of reasons: shortage of work and personal reasons. The employer must be able to prove that there is a just reason for the dismissal in order to avoid exposure to damages or that the dismissal is declared invalid. The statutory rules regarding employment protection which requires just reason do not as a rule apply for managerial executives or in situations where the employer wishes to terminate a fixed term contract or terminate an employment when the employee has reached the retirement age of sixty-nine.

Shortage of work as reason for a dismissal is a legal technical term which is not limited to denominate a situation where there is not enough work but also other situations where the dismissal is due to the employer's right to manage the business and/or where there are economic, technical or organizational reasons for the dismissal. In Sweden courts do not examine the business reasons behind a dismissal unless there are reasons to believe that the reason for the dismissal was related to an individual employee. An employer may not arbitrarily select which employee shall be terminated on grounds of redundancy. Order of priority rules which among other things are based on the employee's aggregated length of service apply.

A dismissal due to personal reasons can only be justified in a situation where the employee is guilty of a breach of obligations that are of material interest to the employer and which existence has been made known to the employee. Thus, a dismissal cannot be based on trivial offenses, and it is required that the employer can show that the employee has acted in a way that is not reasonably acceptable in an employment relationship and that it cannot reasonably be argued that the employer should have solved the problem by undertaking a less intrusive measure such as a relocation to another position or a written reprimand. Examples of reasons that could be just reasons for a dismissal are unlawful absence, late arrival, refusal to work, inferior performance, inappropriate behavior or harassment, breach of the loyalty obligation, criminal action and illness.

Is there special protection against dismissal for certain groups of employees?

The starting point under Swedish labor law regarding dismissals is that there are no provisions protecting specific groups against dismissals due to shortage of work or personal reasons. However, there are some specific rules that employers must respect when dismissing employees who are on parental leave or are elected as trade union officials.

A special rule for the period of notice applies to an employee who is on full-time parental leave when notice is given due to shortage of work. The period of notice shall commence not when the notice is given but when the employee fully or partly resumes work or would have returned to work according to the notification of parental leave that the employee submitted when beginning the leave.

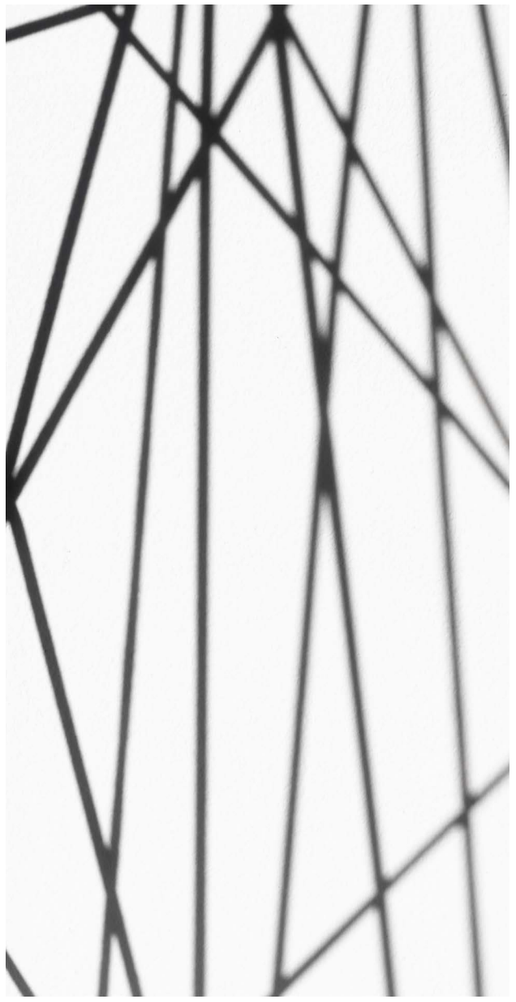
In the event of a cutback in operations a union representative should be given priority for continued work if it is of particular importance for trade union activities at the workplace. If the union representative can only be given continued employment after redeployment, the prerequisite for the union representative is that he or she has sufficient qualifications for this work. This rule is only applicable for employers who are or usually are bound by collective bargaining agreements.

What notice periods must be observed?

When terminating an employment contract, the employer is obliged to apply the notice period stipulated in the employment contract or the longer notice period that may follow from mandatory provisions. The minimum notice period according to mandatory legislation is one month. The period of notice then increases depending on the employee's total length of service with the employer.

The employee shall be entitled to a notice of termination period of:

- ☑ two months, where the aggregate term of employment with the employer is at least two years but less than four years;
- ☑ three months, where the aggregate term of employment is at least four years but less than six years;
- ☑ four months, where the aggregate term of employment is at least six years but less than eight years;
- ☑ five months, where the aggregate term of employment is at least eight years but less than ten years; and
- ☑ six months if the aggregate term of employment is not less than 10 years.



Collective bargaining agreements may include an obligation to observe longer notice periods.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Summary dismissal may take place where the employee has grossly disregarded his or her obligations to the employer. In the case of summary dismissal, the employment ceases with immediate effect without any period of notice. Summary dismissal shall only be considered in profoundly serious cases of misconduct such as assault or threats in the workplace, disloyal competition or theft from the employer.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Notice of dismissal from the employer shall be given in writing and handed over to the employee in person. In the notice of dismissal, the employer shall state the provisions with which the employee shall comply in the event the employee wishes to allege that the termination is invalid or seek damages because of the dismissal. The notice shall also state whether the employee has a right of priority to re-employment. Where the employee has a right of priority and notification is necessary to claim the right of priority, this shall also be stated. Upon the employee's request the employer is required to provide written information on the circumstances that are reasons for the dismissal.

An employer who is planning to execute a dismissal due to a personal reason is obligated to inform the employee and the union in which the employee is a member. The information shall be given two weeks before the employee receives the notification of dismissal. In case of a summary dismissal the information shall be given one week in advance. The employee and the trade union have the right to request consultation with the employer. This consultation must be requested no later than one week after the notification or notice was given. If consultation has been requested, the employer may not conduct the dismissal until the consultation has been concluded.

Formal requirements regarding shortage of work are described below under the heading collective dismissals.

What measures must be taken in the event of a planned mass layoff?

An employer who intends to implement a cutback in operations which regards more than five employees must first notify the Swedish Public Employment Office. The obligation to notify also applies if notices of dismissals during a 90-day period are expected to be twenty or more. Notification shall be made in writing two months (for up to twenty-five employees), four months (for 26-100 employees) or six months (for more than one hundred employees) before a cutback in operations is implemented. Failure to comply with the requirement is subject to a fine.

The decision to implement a cutback in operations is subject to a consultation requirement. Irrespective of whether the employer is party to a collective bargaining agreement or if the cutback in operations regards less than five employees the employer is obligated to enter into consultations with the trade union regarding the decision to dismiss employees on grounds of redundancy. When an employer has not signed any collective bargaining agreement, the employer must negotiate with all unions with members concerned by the future reductions of employees.

The right to negotiations merely gives the trade union an opportunity to influence the way in which decisions are made, not a veto right nor the power to decide the future course of the business. The employer is not required to reach an agreement with the union and has the exclusive competence to determine its own actions.

In conjunction with negotiations regarding a decision to terminate due to redundancy, the employer shall, in ample time, notify the other party in writing of the following matters:

- ☑ the reasons for the planned terminations of employment;
- ☑ the number of employees whose employment is intended to be terminated and the categories to which they belong;
- ☑ the number of employees who are ordinarily employed and the categories to which they belong;
- ☑ the time period during which the terminations are intended to be implemented; and
- ☑ the method for calculating any compensation to be paid in conjunction with termination in addition to that which is required by law or applicable collective agreements.

The employer shall also provide the other party with a copy of any written notice that has been submitted to the Swedish Public Employment Office.

Failure to comply with the consultation requirement does not make the dismissals invalid. However, the failure triggers a liability to pay general damages to the trade union.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

The system of work councils does not exist in Sweden. Co-determination is instead covered through legislation that obligates the employer to consult with unions prior to important decisions that affect the employees. For more information regarding the employer's obligations vis-à-vis employees' representatives see above under the heading collective dismissals.

Is there an obligation to offer severance payment in the case of dismissal?

There is no mandatory obligation under Swedish law to pay severance pay to employees who are dismissed. However, it is quite common for employers to enter into individual or collective agreements whereby employees who are dismissed are offered severance pay in exchange for waiving their rights to challenge the dismissal or the order of priority rules.

What legal protection options does the dismissed employee have and to what result do they lead?

The dismissal of an employee may be ruled invalid by the court if the employer is not able to prove just reasons. If the termination was for organizational reasons the remedy is limited to general and financial damages.

The general damages for a wrongful dismissal can normally be estimated to be between SEK 100,000 and 190,000 per dismissal. The financial damages depending on the circumstances of the individual case are maximized to an amount corresponding to between 16- and 32-months' salary depending on the employee's length of service. The damages may not, however, be settled in such a way that the amount is calculated based on monthly wages which exceed the number of months of employment, or parts thereof, with the employer. Where the employee has been employed for less than six months, the amount shall nevertheless correspond to wages for six months.

Switzerland

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For what reasons can an employer terminate the employment relationship?

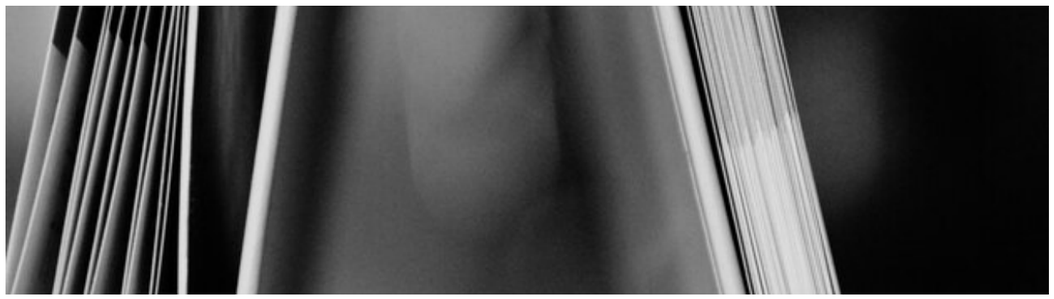
In Switzerland, the principle of freedom to dismiss applies to employment relationships based on private law. Both contracting parties (i.e. the employer and the employees) may terminate the employment contract considering the contractual or statutory notice period. Neither the employer nor the employee needs any special reason for a termination. The party giving notice of termination must state its reasons in writing if requested by the other party.

Is there special protection against dismissal for certain groups of employees?

After the probation period has expired, the employer may not terminate the employment relationship for several reasons: i) while the other party is performing Swiss compulsory military or civil defence service or Swiss alternative civilian service or, where such service lasts for more than eleven days, during the four weeks preceding or following it; ii) while the employee through no fault of his own is partially or entirely prevented from working by illness or accident for up to 30 days in the first year of service, 90 days in the second to fifth years of service and 180 days in the sixth and subsequent years of service; iii) during the pregnancy of an employee and the sixteen weeks following birth; iv) while the employee is participating with the employer's consent in an overseas aid project ordered by the competent federal authority.

Any notice of termination given during the above proscribed periods is void; by contrast, where such notice was given prior to the commencement of a proscribed period but the notice period has not yet expired at that juncture, it is suspended and does not resume until the proscribed period has ended.

Where a specific end-point, such as the end of a month or working week, has been set for termination of the employment relationship and such end-point does not coincide with the expiry of the resumed notice period, the latter is extended until the next applicable end-point.



It should also be underlined that notice of termination is unlawful where given by one party for the following reasons: i) on account of an attribute pertaining to the person of the other party, unless such attribute relates to the employment relationship or substantially impairs cooperation within the business; ii) because the other party exercises a constitutional right, unless the exercise of such right breaches an obligation arising from the employment relationship or substantially impairs cooperation within the business; iii) solely in order to prevent claims under the employment relationship from accruing to the other party; iv) because the other party asserts claims under the employment relationship in good faith; v) because the other party is performing Swiss compulsory military or civil defence service or Swiss alternative civilian service or a non-voluntary legal obligation. Further, notice of termination given by the employer is unlawful when given because the employee is or is not a member of an employees' organization or because he carries out trade union activities in a lawful manner.

What notice periods must be observed?

During the probation period, either party may terminate the contract at any time by giving seven days' notice; the probation period is considered to be the first month of an employment relationship. Different terms may be envisaged by an individual written agreement, a standard employment contract or a collective bargaining agreement; however, the probation period may not exceed three months.

Where the period that would normally constitute the probation period is interrupted by illness, accident or performance of a non-voluntary legal obligation, the probation period is extended accordingly.

The basic legal notice periods are the following: one month's notice during the first year of service, two months' notice in the second to ninth years of service and three months' notice thereafter, all such notice to expire at the end of a calendar month. These notice periods may be varied by written individual, standard or collective bargaining agreement; however, they may be reduced to less than one month only by collective bargaining agreement and only for the first year of service.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

Termination without notice is valid if the employment relationship is no longer acceptable due to fraud, refusal to work etc. However, notice must be given immediately after the justified reason for termination is discovered.

Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give its reasons in writing at the other party's request.

In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice. The court determines at its discretion whether there is good cause; however, under no circumstances may the court hold that good cause is constituted by an employee being prevented from working through no fault of his own.

Where the good cause for terminating the employment relationship with immediate effect consists in the breach of contract by one party, that party is fully liable for damages due with regard to all claims arising under the employment relationship.

In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

There are no specific procedures that an employer is obligated to follow in relation to individual dismissals. Collective bargaining or individual agreements frequently state that the notice must be in writing or must even be sent by registered mail. In any case, it is important to be able to furnish proof of the termination.

As a general rule, the termination is valid only when the addressee (employer or employee) has received the letter. It is therefore recommended to send it sufficiently in advance, so that the notice period is respected. Termination communicated verbally takes effect immediately, even if written confirmation is sent at a later date.

It is worth mentioning that the employer does not have to specify the reasons for termination in the letter of dismissal.

What measures must be taken in the event of a planned mass layoff?

A dismissal is considered a mass layoff when it affects: i) at least 10 employees in a business normally employing more than 20 and fewer than 100 employees; ii) at least 10% of the employees of a business normally employing at least 100 and fewer than 300 employees; iii) at least 30 employees in a business normally employing at least 300 employees. The provisions governing mass layoff apply equally to fixed term employment relationships terminated prior to expiry of their agreed duration.

In the case of mass layoffs, the following consultation procedure must be observed by the employer:

- ☑ Give the organization that represents the employees or, where there is none, all the employees themselves, the opportunity to express proposals on how to avoid such redundancies or limit their number and how to mitigate their consequences;
- ☑ Furnish the organization that represents the employees or, where there is none, all the employees themselves, with all appropriate information (e.g. reskill possibilities, reduced hours, early retirement, a social plan);
- ☑ Confirm receipt of all proposals and take them into serious consideration.

The employer has to give time to evaluate the information and to submit proposals. It may fix a deadline within which the counterpart has to communicate its proposals. This period depends on the circumstances but, according to the code of praxis, a deadline from 7 to 10 days can be considered appropriate, even if a longer term is requested.

During the consultation period, the cantonal employment office may act as a mediator, seeking solutions to the problems created by the intended mass layoffs.

Once the consultation procedure is concluded, the employer has to notify the cantonal employment office in writing of the results of the consultancy procedure and provide all appropriate information regarding the intended mass layoffs. A copy of this notification has to be sent to the organization of the employees or, where there is none, to all the employees themselves.

Where the notice to terminate an employment relationship has been given within the context of mass layoffs, the relationship ends 30 days after the date on which the mass layoffs are notified to the cantonal employment office, unless such notice of termination takes effect at a later date pursuant to statutory or contractual provisions.

The above-mentioned procedure has to be followed in order to avoid violation of Swiss law, according to which, the termination may take effect at a later date or the employer has to provide compensation to the employees due to termination at an inopportune juncture.

The period of notice starts when the information is sent to the cantonal authority, while the consultancy procedure should end before the notices of termination are given.

Termination by the employer shall be deemed unlawful when there are violations of the above-mentioned procedure, for instance, when the notice is given without having consulted with the organization that represents the employees or, where there is none, the employees themselves.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

There are no specific statutory rights that employers have to be aware of. However, collective bargaining agreements might provide for some rights of trade unions.

Some participation obligations may arise when an employer intends to make mass layoffs. As mentioned above, the employer must consult with the organization that represents the employees or, where there is none, the employees themselves. It must give them at least an opportunity to formulate proposals on how to avoid such redundancies. The cantonal employment office has to be informed about the mass layoffs.

The employer must hold negotiations with the employees with the aim of preparing a social plan if it normally employs at least 250 employee and intends to make at least 30 employees redundant within 30 days for reasons that have no connection with their persons.

The employee associations, the organization representing the employees or the employees may invite specialist advisers to the negotiations. These persons must preserve confidentiality in dealings with persons outside the company. If the parties are unable to agree on a social plan, an arbitral tribunal is appointed.

Is there an obligation to offer severance payment in the case of dismissal?

Swiss law does not provide a general legal obligation to pay a severance in the event of a dismissal.

This obligation to offer severance payment arises, for instance, where an employment relationship of an employee of at least 50 years of age ends after twenty or more years of service. If the employee dies during the employment relationship, such allowance is paid to the surviving spouse, registered partner or children who are minors or, in the absence of such heirs, other persons to whom he had a duty to provide support.

The amount of the severance allowance may be fixed by written individual agreement, standard employment contract or collective bargaining agreement, but may never be less than two months' salary for the employee.

Where the amount of the severance allowance is not fixed, the court has discretion to determine it taking due account of all the circumstances, although it must not exceed the equivalent of eight months' salary for the employee. The severance allowance may be reduced or dispensed with if the employee has terminated the employment relationship without good cause or the employer itself has terminated it with immediate effect for good cause or where the payment of such allowance would inflict financial hardship on it.

The severance allowance is due on termination of the employment relationship, but the due date may be deferred by written individual agreement, standard employment contract or collective bargaining agreement or by court order.

Moreover, where the employee receives benefits from an occupational benefits scheme, these may be deducted from the severance allowance to the extent that they were funded by the employer either directly or through its contributions to the occupational benefits scheme. The employer is likewise released from its obligation to make a severance allowance to the extent that it gives a binding commitment to make future benefits contributions on the employee's behalf or has a third party give such a commitment.

What legal protection options does the dismissed employee have and to what result do they lead?

Each Swiss canton is responsible for organizing the court system.

In case of individual contracts, the cantons often create special courts for labor disputes and provide for compulsory preliminary conciliation proceedings. For disputes not exceeding claims of CHF 30'000, the cantons have put in place simplified and shortened procedures. In these cases, the parties bear only the legal fees, no court fees. In the event of a dispute, federal employees need to contact the responsible administrative office.

On the other hand, there can also be labor disputes involving several employees (a so-called "collective labor dispute"). The cantonal conciliation boards are responsible for handling these disputes. If the dispute extends beyond a canton's border, the Federal Board for Conciliation in Collective Labor Disputes is called upon.

Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work. The court may order the employer to pay the employee an amount of compensation determined at the court's discretion taking due account of all circumstances; however, compensation may not exceed the equivalent of six months' salary for the employee.

In case of wrongful termination of the employment contract, there is a deadline for the claim: the employee must initiate legal proceedings within 180 days after termination. It is sufficient initiating conciliation proceedings. The deadline is met if the claim is filed on the last day of the 180 days period.

Ukraine

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For what reasons can an employer terminate the employment relationship?

The Labor Code of Ukraine **(the "Labor Code")** sets forth the exhaustive list of dismissal grounds, which are as follows: mutual agreement of an employer and an employee; expiration of a fixed term employment agreement, unless employment relationships actually continue and none of the parties requests their termination; military conscription of an employee or an employer - individual, assignment to the alternative (non-military) service, except where the law requires preservation of the place of work; dismissal at the initiative of an employee; dismissal at the initiative of an employer; dismissal at the request of a trade union; transfer of an employee, subject to his/her consent, to another employer or to an elective position; refusal of an employee to be relocated with the employer to another territory or to continue working under the changed material conditions of work; a court decision that entered into force whereupon an employee is sentenced to an imprisonment or a similar penalty which prevents the employee from performing job duties (except in cases of release from serving a sentence with probation); entering into an employment agreement (contract) in breach of requirements of the Law of Ukraine "On Corruption Prevention" applicable to persons who have resigned or otherwise ceased activities related to the performance of state or local government functions within one year from the date of termination; grounds provided for by the Law of Ukraine "On Purification of Public Authorities"; a court decision which came into force on recognition of unjustified assets and confiscation thereof for the state benefit in respect of officials of the state and local authorities; dismissal grounds provided for by an employment agreement with non-fixed working hours, an employment contract (a special form of a fixed term employment agreement); death of an employer-individual or entry into force of a court decision declaring such individual missing or dead; death of an employee, declaration of an employee by a court as missing or dead; absence of an employee from work and absence of the information about the reasons for such absence for more than four consecutive months; dismissal grounds provided for by other laws (e.g. violation of conflict of interest rules under the Law of Ukraine "On Limited Liability and Additional Liability Companies").

Termination at the employee's initiative

An employee is entitled to terminate an indefinite term employment agreement by submitting a written dismissal application at any time without any reason at least 2 weeks prior to the requested dismissal date. At the same time an employee may revoke his/her dismissal application or continue working after the requested dismissal date, in which case an employer may dismiss such employee only if another employee has already been hired to this position and such employee is prohibited from dismissal.

If the dismissal is caused by reasons preventing an employee from continuing working (e.g. an employee moves to another municipality, state of health, necessity to take care of an ill relative), an employer must terminate employment relationships with such employee within such term as requested by the employee. An employee is also entitled to request a dismissal within such term as he/she deems relevant on the reasons of breach by an employer of labor laws, terms and conditions of a collective bargaining agreement or an employment agreement, or commitment by the employer of mobbing (harassment) towards an employee or its failure to take actions to stop it, which is established by a court decision that came into force.

An employee is entitled to early terminate a fixed term employment agreement on the reasons of the state of health, preventing him/her from continuing working, breach by an employer of labor laws, a collective bargaining or an employment agreement, as well as on other reasons listed above.

Termination at the employer's initiative

The Labor Code entitles an employer to terminate an employment agreement on its own initiative only on the following grounds: changes in organization of production and work, including liquidation, reorganization, bankruptcy or conversion of a company, redundancy of staff positions or number of employees; identified incompatibility of an employee with the position held or work performed due to insufficient qualifications or health condition that prevent him/her from continuing working, as well as in case of refusal to grant access to state secrets or cancellation of access to state secrets if the performance of the duties assigned requires access to state secrets; failure of an employee to perform on a regular basis without a valid reason his/her job duties under an employment agreement or rules of internal conduct provided that this employee has already been subject to a disciplinary liability; unauthorized absence from work (including absence from work for 3 hours during a working day) without a valid reason; absence from work due to a sick leave for more than 4 consecutive months (except for a maternity leave), unless a longer period of absence is established by the laws for a particular disease; reinstatement to a position of an employee, who held it earlier; appearance at work in a drunken state or a state of intoxication; commitment of theft (including small-scale) of an employer's property at the place of work established by a court decision that entered into force or by a decision of a competent authority on imposition of an administrative liability; military conscription or mobilization of an individual - employer during a special period; inconsistency between job duties and an employee's qualification determined in the course of a probation; commitment of mobbing (harassment) established by a court decision that has entered into force; refusal of an employee of the Bureau of Economic Security of Ukraine to undergo certification or the decision of the certification commission on unsuccessful certification of the employee of the Bureau of Economic Security of Ukraine, which is carried out in accordance with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Work of the Bureau of Economic Security of Ukraine"; entry into force of a court verdict convicting an employee (except for release from serving a sentence with probation) for committing a crime against the national security of Ukraine; failure by an employee to comply with rules of internal conduct in terms of the obligation of non-disclosure of classified information.

> Clear grounds for termination promote transparency and fairness."

In addition to the above grounds, an employer may dismiss at its initiative some specific categories of employees on the following grounds: one-time gross violation of job duties by a director of a company (head of a branch or representative office), its deputies, a chief accountant and its deputies, officials of the state customs and tax authorities, as well as officials of the state authorities in charge of implementing fiscal control policy and control over prices; guilty actions of a director of a company which entailed untimely payment of a salary or payment of a salary in the amount lower that the statutory minimum; committing mobbing (harassment) by a director of a company, regardless of the form of manifestation, and/or failure to take actions to stop it, which is established by a court decision that has entered into force; committing of guilty actions by an employee who is working with material or cultural values in case such guilty actions resulted in his/her miscredit on the management side; committing by an employee who performs educational functions of an immoral offence incompatible with continuation of this work; committing by a housekeeping employee of guilty acts that caused or could have caused harm to the life or health of a household member; being a direct subordinate of a relative, contrary to the requirements of the Law of Ukraine "On Prevention of Corruption"; having a real or potential conflict of interest that is permanent and cannot be resolved in any other way provided for by the Law of Ukraine "On Prevention of Corruption"; termination of authorities of a company's official; inability to provide an employee with work specified in an employment agreement due to the destruction (absence) of production, organizational and technical conditions, means of production or property of an employer as a result of hostilities.

Is there special protection against dismissal for certain groups of employees?

The Labor Code prohibits dismissing at the employer's initiative: pregnant women and women with children under the age of three (up to six years - if a child needs home care); single mothers with a child under the age of fourteen or a child with a disability; fathers who are raising children without a mother (including in the case of a long stay of the mother in a medical institution), as well as guardians (tutors), one of the adoptive parents, one of the parent-caregivers; former members of elected bodies of a trade union- within 1 year following termination of their authorities/their resignation from such position. However, in case of a complete liquidation of a legal entity, dismissal of the above categories of employees may be carried out subject to their mandatory employment with another employer.

Dismissal of employees under the age of 18 requires obtaining a prior consent from the regional children service and generally is permitted only in exceptional cases subject to their mandatory employment with another employer.

If an employee is a member of a trade union, an employer shall get the trade union's consent to dismiss such an employee. Dismissal of members of elected bodies of a trade union and changes of their employment agreements' terms and conditions require getting a prior consent from such elected body of the trade union, as well as of the higher elected body of such trade union or association of trade unions (as applicable).

In addition, it is prohibited to dismiss an employee while he/she is on sick leave or vacation (including maternity leave).

Dismissal at the employer's initiative on the grounds of changes in organization of production and work, identified incompatibility of an employee with the position held or work performed due to insufficient qualifications or health, as well as reinstatement to a position of an employee, who held it earlier, is permitted only if an employee may not be transferred to another position within the same employer.

The preferential right to remain at work in the course of redundancy is given to employees with higher qualifications and labor performance. In case of equal labor performance and qualifications, the preferential right to remain at work is given to: family persons - in case of two or more dependents; persons in whose family there are no other person with independent earnings; employees with long-term continuous work experience at the employer; employees that are in-service studying in higher and secondary specialized educational institutions; war veterans, victims of the Revolution of Dignity, war disabled person, family members of deceased war veterans and Defenders of Ukraine, as well as persons rehabilitated in accordance with the Law of Ukraine "On the rehabilitation of victims of communist totalitarian regime repression of 1917 - 1991", among those who were subjected to repressions in the form (forms) of imprisonment or restriction of freedom or forced unjustified placement of a healthy person in a psychiatric institution according to the decision of an extrajudicial or other repressive body; authors of inventions, utility models, industrial designs and rationalization proposals; employees affected at the employer by work injury or an occupational disease; employees deported from Ukraine within five years upon their return to the permanent place of their residence in Ukraine; former military personnel of the compulsory military service, mobilized soldiers of the compulsory military service for a mobilization period, special period, compulsory military service for reservist during special period, officers of compulsory military service and soldiers of alternative (non-military) service - within two years from the date of their dismissal from service; employees who have less than three years before the retirement age, upon which the person is entitled to receive pension payments; employees who are members of fire and rescue units on a voluntary basis for at least one year. The preferential right may also be provided to other categories of employees under special laws. An employee dismissed in connection with redundancy has a pre-emptive right to be re-hired in case a vacancy appears within one year following the dismissal.

What notice periods must be observed?

A statutory notice period is established for the dismissal at the employee's initiative and shall be 2 weeks prior to the requested dismissal date.

In case of dismissal at the employer's initiative in connection with changes in organization of production and work, including liquidation, reorganization, bankruptcy or conversion of a company, redundancy of staff positions or number of employees, an employer is required to notify in writing each employee not less than 2 months before the dismissal.

The same period of at least 2 months shall be observed by the employer in case of notification about changes in material working conditions of the employee due to changes in organization of production and work and a subsequent dismissal of the employee on the basis of his/her refusal to continue working under the changed material working conditions.

Dismissal at the employer's initiative during a probation period requires the employer giving an employee a 3 days' notice in writing.

Under what circumstances is an extraordinary termination without respecting a notice period possible?

In case of dismissal at the employee's initiative, if such dismissal is caused by impossibility to continue working (e.g. an employee moves to another place, state of health), an employer must terminate employment relationships with the employee within such term as requested by the employee (including immediately). The same rule applies if the employee requests a dismissal on the reasons of breach by an employer of labor laws, a collective bargaining agreement or an employment agreement, commitment by the employer of mobbing (harassment) towards an employee or its failure to take actions to stop it, which is established by a court decision that came into force.

In case of dismissal on the mutual agreement ground, parties are free to agree on any dismissal date, including on the dismissal with an immediate effect.

Observation of a notice period is not required in case of termination of authorities of a company's officials.

Which formal requirements must be observed when giving notice of termination and who is responsible for declaring?

Basically, there are no statutory requirements for a termination notice except that it shall be in writing. As a matter of practice, its receipt shall be acknowledged in writing by another party. Depending on the dismissal ground, an employer's dismissal order / decision may serve as a notice, in which case it shall comply with the employer's internal rules.

> Proper documentation is essential to ensure the validity and legality of the termination process."

However, the dismissal notice (or the dismissal order/decision) is the final, but not the only document in the long chain of documentation required to be implemented and justify each dismissal. Types of documents to be adopted and justifications to be collected will differ depending on the dismissal ground, but the principal aim is to have all necessary and appropriate evidence to prove that the dismissal was implemented in full compliance with all applicable labor laws requirements and the established practice.

What measures must be taken in the event of a planned mass layoff?

According to the Law of Ukraine "On Employment", a mass layoff is a dismissal at the employer's initiative within one month of: 10 employees or more - for companies employing 20-100 employees; 10 % of employees or more - for companies employing 101 - 300 employees; 30 employees or more - for companies employing 301-1,000 employees; and 3% of employees or more - for companies employing 1,001 and more employees.

Measures preventing a mass lay-off and minimizing its negative consequences may be established in a collective bargaining agreement. Measures aimed at employment of dismissed employees shall be ensured by local authorities together with parties of a social dialogue.

An employer shall submit a report to the state employment center about a mass layoff in connection with changes in organization of production and work, including liquidation, reorganization or conversion of a company, redundancy, containing information about the reasons for future dismissals, number and categories of employees subject to dismissal, term of dismissals and negotiations carried out with a trade union, not later than 2 months prior to the envisaged dismissal.

An employer that conducted the mass layoff of its employees is prohibited from using services of outstaffing agencies within 1 year following the mass layoff.

What participation obligations exist vis-à-vis works councils, trade unions and state authorities?

According to the Labor Code, liquidation, reorganization, change of an ownership form of a company-employer or partial suspension of production leading to a future redundancy, deterioration of working conditions may be implemented only after a prior notification of a trade union about a mass layoff outlining such measures, including reasons for future dismissals, number and categories of employees subject to dismissal, term of dismissals. The employer not later than 3 months after adoption of the decision on mass layoff shall negotiate with the trade union on measures that may prevent / minimize the number of dismissals. The Law of Ukraine "On Employment" requires the employer to carry out the above negotiations at least 3 months before the envisaged dismissal. At the same time, the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Their Activity" contains a broader wording on this matter, requiring such negotiations to be conducted in case a future dismissal is caused by economic, technological, structural or analogues reasons or by future liquidation, reorganization or change of ownership not later than 3 months prior to the scheduled dismissal. The trade union is entitled to make proposals to relevant bodies of the employer on postponement of terms of dismissals, suspension or termination of redundancy measures.

Apart from the above, a dismissal of each particular employee - member of a trade union on the employer's initiative on the relevant grounds indicated in question 1 above (except for dismissal due to the liquidation of a company, as well as dismissal of a housekeeping employee), shall be prior agreed with the trade union. The Labor Code establishes the following general rules for getting such consent of a trade union: an employer shall file a justified dismissal request to a primary organization of a trade union (its elected board or a local representative) of which an employee is a member; the request shall be considered by the trade union within 15 calendar days; a consideration of the request shall be done in the presence of the employee. The hearing shall be postponed in case

of a failure of the employee to show and in case of the subsequent failure to attend the hearing, the case may be considered without the employee's presence; a grounded decision shall be notified to the employer within 3 days following its adoption. In case of a failure of the trade union to respond within the established term it shall be assumed that the trade union has consented to the dismissal; a refusal to consent to the dismissal shall be well justified. In case the refusal is not justified, the employer shall be entitled to dismiss the employee; the employer shall dismiss the employee not later than 1 month following obtainment of the trade union's consent to dismissal; in case of a failure of the employer to apply for the trade union's consent, a court shall suspend a litigation, apply for and obtain the trade union's consent and thereafter resume the litigation.

A trade union's consent for dismissal is not required in case an employee subject to dismissal on the relevant ground at the employer's initiative is not a trade union member and/or there is no primary trade union organization acting within the employer, as well as for dismissal of a company's officials. The trade union's consent is not required during martial law period.

A trade union is authorized to request dismissal of a company's director in case such director violates labor laws, collective bargaining agreements.

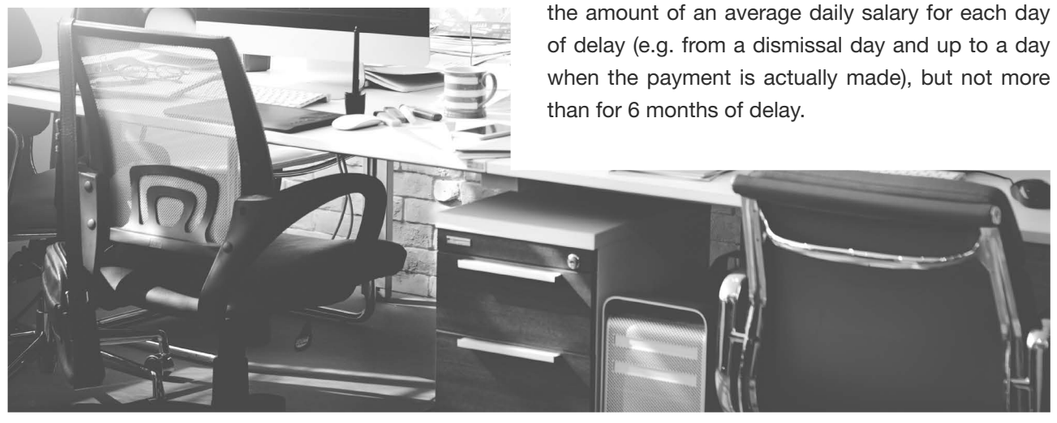
Is there an obligation to offer severance payment in the case of dismissal?

A severance payment in the amount of at least 1 average monthly salary shall be paid in case of dismissal on the following grounds: refusal of an employee to be relocated with the employer to another territory or to continue working under the changed material conditions of work; changes in organization of production and work; identified incompatibility of an employee with the position held or work performed due to insufficient qualifications or health; reinstatement to a position of an employee, who held it earlier.

Dismissal on the basis of termination of authorities of a company's official is subject to payment of a severance payment in the amount of 6 average monthly salaries.

Dismissal due to the military conscription of an employee, assignment to the alternative (non-military) service entitles the employee to a severance payment in the amount of 2 statutory minimum salaries.

Dismissal at the employee's initiative on the reasons of breach by an employer of labor laws, a collective bargaining or an employment agreement, committing mobbing (harassment) towards an employee or failure to take actions to stop it, is subject to payment of a severance payment in the amount of at least 3 average monthly salaries, unless another amount is provided for by the collective bargaining agreement.



What legal protection options does the dismissed employee have and to what result do they lead?

An employee is entitled to challenge in court any dismissal for whatever reason, as well as an employer's non-compliance with its duties in connection with dismissal. As Ukrainian labor laws and courts are very employees-oriented, a court decision in favor of a dismissed employee is very probable and may be even definite in those cases when an employer does not have any evidence to prove the dismissal reasons.

Under a court decision an unduly dismissed employee may be reinstated to a position, from which he/she was unduly dismissed, and awarded with payment of a salary for the whole period of undue dismissal starting from a dismissal date and up to a reinstatement date, but not more than for 1 year. The court, however, may decide that court proceedings lasted longer than 1 year not on the employee's fault, in which case the employee shall be awarded with a compensation for the whole period starting from a dismissal date and up to the reinstatement date. An employee may also be awarded with compensation of moral damage caused by the undue dismissal.

If an employer failed to pay to a dismissed employee all amounts due to him/her in connection with dismissal (which amounts shall include salary, compensation for unused days of vacations, a statutory severance payment, if any, other amounts as agreed between the employer and the employee) or such payment was delayed, a court shall award to such employee a compensation in the amount of an average daily salary for each day of delay (e.g. from a dismissal day and up to a day when the payment is actually made), but not more than for 6 months of delay.