

Andersen in Europe  
**Dismissals Guide**

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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 21 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 21 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
- ◆ Executive compensation and incentives
- ◆ Non-compete
- ◆ Employment policies
- ◆ Pensions

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#### Transparency

We value open communication, information sharing and inclusive decision making.



### Legal reasons

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

a. A dismissal related to capabilities of the employee is possible if grounds in the person of the employee prevent further employment. Examples of personal grounds are not performing the job to the required standards, unjustified absences, continuous mistakes, bad performance, loss of professional, physical, or personal qualifications, etc. From our court practice, 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.

b. A dismissal for conduct-related grounds is possible if the employee has violated contractual obligations and this has led to an impairment of the employment relationship. Examples of conduct-related grounds 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 grounds, unless in the event of severe breach of the principle of trust by the employee where employer may apply the immediate termination.

c. Termination for operational grounds exists if an employer terminates an employment relationship due to operational requirements. The Albanian 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 employment relationship, the employer is advised to:

- a. produce written resolution on the need for redundancy of the job positions due to specific grounds, e.g. introduction of new technology, closure of a unit, relocation of operations, decrease in the revenues of the company, etc.;
- b. 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 existing 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.);
- c. avoid recruiting new staff in the same or similar job position that was made redundant for at least 6 months from the dismissal(s).

## Special protections

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 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 (article 146 of Labor Code) if made for one of the below reasons:

- a. Retaliation against employee complaints (trying to enforce rights): Employer uses termination as a means of retaliation against employee who raises complaints and tries to enforce rights under contract and law.
- b. Employee having to perform mandatory legal obligation: This is the case when the employer terminates the contract because the employee has had to fulfill a mandatory legal obligation during the employment (e.g. appeared in court as witness thus unable to attend work).
- c. Discrimination: Employer terminates the contract due to employee's personal features (race, color, sex, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality, social status).

- d. Employee exercising constitutional rights: Employer terminates the contract due to reasons relating to the employee exercising constitutional rights.
- e. Employer does not inform employee on the grounds for termination.
- f. 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.

## Notice period

According to Article 143 of the Labor Code, there is a schedule of notice terms ranging to:

- a. 2 weeks for employees who have been hired by the employer for up to 6 months,
- b. 1 month for employees who have been hired by the employer for more than 6 months up to 2 years,
- c. 2 months for employees who have been hired by the employer for more than 2 years up to 5 years, and
- d. 3 months for workers who have been hired by the employer for more than 5 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.

## Absence of notice period

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/her contractual obligations (as for example fraudulent actions to the damage of the employer), or (b) in the case that the employee performs a minor breach of his/her contractual obligations repeatedly, despite the employer has provided 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 Article 153 of the Albanian 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 circumstances (including length of service, previous disciplinary record and personal circumstances), 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 employer 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.

## Formal requirements

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

- a. The employer should conduct a meeting with the employee after having provided 72 hours in advance written notice of such meeting. During this meeting, the employer should discuss the grounds for the intended termination with the employee and acknowledge the employee's objections, if any.
- b. 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 hours to one week after the aforementioned discussion.

In both cases of normal and immediate termination of employment relationship,

the employer must specify the grounds 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.

## Collective dismissals

A collective dismissal or collective dismissal is defined under the Labor Code as the intended dismissal by the employer for grounds 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 for enterprises employing up to 100 employees; (ii) 15 for the enterprises employing between 100 and 200 employees; or (iii) 20 for enterprises employing more than 200 employees.

In case of a planned collective dismissal, the employer has a statutory duty to start a mandatory information and consultation procedure with the trade union representatives and the Ministry of Economy 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:

- a. the grounds for dismissal;
- b. the number of the employees to be dismissed;
- c. the number of employees employed;
- d. 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 employer 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 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 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 dismissal. Afterwards, the employer can inform the employees of their dismissal and begin the termination of employment contracts providing the relevant notice periods.

## Employees' representatives and state authorities

According to the Albanian Labor Code, prior to taking a decision for reorganization of the company or any other decision 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 representative 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 consequences.

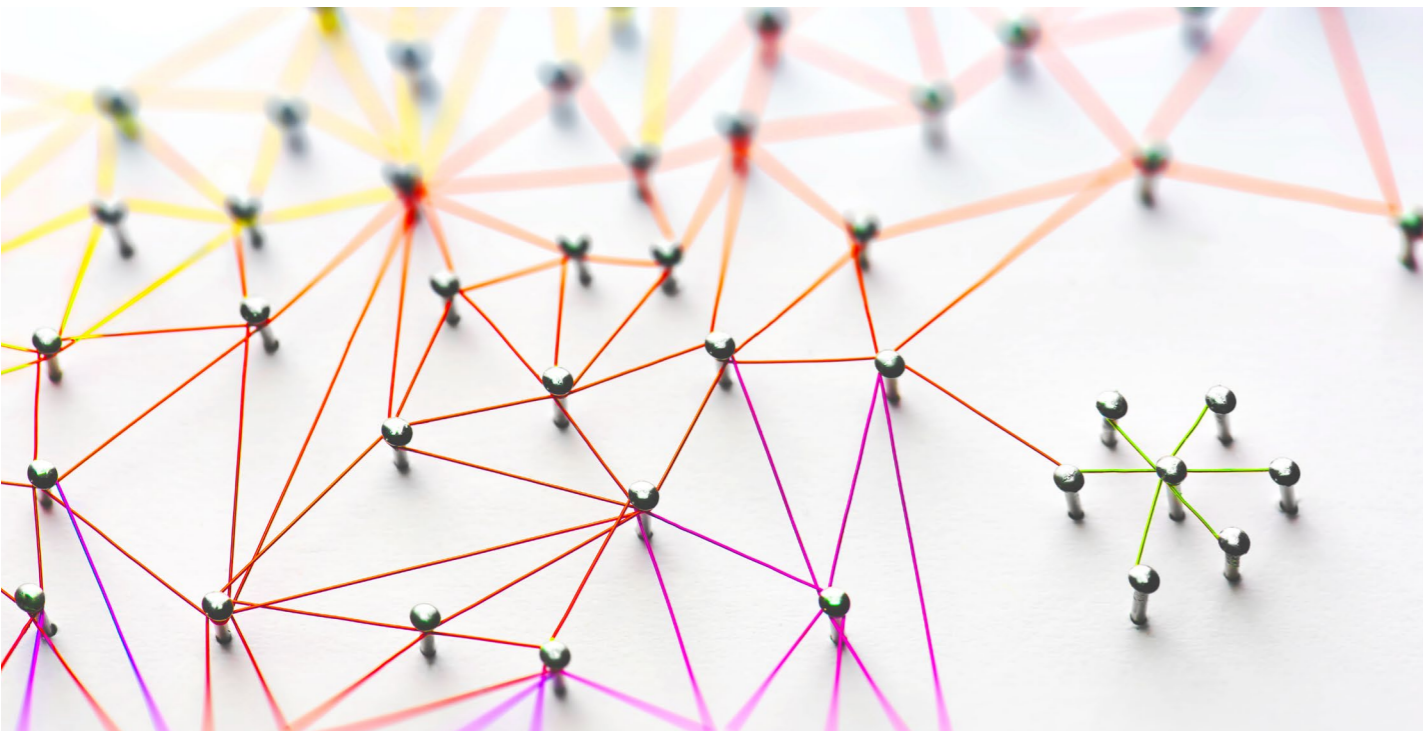
Also, the relevant articles of the collective bargaining agreement, if applicable, or any other agreement between the employer and the representative of the employees/work council about obligatory consultation procedures, must be checked.

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

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

## Severance payment

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 years for the employer. Such



seniority bonus ought to be at least as much as half monthly salary for each complete working year, calculated on the basis of the salary existing at the termination 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 employment relationship with the employee.

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

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.

## Legal protection for the employee

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 must file a lawsuit for wrongful termination with 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 procedure and the notice period, or (ii) failure to pay the payments due to the employee. ■



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# AUSTRIA



## Legal reasons

Austrian law differentiates between an (ordinary) termination (“Kündigung”) and an immediate dismissal for grave reasons (“Entlassung”). Please also note that Austrian law (at least for now) also makes a difference between employees (“Angestellte”, supposed to have somewhat higher education) and workers (“Arbeiter”, most of this category covering physical work of different kinds), with relevant differences regarding terminations, mostly regarding notice periods. These differences shall now be abolished step by step.

Terminations are in principle always permitted and do not need to be justified, except for specific groups who enjoy special protection (such as expecting mothers, young mothers, older employees, employees with special needs, see below).

In case of serious violations of duties arising from the employment contract or law, the instrument of dismissal is available if the employer can no longer be expected to continue the employment relationship, not even for one more day. If employees are part

of a specially protected group, terminations depend on the court’s consent. In case of an immediate dismissal, this consent may be sought retroactively, but only in very grave cases (e.g. assault or significant defamation of character against the employer, his/her family members, or against other employees or certain acts under criminal law: acts committed with the intent to commit a criminal offense punishable by imprisonment for more than one year or criminal offenses committed with the intention of self-enrichment).

## Special protections

The following employees are subject to special protection in Austria: (i) expectant mothers as well as mothers and fathers who take parental leave or part-time employment on the occasion of childbirth (parental part-time work), (ii) members of works councils or people equivalent to them (e.g. trusted representatives for persons with disabilities), (iii) people on compulsory military or civilian service, and (iv) disabled people benefiting from the according norms.

## Expecting Mothers and Parents on parental leave or parental part-time.

Expectant mothers enjoy protection against termination and dismissal from the onset of pregnancy until either 4 months after birth or 4 weeks after the end of maternity leave. After these terms, the duration of the protection against dismissal may vary, depending on the duration of the previous employment relationship and the type of continuation of the cooperation after the end of the maternity leave.

If parental part-time work is agreed upon, the protection against termination and dismissal ends 4 weeks after the end of the parental part-time work, but no later than 4 weeks after the child turns 4 years old. Between the age of 4 and the age of 7 (maximum), there is a so-called protection against "dismissal for unlawful motivation". If notice of termination is given because of parental part-time work, the termination may be challenged at court. Such a termination would also be considered discriminatory under the Equal Treatment Act.

During the mentioned protection periods, the court may approve the termination or dismissal only if there is a reason for dismissal specified in the Maternity Protection Act. Dealing with personal reasons, the extraordinary state of mind of the expectant mother must be considered. The court further approves a termination during the 1st year of maternity leave if the business is (or individual business departments are) permanently shut down or restricted for economic reasons and the employer cannot reasonably be expected to continue employment.

## Employees' Representatives

The employment relationship of works council members may not be terminated either by termination or dismissal without the prior consent of the Labor Court. (Members of the election committee, candidates who have announced their plan to get elected and substitute members are also covered by protection against termination and dismissal).

### Military / civilian service

The employment relationship of employees drafted for compulsory military or substituting civilian service may not be terminated either by termination or dismissal without the prior consent of the Labor Court. This applies from the date of receipt of the assignment notice until the expiration of one month after the end of service. Termination and dismissal protection does not apply to times spent in foreign and overseas development assistance services and to the case of total shut down of business for economic reasons.

### Employees with special needs

If the employment relationship was established before January 1, 2011, the termination of an employment relationship of a disabled employee is only possible with the consent of the Disability Committee.

For employments started after January 1, 2011, the approval of the Disability Committee is not required if (i) the employee's disability had already been determined before/at the beginning of the employment relationship and the notice of termination is given within the first four years of the employment relationship, or (ii) if the

employee's disability is determined after the beginning of the employment relationship and the notice of termination is given during the first six months of the employment relationship. The approval of the Disability Committee is still required if the employee's disability is determined within the first six months of employment due to an accident at work, or if the employee's disability is determined after more than six months of employment.

"Determination" of the status as beneficiary happens by a legally binding decision of the Ministry for Social Affairs. The beneficiary status becomes effective (retroactively) on the day the application is received by the Service-Desk at the Ministry for Social Affairs).

## Notice period

The notice period is the period of time that must elapse between the notice of termination and the intended end of the employment relationship (termination date). The notice period starts on the day following receipt of the notice of termination (from 00.00 hours on). The notice period to be observed by the employer shall be extended in accordance with the length of service of the employee.

If no other regime has been agreed via contractual agreement (or collective bargaining agreement), employers may terminate the employment relationship subject to the following notice periods: (i) in the 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 and (v) from the 26th year of service: 5 months.

**The employee may terminate the employment relationship 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 by agreement.**

Corresponding periods of notice of equal length for both parties are often agreed contractually. In no case may the period of notice to be observed by the employee exceed the period given to the employer.

Workers shall be treated equally to employees within the year 2021. For the moment being, the notice periods for workers are much shorter. Collective bargaining agreements often provide for a staggered extension depending on seniority. If no specific individual or collective agreement exists, the law requires a notice period of 14 days for workers.

## Absence of notice period

Employment relationships are continuing obligations, which means that they can be terminated prematurely at any time without notice for good cause.

The law on employees names some exemplary cases of "good cause", but there is no taxative list of reasons for immediate dismissal. The Highest Court has determined a vast case law regarding circumstances that reach an intensity of the breaches sufficient for an immediate and extraordinary dismissal. The examples given by law for employees include disloyalty/embezzlement, inability to continue in the performance of duty, persistent neglect of duty, forbidden competitive activities, prevention of performance of substantial length (such as by imprisonment, but not in the case of prolonged serious illness),

or substantial breach of morals against the employer.

The law regarding workers includes a fixed list of causes for immediate dismissal, namely: deception by presenting false certificates, deception regarding a second employment relationship, persistent breach of duty, unfitness for work, leaving work without authorization, persistent addiction to alcohol despite several unsuccessful warnings, theft, embezzlement or other criminal acts against the employer or its employees, gross insult or dangerous threats against the employer or its employees, betrayal of business or trade secrets, concurrence-business, induction to disobedience, (and very 19th century-like) disorderly living, immoral or unlawful acts, inability to work due to a “deterrent illness” and finally imprisonment exceeding 14 days.

Most importantly, dismissals for good cause need to happen “immediately”. As soon as the employers’ relevant decision-making representative becomes aware of the severe breach of duty, the employee may not be allowed to continue his/her work at all. The very next day (in case of big entities with complicated decision-making processes: within a maximum of three working days) the dismissal must be carried out and the employee must be prevented from continuing his/her work. If the employer allows this period to elapse, the matter is obviously not serious enough and therefore the continuation of the cooperation until the end of an ordinary notice period is deemed to be reasonable. In such case, the dismissal is time-barred and the same reason of dismissal may not be used again against the employee.

## Formal requirements

Responsibility lies with the employer’s management / managing director or any person vested with respective competences in HR-matters. Terminations and dismissals may happen orally and are in that case deemed to have been received directly. However, several collective bargaining agreements postulate (or individual agreements foresee) the compulsory written form for terminations/dismissals. In this case, the document may be handed over in person (ideally having the employee sign the receipt) or sent by courier or mail, as proven date of delivery is crucial. The employer does not have to specify the reasons for termination nor the concrete reason for a dismissal. In case of an immediate dismissal challenged

by the employee, the employer may also bring up the reasons found out after having dismissed, if they are sufficiently grave.

## Collective dismissals

The early warning system, as defined in the Law, obliges employers to notify the regional office of the Public Employment Service (AMS) responsible for the location, in writing, about the intention to terminate employment relationships and to wait at least 30 days before issuing notices of termination. The early warning system is intended to enable the AMS to avoid unemployment as far as possible providing subsidies and special counseling.

The obligation to notify is in place for employers in the case of intended

termination within a period of 30 days of employment relationships (i) of at least five employees in companies with more than 20 and less than 100 employees or (ii) of at least five percent of the employees in companies with 100 to 600 employees, or (iii) of at least 30 employees in companies with more than 600 employees, or (iv) of at least five employees who have reached the age of 50 (exception: in the case of seasonal businesses). The obligation to notify also exists in case of insolvency and seasonal interruptions.

The “number of employees” to be used for the calculations includes all individuals in salaried employment (including apprentices and executives). It is to be noted that employer-side terminations and mutually agreed terminations must be counted





together for the relevant number of intended terminations.

At the same time, evidence must be provided that the works council has been consulted about the operational restriction due to the termination. A copy of the notification shall be sent to the works council. The transmission of a copy of the notification to the works council does however not replace the preliminary termination procedure under works constitution law (information 1 week before the individual termination is announced etc.).

## Employees' representatives and state authorities

Works councils may be established in any entity exceeding 5 adult employees not related to the employer. Once a works council is in place, it has several participation and consultative rights regarding terminations and dismissals.

If the employee expressly requests it, he/she may discuss with the works council prior to an intended termination of the employment relationship by mutual consent. In this case, a mutually agreed solution cannot be agreed with legal effect during the following two working days.

Prior to any unilateral termination, the employer shall previously notify the works council, which shall have one week to comment on the intended termination. At the request of the works council, the employer shall discuss the planned termination with the works council within the feedback period. A notice of termination issued before the end of this 7-day feedback-period is legally invalid unless the works council has already issued a statement.

The works council cannot impede a termination or a dismissal, but its reaction may determine, if and for what reason the employee may challenge his/her termination in court. If the works council expressly objected to the intended termination, it may contest the termination in court at the employee's request and on his/her behalf. If the works council does not object, the employee himself may contest the termination within two weeks of the expiry of the one-week contestation period applicable to the works council. If, however, the works council has not issued any statement on the intended termination within the stipulated one-week period, the employee may challenge the termination him or herself with the court within two weeks of receipt of the termination notice. In this case, however, a "social comparison" of the case to other employees who have not been dismissed, is excluded.

The employer shall immediately notify the works council of any occurred immediate dismissal of an employee and shall discuss the dismissal with the works council at the latter's request within three working days after notification. Unlike in the case of ordinary terminations, failure to notify the works council in advance does not render the immediate dismissal legally invalid. If the works council agrees to the immediate dismissal, the decision can only be challenged in court if a prohibited motivation for the dismissal can be proven (such as dismissal because of activities as workers' representative etc.). If the works council has not expressed its opinion or has even expressly objected the dismissal, the decision can (additionally) also be challenged on grounds of social unlawfulness (stating that the dismissal affects the employee with unreasonably great [economic] hardship).

## Severance payment

### Old System

An "Old Severance System" applies in principle to all employees who joined a company before January 1, 2003. If the employment relationship has lasted for an uninterrupted period of 3 years and if the employee did not opt into the new system, the employee shall be entitled to severance pay upon termination of the employment relationship as follows.

The amount of the severance payment shall be graduated according to the length of service and shall be: (i) after 3 years of service 2 months' pay, (ii) after 5 years of service 3 months' pay, (iii) after 10 years of service 4 months' pay, (iv) after 15 years of service 6 months' pay, (v) after 20 years of service 9 months' pay and (vi) after 25 years of service 12 months' pay.

However, severance is lost due to a justified immediate dismissal or in case the employee terminated the employment him or herself.

### New System

In case of employment started after January 1, 2003, a "New Severance System" has been established. Previously, an entitlement to severance pay only arose after 3 years of uninterrupted employment in the same employer, and only if the employment relationship was terminated by the employer or by mutual consent. With the new severance payment, this entitlement already exists from the 2nd month of the employment relationship. The entitlement to severance pay is not paid out to the employee by the employer in case of terminations and is not lost in the event of self-termination but can

also be transferred to another employer under the new severance pay scheme. Periods of childcare allowance as well as civilian and military service are taken into account under certain conditions.

Under the New Severance System, severance pay is outsourced to so called severance pay funds (= company pension funds). This means that the employer does make regular payments to a fund and thus does not need to have large sums ready to be paid out in case of terminations. From the 2nd month of employment on, each month the employer must pay 1.53 percent of the employee's gross pay (including vacation and Christmas bonuses) to the health insurance fund, together with the rest of social security contributions. The health insurance fund checks this contribution and forwards it to the severance pay fund. Severance payment funds must maintain an account for each employee, which is used as the basis for calculating the severance payment. Once a year (and after termination of the employment relationship), the employee must be informed in writing about the acquired severance payment entitlement amounts and about the basic features of the investment policy.

The employee must, in case of a termination, choose within 6 months in writing, how he/she wants to proceed. If no choice is made, the money will continue to be invested in the severance pay fund. The following choices exist: (i) paying out of the entire severance payment as a lump sum, (ii) further investment of the entire severance payment, (iii) transfer of the entire severance payment to the fund of the new employer, (iv) transfer of the entire severance payment to a company collective insurance scheme to which the employee is already entitled OR to an insurance company as a single

premium for a demonstrably concluded supplementary pension insurance OR to a pension fund which the employee is already a beneficiary of OR to a company pension scheme in which the employee is already a beneficiary OR to a supplementary pension insurance in which the employee is already insured.

In the event of self-termination, there is no entitlement to have the accumulated severance pay paid out to the employee. The severance payment remains in the severance payment fund. An exception is made if no new employment relationship is subsequently entered into because of final retirement.

## Legal protection for the employee

Austrian labor law provides two options for contesting an ordinary termination or a dismissal if the employee worked in a company, in which at least five employees of full age are employed, who are not family members / relatives of the employer (company eligible for works council).

A challenge on the grounds of social unacceptability is admissible within 14 days of termination if the employee has been employed for at least six months and the works council has not expressly approved the termination. A termination is socially unacceptable if the employee can credibly demonstrate that it impairs the employee's essential interests (e.g. due to advanced age and the resulting reduced opportunities on the labor market or due to a significant expected loss of income) and the termination is not nevertheless justified by personal or operational reasons.

The termination can also be challenged

if it was given because of "inadmissible motivation". Such motivation shall be deemed existent if the notice of termination was given, in particular, because of the following reasons: (i) joining, activity in or membership of a trade union, (ii) application for membership of the works council, (iii) activity as a work-safety representative or safety specialist, (iv) imminent call-up to military service, (v) assertion by the employee of justified claims questioned by the employer, (vi) assertion of claims for equal treatment. Even if an illegitimate motivation might have played a role, a challenge is only possible if the unlawful motivation was the decisive reason for the termination.

If the challenge in court is successful, the termination is deemed invalid, the employment has never ended. The employee has the right to continue his/her work, all suspended salary payments and social security contributions must be paid in arrears by the employer.

## Miscellaneous

It may be noted that Austrian Employment Law has traditionally been employee-friendly, this tendency is not expected to change anytime soon. It remains to be seen if and how the ongoing Covid-19-crisis and its severe consequences upon the employment-market shall affect the development of legislation and rulings. ■



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# BOSNIA AND HERZEGOVINA



## Legal reasons

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:

- a. 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 it; (iii) if due to technological, economic or organizational changes the need to perform 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 contract; (v) 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, ie unpaid leave;
- b. Due to violation of the work obligation: (i) if the employee refuses to perform his/her 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; (v) intentionally prevents or hinders other workers from performing their work duties, thereby disrupting the work process with the employer; (vi) violently treats the employer, other workers and third parties during work; (vii) is unjustifiably absent from work for three days in a calendar year; (viii) if he/she 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 workers or mobbing; (x) if he/she commits another serious breach of duty determined by the collective agreement.

- c. Due to non-compliance with work discipline: (i) if the employee unjustifiably refuses to perform his/her duties or employer's orders in accordance with the law; (ii) if he/she fails to submit a certificate of temporary incapacity for work; (iii) if he/she 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; (v) if his/her 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/she does not respect the work discipline prescribed by the act of the employer, i.e. if his/her behavior is such that he/she 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 his/her obligations under the employment contract, (iii) due to violation of the work obligation.

## Special protections

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.

## Notice period

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.

In the Federation of Bosnia and Herzegovina, the notice period cannot be shorter than 7 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 3 months when the employer terminates the employment.

## Absence of notice period

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/her 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 5 days from the day of expiration of the period of suspension of employment, i.e. unpaid leave.

## Formal requirements

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/her.

## Collective dismissals

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 workers 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 workers' council and to the Employment Bureau no later than 8 days from the day of determining the program proposal, for the purpose of giving an opinion.

The trade union or workers' 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 workers. The employer is obliged to consider the opinion of the trade union and the Bureau and to inform them of its position within 8 days from the day of submitting the opinion. The criteria for determining redundancy cannot be the absence of workers 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 workers 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.

## Employees' representatives 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.

## Severance payment

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 2 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 3 months before the termination of the employment contract. The severance pay may not exceed 6 average monthly salaries paid to the employee in the last 3 months before the termination of the employment contract.

## Legal protection for the employee

In the Republic of Srpska, an employee who considers that the termination of his/her employment contract has violated his/her 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/her 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 6 months from the date of delivery of the decision.

In the Federation of Bosnia and Herzegovina, a worker who considers that his/her employer has violated his/her employment right by terminating his/her 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. ■



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# BULGARIA



## Legal reasons

In Bulgaria the grounds for unilateral termination by the employer can be divided into 3 major groups – due to reasons in the employee, due to reasons in the employer and due to objective reasons.

- a. 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.
- b. 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.

- c. 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.

## Special protection

Upon dismissals due to partial closing of the undertaking, reduction of the volume of work, staff cuts, lack of capacity for efficient execution of the work by the employee, upon change of the requirements for execution of the position, if the employee does not satisfy the said requirements or upon disciplinary dismissal, 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-rehabilitatee; 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/she 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 6 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 is using leave due to childbirth, may be dismissed only upon full closing of the undertaking.

## Notice period

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 1 and 3 months. In case of an employment contract for a fixed term the notice period is 3 months, but not longer than the remaining part of the term.

## Absence of notice period

An employment relationship may be terminated without notice during the probation period, if such is stipulated. The probation period may not exceed 6 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.

## Formal requirements

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.

## Collective dismissals

The Bulgarian legislation has implemented the European legislation on collective 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.

Collective 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 percent 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 5 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 collective 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.

## Employees' representatives and state authorities

With the exception of collective 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 6 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.

## Severance payment

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 1 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 2 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 2 months; and where the employee has worked with the same employer for the last 10 years, the compensation shall equal his/her gross remuneration for a period of 6 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.

## Legal protection for the employee

The Bulgarian legislation treats legal disputes as labor claims, where the subject is related to labor 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: 1 month for claims over unlawful disciplinary notes and limited liability of the employee; 2 months for claims over unlawful dismissal; 3 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. Labor 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 3 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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# CROATIA



## Legal reasons

The employer may terminate the employment contract on an ordinary or extraordinary basis for employee misconduct.

In relation to dismissals on an ordinary basis, where the employee fails to comply with their obligations under the employment contract, the employer may terminate the contract for employee misconduct. In case of an extraordinary dismissal, the employer may terminate the contract if it is no longer possible to maintain employment for a material breach of the employment contract or based on any other relevant fact. However, an employment contract may be terminated on an extraordinary basis 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.

In the Croatian legal system, it is possible to terminate individual employment contracts for personal or redundancy reasons and this is referred to as dismissal for business reasons. The Act defines that, in case of a dismissal for personal reasons, the employer

may terminate the employment contract if the employee is unable to perform their employment-related duties due to certain permanent characteristics.

The Act defines that, in case of a dismissal for business reasons, the employer may terminate the employment contract if there is no longer a need for a particular job to be performed at the employer for economic, technological or organizational reasons.

## Special protection

During pregnancy, maternity leave, the exercise of the right to short-time working hours by parents or adoptive parents, adoption leave and leave for taking care of the child with serious developmental problems, and during a period of fifteen days after the cessation of pregnancy or the cessation of the exercise of these rights, the employer may not dismiss a pregnant woman or a person exercising one of the rights mentioned from work. 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/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 Act defines that an employer must not dismiss an employee who has suffered an injury at work or has contracted an occupational disease as long as they are temporarily unable to work due to medical treatment or recovery.

## Notice period

In case of an ordinary dismissal, the notice period may be defined by law or the employment contract. The Act defines that, in case of a notice of ordinary dismissal, the notice period must be at least:

- a. 2 weeks, if the employee has been employed by the same employer for less than 1 year without interruption;
- b. 1 month, if the employee has been employed by the same employer for 1 year without interruption;
- c. 1 month and 2 weeks, if the employee has been employed by the same employer for 2 years without interruption;
- d. 2 months, if the employee has been employed by the same employer for 5 years without interruption;
- e. 2 months and 2 weeks, if the employee has been employed by the same employer for 10 years without interruption; and
- f. 3 months, if the employee has been employed by the same employer for 20 years without interruption.

However, if an employee has been employed

by the same employer for 20 years without interruption, the notice period is extended by 2 weeks if the employee has reached 50 years of age or by 1 month if the employee has reached 55 years of age. On the other hand, the Act defines that the notice period applicable to dismissals for employee misconduct may be reduced to half the notice period defined in the 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 benefit 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 4 hours per week and still receive this benefit, provided they spend such time on 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 1 month, unless the employee has a particularly important reason.

## Absence of notice period

As mentioned above, an employment contract may be terminated on an extraordinary basis by giving a notice of termination within 15 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 and the employee have reasonable grounds for termination of employment for a material breach of obligations under the employment contract or any other relevant fact.

## Formal requirements

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

The dismissal must be in written form to be valid. The employer must give reasons for dismissal in written form. The letter of dismissal must be delivered to the employee. Proper delivery is important because of the notice period which starts running on the day of submission of the notice of dismissal. The safest and most straightforward way is to hand it over directly to the employee.

## Collective dismissals

In case that there is no longer a need for the services of at least 20 employees within 90 days and at least 5 employees are to be dismissed for business reasons, the employer is required to consult the works council to reach an agreement to eliminate and reduce the redundancy. The Act defines that, before terminating a contract for redundancy reasons, the employer is required to:

- a. inform the works council of all grounds for the redundancy, the total number of employees, their jobs, and positions which are no longer needed, the criterion for choosing these employees, and the amount and method for calculating the severance pay;
- b. consider all the proposals and possibilities for the elimination and reduction of the redundancy; and
- c. inform the competent employment authority (hereinafter: "HZZ") of the outcome of such consultations and provide such information to HZZ.

## Employees' representatives and state authorities

If a works council exists, it must be notified about every dismissal. Otherwise, the dismissal is invalid.

A decision rendered by the employer in violation of the provisions of this Act concerning consultations with the works council shall be null and void. Only with the prior consent of the works council, the employer may bring decisions concerning:

- a. the dismissal of works council member;
- b. the dismissal of a works council member who is not elected or a member of the electoral committee, no earlier than three months following the establishment of the election results;
- c. the dismissal of an employee with impaired ability to work or in imminent danger of disability;
- d. the dismissal of an employee who is over 60 years of age;
- e. the dismissal of an employee's representative on the supervisory board;
- f. the inclusion of the persons during pregnancy, maternity leave etc.
- g. the collection, processing, use and forwarding to third parties of information about an employee; and
- h. the appointment of a person authorized for supervision to ensure that personal information about employees is collected, processed, used or forwarded to third parties.

In addition, the employer shall not without prior consent of the works council take any dismissal decision if the employee concerned is a trade union representative.



If the works council does not give or deny its consent within 8 days, it shall be considered that they have consented to the employer's decision and, if the works council refuses to give its consent, the employer may within 15 days of receiving its statement of refusal require that such consent be replaced by a judicial decision or arbitration award. The court of first instance shall render its decision concerning the legal action brought by the employer within 30 days of the date the action is filed. If no works council is established at the employer, all rights and obligations pertaining to works councils herein defined shall be exercised by a trade union representative.

## Severance payment

According to the Law, where an employer dismisses an employee following a period of at least 2 years of uninterrupted service, the employee has the right to receive severance pay in an amount to be determined based on the length of their uninterrupted service to date with that employer, unless the employee is being dismissed for their misconduct. Such severance pay shall not be agreed upon or determined in an amount lower than one-third of the average monthly salary earned by the employee within the 3 months preceding the termination date of their employment contract. The total amount of severance pay shall not exceed 6 average monthly salaries earned by the employee within the 3 months preceding the termination date of their employment contract, unless otherwise defined in the employment contract, collective bargaining agreement, the applicable labor regulations or the Act.

## Legal protection for the employee

If an employee is dismissed in violation of the Act and a court establishes that the dismissal was not permissible, the court shall order the employer to reinstate the employee. On the other hand, if the employee challenges the permissibility of dismissal, they may apply to the court to render an injunction regarding their reinstatement pending the final judgment.

If a court establishes that the dismissal was not permissible and it is not acceptable for the employee to remain in employment, the court shall determine the termination date of their employment and award him/her damages in an amount equaling at least 3, but no more than 8 average monthly salaries paid to the employee depending on their length of service, age and maintenance obligations.

A court may render the same decision at the request of the employer if the circumstances surrounding the case demonstrate that the continuation of the employment contract would not be in either party's best interest. However, an employer's decision to dismiss an employee taken in violation of the Act shall be null and void. ■



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## Legal reasons

For a dismissal to be considered lawful by the employer, the law provides for various reasons under which a dismissal is considered to be lawful and fair, and if any one of them applies, the employee has no right to compensation by virtue of the law, such as, gross misconduct by the employee in the course of his/her duties, commission by the employee in the course of his/her duties of a criminal offense without the agreement, expressed or implied, of his/her employer, immoral behavior by the employee in the course of his/her duties and serious or repeated contravention or disregard by the employee of work or other rules in relation to his/her employment.

In the above instances, an employer has the right to terminate the employment of an employee without notice, where the employee's conduct is such as to justify his/her dismissal without notice.

An employer intending to terminate the employment of an employee, who has completed at least 26 weeks of continuous employment, is obliged to give to the

employee a notice of termination in writing according to the minimum notice periods set out in the applicable law.

The right of an employee for a longer period of notice in case there is a respective provision in the contract of employment, is not affected by the applicable law. The employee and the employer have the right to a longer period of notice, if that is so entitled by custom, law, collective agreement, contract or otherwise.

The employer has the right to require the employee to accept payment of his/her wages, in lieu of the period of notice to which he/she is entitled. An employee, who has been given notice, is entitled to a full paid time off from work not exceeding 8 hours per week and a maximum of 40 hours in total, in order to be able to seek a new employment.

Where the employer does not exercise his/her right to dismissal without notice within reasonable time, the termination of employment is deemed to be unjustified.

According to the law, it is presumed that a dismissal was not made for any of the

reasons listed above. The employer has the burden to prove that they dismissed the employee for any of those reasons in order to avoid paying compensation to the employee.

## Special protections

Certain categories of employees enjoy protection against dismissal and employers may never lawfully terminate the employment agreement where an employee is a member of a trade union or a safety committee, where an employee activity is as an employer's representative, the filing in good faith of a complaint or the participation in proceedings against an employer involving an alleged violation of laws or regulations, civil or criminal, or recourse to a competent administrative authority, race, color, sex, civil status, religion, political opinion, national origin or social origin, pregnancy or maternity and parental leave or leave on grounds of force majeure.

## Notice period

An employer who intends to terminate the employment, after the period of at least 26 weeks, should give a minimum period of notice, depending on the employee's employment, 1 week notice for employment 6 months to 1 year, 2 weeks' notice for employment 1-2 years, 4 weeks' notice for employment 2-3 years, 5 weeks' notice for employment 3-4 years, 6 weeks' notice for employment 4-5 years, 7 weeks' notice for employment 5-6 years and 8 weeks' notice for employment for more than 6 years.

The right of an employee for a longer period of notice in case there is a respective provision in the contract of employment, is not affected by the law. Longer period of

notice may also result from custom, law, collective agreement, contract or otherwise.

The employer has the right to require the employee to accept payment of his/her wages, in lieu of the period of notice to which he/she is entitled. An employee, who has been given notice, is entitled to a paid time off from work not exceeding 8 hours per week and a maximum of 40 hours in total, in order to be able to seek a new employment.

## Absence of notice period

The reasons include whether the employee is on probation, the duration of which cannot exceed 104 weeks, whether there has been a serious breakdown of the relationship between employer-employee due to the employee's misconduct, the commitment of serious offense, the commitment of a crime during his/her employment, without the employer's approval, inappropriate behavior and serious and/or repeated violation of employment rules.

## Formal requirements

Any notice for termination of employment must be in writing. The law does not set out any other specific requirements apart from the notice being in writing and delivered to the employee. As a form of good practice, the best way is to hand it over directly to the employee. The safest and most straightforward way is to hand it over directly to the employee.

## Collective dismissals

The law provides an exhaustive list of reasons justifying redundancy for the following reasons: because the employer has ceased or intends to cease to carry on the business in

which the employee was employed, because the employer ceases or intends to cease to carry on business in the place in which the employee was employed, because of any of the following other reasons concerned with the operation of the business, such modernization, mechanization, or any other change in the methods of production or organization, which reduces the number of employees necessary, changes in products or production methods or in the skills needed on the part of the employees, closing of departments, marketing or credit difficulties, lack of orders or raw materials, scarcity of means of production; or contraction of the volume of work or business.

Redundancy payments are paid by the state Redundancy Fund (financed by employer contributions) in accordance with the thresholds set out in the law that corresponds to the number of years of service.

An employer is obliged to re-hire redundant employees if a position becomes available up to 8 months following the redundancy.

Collective dismissals under the Collective Redundancies Law are dismissals for one or more reasons not related to the employees per se, and where the number of employees dismissed within a 30-day period exceeds a certain threshold depending on the size of the workforce of the employer. An employer intending to implement a collective dismissal has a statutory obligation to notify and engage in consultations with the employees' representatives as soon as possible to reach a settlement agreement.

An employer is obliged to inform the Ministry of Labor about any intended redundancies.

## Employees' representatives and state authorities

Cyprus has a relatively high level of trade union organizations and these have the right, inter alia, to appear before courts as either a plaintiff or defendant and represent their members. Through practice, trade unions will ordinarily represent their members during any termination instance.

## Severance payment

Employers have the right to pay in lieu of notice, for which the sum paid is equivalent to the applicable notice period, but there is no obligation for any severance or dismissal indemnity. Private settlement agreements between the employer and the employee can be concluded provided that such agreements do not violate the minimum amounts set by the law.

An employee, whose employment is terminated unlawfully after he/she has completed 26 weeks of continuous employment with an employer, is entitled to compensation. Compensation is also payable in the case of an employee who terminates his/her employment because of his/her employer's conduct.

The amount of compensation is decided by the Labor Disputes Court after an application by the employee, but in no case, it can be less than the amount of redundancy payment, to which the employee would be entitled, had been declared redundant, or higher than 2 years wages. In assessing the amount of compensation, the Court gives consideration, inter alia, to the emoluments of the employee, the length of his/her service, the loss of his/her career prospects, his/her age and the circumstances of his/her dismissal.

Compensation is payable as follows: for the first 4 years of continuous employment, 2 weeks' wages per completed year, for 5th to 10th years, 2 1/2 weeks' wages per completed year, for 11th to 15th years, 3 weeks' wages per completed year, for 16th to 20th years, 3 1/2 weeks' wages per completed year and for 20th to 25th years, 4 weeks' wages per completed year.

No compensation is payable in the case of any employee, who, before the termination of his/her employment, has attained the pensionable age (65) and when termination of employment is by reason of redundancy.

## Legal protection for the employee

Where the Employer fails to prove that the dismissal of an employee was made for any of the reasons set out above, an employee will be entitled to compensation for unfair dismissal. The Industrial Disputes Tribunal may also order re-employment of the Employee (but they rarely do so).

The law sets both the minimum and the maximum level of compensation that may be awarded to an employee in cases of unfair dismissal.

In exercising its discretion regarding the amount of compensation it will award to an employee for unfair dismissal, considering a number of factors such as the duration of employment, loss of career prospects; the conditions and circumstances under which the employee was dismissed, the age of the employee and the employee's marital/family status.

The minimum level of compensation for unfair dismissal would be the same as if the

employee were dismissed for redundancy. This means that the compensation an employee will receive depends on how long he/she was employed for and his/her remuneration.

The maximum compensation an employee would be entitled for unfair dismissal should not exceed the salary of a 2 year period.

Under the Law, any compensation exceeding the salary of a 1 year period is paid by the government's redundancy fund. ■



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# GERMANY



## 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 (cf. under b.) of the employee 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 conception 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 means 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 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 respecting the notice periods is invalid. 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 for 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 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 dismissal must be in written form to be valid. The electronic form is excluded. 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 the dismissal is 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 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, if the employer intends to carry out notifiable dismissals. 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. 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 to 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 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 operational change.

Trade unions are not to be 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 approval of the competent state authority must be obtained.

## 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 against payment of a 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.

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 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. ■



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# GREECE



## Legal reasons

According to the Greek employment law, an employment contract can be lawfully and validly terminated at any time without any cause. Therefore, the dismissal constitutes a “causal transaction”, meaning that the employer is not obliged to justify it, nor the existence of a particular cause defines its validity.

Upon the employer’s decision the dismissal might take place either with prior notice or not. In any case though the dismissal must take place in writing and the employer must pay the severance payment to the employee according to the law. The motives of the employer can be challenged before the competent Court and motives of dismissal, such as hatred or reasons of revenge as a result of a previous lawful but disliked by the employer behavior of the employee, can overturn the dismissal.

## Special protections

- a. For trade unions’ board members and members of the temporary administration

The dismissal of Labor Unions’ Board members and the members of the Temporary Administration is prohibited by law and the employer may terminate their employment relationship only for specific reasons stipulated. It should be clearly stated that any other employee who is a union member, besides the ones expressly protected by the law, is by no means protected against dismissal and the relevant legislation regarding the termination of employment applies accordingly. The protection from dismissal described above remains in effect during their term and for 1 year after the duty of a member in the BoD of the Union has expired.

The dismissal of employees who participate in the Temporary Administration of a Labor Union that is under incorporation as well as the dismissal of a Union’s Founding members, is also prohibited by law. The protection from dismissal described above remains in effect for 1 year after the signing date of the Union’s Articles of Association.

In case of serious breach of the employment terms and conditions on behalf of a protected employee, the employer has the right to submit an application for dismissal to a relative committee, consisting of one judge, one representative of employees’ unions and one representative of employers’ unions, which shall finally decide about the dismissal.

- b. Pregnant employees and women who have given birth

Pregnant employees may not be dismissed throughout the period of the pregnancy and for a period of 18 months following delivery of their child. Any such dismissal is permitted only as termination for cause. In fact, the above-mentioned protected employees may be dismissed only if there is a specific reason justifying the dismissal, i.e. a reason that may be perceived so important, that it requires employment termination.

According to case law, the employer shutting down its business, can be perceived as a reason of high importance, thus justifying the termination for cause. Notwithstanding the above, it should be stated that for the proper termination of the employment contract of the above-mentioned employees, even if there are grounds for termination for cause, the employer is additionally required to justify in writing the termination including mentioning the cause, and then notify accordingly not only the employee to be laid off, but also the proper authorities.

The above notification may be completed by handing over to the employee a written statement, including the reason for the termination, along

with the termination form (Form E6. Termination of employment contracts). Both documents to be handed over to the employee must be signed by the company’s legal representative or any other authorized person who has been appointed to do so. Consequently, the competent authorities, i.e. the Hellenic Labor Inspectorate, must be properly notified as well of the termination of the employment contract.

## Notice period

The employer is granted with the option – not obligation – to pre-notify the employee in writing about the imminent dismissal. In such cases the employer is obliged to pay half of the compensation mentioned in a future chapter to the employee whose employment contract is terminated without prior notice. The notice period depends on the years of continuous employment with the same employer:

Occupation time	Notice period
Up to 12 months to 2 years	1 month
2 years – 4 years	2 months
4 years – 5 years	2 months
5 years – 6 years	3 months
6 years – 8 years	3 months
8 years - 10 years	3 months
Up to 10 years	4 months
Up to 11 years	4 months
Up to 12 years	4 months
Up to 13 years	4 months
Up to 14 years	4 months
Up to 15 years	4 months
Up to 16 years	4 months

For each additional year of occupation and up to 28 years and beyond employees who had been working for the same employer for over 16 years by the 12th of November 2012 the notice period is 4 months.

The employer is entitled to decide whether he/she dismisses the employee with or without notice.

## Absence of notice period

An employment contract for an indefinite term shall be terminated lawfully and validly at any time without warning. As we have already mentioned, the employer is granted with the option – not obligation – to pre-notify the employee in writing about the imminent dismissal. The employer is entitled to decide whether the dismissal of the employee is with or without notice.

## Formal requirements

### a. Indefinite term employment contract

According to the provisions of employment legislation in Greece, there are 2 main categories of requirements which should be met for lawfully terminating an employment relationship. The first category consists of the formal requirements, i.e. the procedural restrictions and the second one entails the substantive conditions under which any employment may be terminated.

#### The formal requirements

An indefinite term employment contract shall be terminated lawfully and validly at any time without warning, provided that the following conditions are observed:

- i. written notice for the termination of the employment contract, which has been signed by the company's legal representative or any other person who has been properly authorized to do so, is furnished directly to the employee at the day the dismissal occurs, and

- ii. severance payment is made.

In reference to the severance payment, it should be clarified that this kind of compensation is calculated based on the gross regular salary granted to the employee during the last month of the employment contract before his/her dismissal and taking into consideration whether the employee to be laid off will be given prior written notice or not, as the employer has the option – not obligation – to pre-notify the employee in writing about the imminent dismissal.

Moreover, should the sum to be granted as severance payment exceed the amount of 2-months' wages, employer is legally bound to grant the employee at the time of the dismissal the proportion of the severance payment equivalent to 2-months' wages.

Regarding the remaining amount to be granted, the payments to the dismissed employee should be made in bimonthly installments, with every installment amounting to at least the equivalent of 2-months' wages, except for the remaining amount for the compensation payment, being smaller than the equivalent of 2-months' wages. In such cases when granting the severance payment in installments is permitted by the law, the first installment should be paid by the completion of the 2-months' period after the date of the termination of the employment contract.

#### The substantive conditions

With respect to the substantive conditions, there are 2 main reasons for terminating

an employment relationship. The first refers to the employee's performance and contractual behavior and the second one to organizational and financial reasons, which eventually lead to reduced workforce of the employer. Even though he/she has been thoroughly informed of the decision of the employer to terminate his/her employment contract, the employee may refuse to sign the document regarding the termination of the employment contract, thus rendering impossible for the formalities, stipulated by the law in reference to the termination of an employment contract, to be finalized.

If that is the case, for the termination of the employment contract to be finalized, a respective extrajudicial statement should be served by bailiff to the employee, along with



the termination form (Form E6. Termination of employment contracts) attached to the said document. Both documents must be signed by the company's legal representative or any other authorized person who has been appointed to do so. Moreover, at the same time, the employer is required to transfer to the employee's bank account his/her proper severance payment.

#### b. Fixed-term employment contract

Any fixed-term employment contract is terminated after its term expires without having to observe any conditions such as giving notice or granting severance payment. Moreover, pursuant to the provisions of the Greek Civil Code, a fixed-term contract may be terminated, prior to the agreed termination date, by either of the parties. However, any fixed-term contracts of employment cannot be prematurely terminated unless there is a serious ground for their termination.

Although the law does not stipulate any reasons, according to case law it has been decided that the following may constitute serious grounds for premature termination: material breach of contract by either of the parties, continued absenteeism by the employee, improper execution of the employee's duties, being conceited of a crime etc.

## Collective dismissals

Dismissals may occur following specific limitations which depend on the company size which is going to proceed with the dismissals.

- a. By an establishment with 20 to 150 employees up to 6 employees per month may be dismissed.
- b. Businesses whose staff exceeds 150

individuals can dismiss 5% of their workforce and in any event no more than 30 employees.

In case of exceeding those limitations, all dismissals are classified as collective dismissals, thus they are prohibited.

Apart from the general provisions regulating the termination of any open-ended employment contract such as written notice and compensation payment, additionally there is a specific procedure to be followed by the employer to carry out properly the dismissals.

The employer must inform the workers' representatives of the proposed dismissals, indicate the reasons for them and provide other information as required by the law (i.e. the number and categories of employees concerned, the criteria used to select the employees, the period over which the collective dismissal will be carried out). Such documents must also be sent to the relevant authorities, i.e. the Supreme Labor Council, which is a special committee within the Ministry of Labor, consisting of an equal number of representatives from the State, the employees' associations and the employers' associations.

Consultations with the trade unions (workers' representatives) and the employer should also occur, prior to the implementation of any of the proposed dismissals. The consultation period shall last 30 days from the date of the notification to the workers' representatives. Following consultation, the employer must notify the Supreme Labor Council of the outcome thereof. If the parties reach an agreement, the employer can proceed with the dismissals, according to the terms of the agreement, after the lapse of a 10-day

period from the notification to the Supreme Labor Council.

If the parties fail to reach an agreement, the Supreme Labor Council must determine whether the employer has fulfilled all its obligations to consult with the workers' representatives and to notify the authorities. If the obligations have been fulfilled, the employer may proceed with the dismissals after a 20-day period. On the other hand, if the respective obligations have not been fulfilled by the employer, the Supreme Labor Council can extend the consultation period or set the employer a deadline to fulfill its obligations. Nevertheless, in any case, the dismissals will be considered valid (even if no agreement is reached) within 60 days after the Supreme Labor Council was initially notified by the employer.

## Employees' representatives and state authorities

As far as the collective layoff is concerned the employer must only notify the Labor Authority (Supreme Labor Council) of the commencement and the outcome of the consultation period with the workers' legal representatives. For the individual dismissal the employer does not have to obtain the permission of a third party before being able to validly terminate the employment relationship.

## Severance payment

An employment contract can be lawfully and validly terminated at any time without any cause. Upon the employer's decision the dismissal might take place either with prior notice or not. In any case though the dismissal must take place in writing and the employer has the obligation to offer the

severance payment to the employee.

#### i. Redundancy without prior notice

An employment contract for an indefinite term shall be terminated lawfully and validly at any time without warning. As far as the severance payment is concerned, this kind of compensation should be calculated based on the regular salary granted to the employee during the last month of the employment contract before his/her dismissal.

Such a payment cannot exceed the amount of 30 times the lowest daily wage for unskilled workers, currently at EUR 29.04, multiplied by 8, which adds up to a cap salary of EUR 6,969.6.

The total amount of the abovementioned payment will depend on the length of continuous employment by the same employer.

The total amount of the severance payment depends on the occupation time of the employee:

Occupation time	Notice period
Up to 12 months to 2 years	2 months wages
2 years – 4 years	2 months wages
4 years – 5 years	3 months wages
5 years – 6 years	3 months wages
6 years – 8 years	4 months wages
8 years - 10 years	5 months wages
Up to 10 years	6 months wages
Up to 11 years	7 months wages
Up to 12 years	8 months wages
Up to 13 years	9 months wages
Up to 14 years	10 months wages
Up to 15 years	11 months wages
Up to 16 years	12 months wages



Employees who had been working for the same employer for over 16 years by the 12th of November 2012 are entitled to additional compensation as follows:

Occupation time	Amount of severance payment	Additional amount
Up to 17 years	12 months wages	+ 1 month
Up to 18 years	12 months wages	+ 2 months
Up to 19 years	12 months wages	+ 3 months
Up to 20 years	12 months wages	+ 4 months
Up to 21 years	12 months wages	+ 5 months
Up to 22 years	12 months wages	+ 6 months
Up to 23 years	12 months wages	+ 7 months
Up to 24 years	12 months wages	+ 8 months
Up to 25 years	12 months wages	+ 9 months
Up to 26 years	12 months wages	+ 10 months
Up to 27 years	12 months wages	+ 11 months
Up to 28 years and beyond	12 months wages	+ 12 months

It should be noted that the afore-mentioned additional severance payment is calculated on the basis of the regular salary granted to the employee during the last month of the employment contract before his/her dismissal, without taking into consideration any amount exceeding the benchmark of EUR 2,000.

#### ii. Redundancy with prior notice

The employer is granted with the additional option – not obligation – to pre-notify the employee in writing about the imminent dismissal. In such cases the employer is obliged to pay half (1/2) of the afore-mentioned compensation to the employee.

The notice period depends on the years of continuous employment with the same employer:

Occupation time	Notice period
Up to 12 months to 2 years	1 month
2 years – 4 years	2 months
4 years – 5 years	2 months
5 years – 6 years	3 months
6 years – 8 years	3 months
8 years - 10 years	3 months
Up to 10 years	4 months
Up to 11 years	4 months
Up to 12 years	4 months
Up to 13 years	4 months
Up to 14 years	4 months
Up to 15 years	4 months
Up to 16 years	4 months

For each additional year of occupation and up to 28 years and beyond employees who had been working for the same employer for over 16 years by the 12th of November 2012 the notice period is 4 months.

The employer is entitled to decide whether the dismissal of an employee is with or without notice.

Exceptionally, the employer has no obligation to pay any severance payment to the employee, only in the following cases:

- a. Pursuant to the labor legislation currently in force, the employer has no obligation to pay any severance payment to the employee if the latter has been convicted of committing a crime, which directly affects the employment relationship, i.e. partner abuse, theft, fraud etc.
- b. Moreover, according to case law, it has been decided that 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 the employee must intentionally behave inappropriately or breach his/her contractual obligations or even perform his/her duties poorly, for the sole purpose of forcing the employer to dismiss him/her and consequently claim the respective severance payment.

### Legal protection for the employee

The employer is entitled to decide whether the dismissal of an employee is with or without pre-notification. In any case a dismissal that occurs without the

simultaneous compensation payment or the issuing of a written notification is considered null and void. In such cases the employer bears liability for salary payment to the employee, taking into consideration that the employment agreement is still considered to be in effect.

The statutory period of limitation for the employees to sue their employer in case they consider the dismissal unfair or invalid is 3 months; otherwise their right is considered lapsed.

As long as the company has met its obligations of written dismissal and paying the compensation, the employee may only challenge the dismissal from the Subjective Conditions' point of view. Therefore, before proceeding in dismissing the employee, we need to establish the reason of dismissal.

### Miscellaneous

The employee has the obligation to avoid competitive practices during the employment relationship and after the termination of employment if there is a specific provision in the employment contract. ■



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# HUNGARY



## Legal reasons

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, 2 or more positions are merged or when a quality exchange is necessary). An employee having an indefinite term of employment can terminate his/her 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.

## Special protections

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

- during pregnancy;
- during maternity leave;
- during a leave of absence taken without payment for the purpose of child care;
- during any period of actual reserve military service; and
- in case of women, while receiving treatment related to human reproduction procedures, for up to 6 months from the beginning of such treatment.

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

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 starts 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.

## Notice period

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.

## Absence of notice period

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 therefore, in any case within not more than 1 year of the occurrence of such grounds.

## Formal requirements

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 be 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.

## Collective dismissals

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 collective dismissal, its role is administrative only.

## Employees' representatives 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.

## Severance payment

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:

- a. 1 month, in the case of at least 3 years;
- b. 2 months, in the case of at least 5 years;
- c. 3 months, in the case of at least 10 years;
- d. 4 months, in the case of at least 15 years;
- e. 5 months, in the case of at least 20 years;
- f. 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.

## 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 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 a prohibition on dismissal; or if the employer terminated the employment relationship of a protected trade union representative or chairman of the works council without prior consent of the trade union/work council; or if the employee served as an employees' representative at the time his/her employment relationship was terminated; or if the employee successfully challenged the termination of the employment relationship by mutual consent or his/her own legal statement therefor.

## Miscellaneous

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 his/her 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. ■



Szilvia Fehérvári - Partner  
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## Legal reasons

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

Employees can also be dismissed because of the following reasons: a period of illness too long (as provided for by the National Collective Agreements) when it exceeds the ceiling (usually 6 months); a total permanent inability to perform job tasks, if the invalidity degree makes the employee unemployable; during the probation period.

- a. A dismissal for personal reasons is possible if reasons if they prevent further employment 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 abuses alcohol or drugs not during working time, a bank cashier caught in illegal gambling or an elementary or middle school teacher involved in child abuses or pedopornography).
- b. A dismissal for conduct-related reasons is also possible if the employee has violated contractual obligation and the violation is 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, violation of the obligation to present a medical certificate in case of incapacity to work, etc.

As in point a.) above, any breach must be contested in writing by the employer to the employee, who has the right to be heard in his/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".

- c. 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 due to an economic, technologic or production-related reason. The Supreme Labor Court ruled that the entrepreneurial decision to reduce permanently 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 a heavier family burden and a longer seniority of service. If there are no vacant positions the employees can be dismissed respecting the criteria. If the employees are not interchangeable and there are no vacant positions the main criteria are related to economic or technical reasons.

## Special protections

Pregnant women may not be dismissed from the start of pregnancy until the child's first year of age even if the employer was not aware of pregnancy but in this case the employee must send to the employer a medical certificate stating the state of pregnancy within 90 days. The special protection against dismissal already applies even in event of wedding during the period between the request for the wedding publication and 1 year after the celebration of the marriage. The ban only applies to the bride and not to the husband.

Some National Collective Agreements (for example NCA Metalworkers) provide that a member of a company trade union delegation (RSU) may be dismissed for justified reason or just cause only with the prior authorization of the national trade union organization to which he/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.

## Notice period

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; the notice periods are between a minimum of 7 days and a maximum of 4 months and the NCA specifies whether working days or calendar days are to be calculated. The seniority for the calculation of the notice period is determined by the date of receipt of the notice.

## Absence of notice period

An employment relationship may be terminated without notice for good cause, this kind of dismissal is usually given for disciplinary reasons if the employee commits serious and negligent breach of contract that does not permit the continuation of the employment relationship even during the notice period as: repeated and unjustified absenteeism or lack of punctuality; lack of discipline or disobedience at work; verbal or physical offense against the employer or fellow employees; defamation of the employer or managers (also using social media); every behavior of the employee (also 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 for in NCA.

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

## Formal requirements

The dismissal must be in written form to be valid and must indicate exactly: 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 (see above under point 1.c) 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.

## Collective dismissals

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 in writing employees' representatives and the Labor Authority (National Labor Inspectorate) 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 staff reduction plan and any measures planned to deal with the social consequences of the implementation of redundancies.

The first step of 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 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 are paid but except what it's paid in all cases of termination of the employment relationship.

## Employees' representatives and state authorities

The trade unions representatives must be consulted only in event of collective dismissals as mentioned above. In event of disciplinary dismissal the employee that has been charged can defend him or

herself with the assistance of a trade union representative.

Before any individual dismissal for objective reasons, if the employer employs more than 15 employees, the employer must promote a mandatory attempt of settlement at 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.

## Severance payment

Italian law does not provide a general legal obligation to pay a severance 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 in order 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 of 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.

## Legal protection for the employee

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

- a. 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.
- b. 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 up to 6 months.

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

## Miscellaneous

During the emergency period due to Covid-19 Employers are allowed to dismiss the employees only if dismissals resulting from the definitive cessation of the business; if dismissals resulting from the liquidation of the company without continuation, even partial, of the activity; in event of a collective agreement entered into by the trade unions that are comparatively more representative

on a national level, which provides incentives for the termination of the employment relationship or in event of dismissals of employees due to company's bankruptcy. ■



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# MOLDOVA



## Legal reasons

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 to qualify the dismissal in a disciplinary one (culpable violation of the work discipline by the employee) and non-disciplinary (for reasons non-attributable to the employee).

As a rule, one violation of the disciplinary discipline by the employee does not represent a 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 during the working day; attendance to work in alcoholic, narcotic or toxic condition confirmed by medical certificate; committing a contravention (administrative offense) 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 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 (no 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; non-performance that is confirmed under an evaluation procedure approved by the Government; change the founder of the legal entity (applicable for the manager, deputy and the chief accountant); transfer of employee to another employer; holding the retirement status for the age limit, etc.



The employment contract with the manager may provide for the additional reasons of dismissal.

## Special protections

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; performing state or public duties; or being temporarily detached to another employer. Except for certain disciplinary violations, the employee being in maternity or child care leave; the 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 1 year after the expiration of their elective attributions.

## Notice period

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 manager – 1 month before 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 held to comply with the notice's provisions that are more favorable to the employees.

## Absence of notice period

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.

## Formal requirements

The notice of termination shall be given by the employer in written form and brought to employees' acknowledgment with confirmation of their signature.

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 expiration of 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 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.

## Collective dismissals

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 with 3 months in advance the employee representatives and the employment agency and initiate consultation with the employee representatives to reach an agreement.

To allow the employee 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. 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 employee representative and the employer is reached, but no more than 30 calendar days as from the date when the employee 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 employee representatives and employment agency.

## Employees' representatives 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.

## Severance payment

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 1 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 those 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 hired for the secondary job (has the basic workplace with other employer), the severance payment in amount of 1 monthly average salary will be paid in connection with the liquidation of the employer or staff redundancy or termination of the secondary employment in case another person is hired for the basic workplace.

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. Manager shall benefit from a severance payment in 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.

## Legal protection for the employee

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 finds 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, the related penalties, moral damage 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 a compensation in amount of 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 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. This authority does not resort sanctions; the legal prerogative to enforce the labor laws and apply sanction 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.

## Miscellaneous

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. ■



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# NORTH MACEDONIA



## Legal reasons

In North Macedonia, the employer can terminate the employment relationship, when there is no possibility to extend it, due to three reasons stipulated by law: personal reasons, reasons of guilt and business reasons.

- a. A dismissal of personal reasons is possible when the employee, due to his/her conduct, lack of knowledge or capabilities or due to non-fulfillment of special requirements defined by law, is incapable of carrying out the contractual or other obligations laid down by law, collective agreement or internal rules of the employer. The employer may terminate the employment due to personal reasons only after giving the employee a written warning and only if the employee does not improve his/her work after the warning, within the period determined by the employer.
- b. A dismissal of reasons of guilt is possible when the employee violates the contractual or other obligations under the employment.
- c. A dismissal of business reasons is

possible when there is need for carrying out certain work ceases under the conditions stated in the employment contract due to economic, organizational, technological, structural or similar reasons of the employer. However, the termination of the employment due to business reasons needs to be based on the need for efficient functioning of the employer's work, professional training and qualification of the employee, his/her work experience, work success, type and the significance of the job and other criteria determined by a collective agreement, as well as criteria for protection of disabled persons, single parents and parents of children with special needs whose employment is terminated on the same grounds.

## Special protections

The Macedonian Law on Labor Relations guarantees special protection against dismissal due to pregnancy, childbirth and parenthood, during the time of accommodating a child with a foster parent, due to absence from work of a father or a foster parent due to parenthood and due to

shortened working hours due to care of a child with disabilities and special educational needs and absence from work due to care of a child of up to 3 years of age.

The dismissal will be considered null and void if the employer was familiar with the above-mentioned circumstances on the day of the delivery of the decision on dismissal or if the employee, within a period of 15 days as of the day of the delivery of the decision, notifies the employer about the existence of the abovementioned circumstances by submitting an appropriate certificate by an authorized doctor or competent body.

However, it is important to point out that this does not prevent the termination of the employment contract concluded for a definite period, upon the expiry of the time for which it has been concluded.

Also, this prohibition on dismissal does not apply to the termination of the employment due to serious violation of the contractual obligations, that is, due to violation of the working order and discipline or the working duties which are grounds for termination of the employment without a notice period in accordance with the law and the collective agreement. In this case, the employer may terminate the employment only upon a previous consent from the trade union whose member is the employee, subject of dismissal.

If the union does not give consent for dismissal, the employer may within a period of 15 days as of the day of the delivery of the statement for not giving consent, initiate a procedure for reconsideration by a competent court or arbitration. If the employee is not a member of the union, the consent shall be given by the competent labor inspectorate.

## Notice period

The employee and the employer may terminate the employment contract within a legally or contractually determined notice period. When making the decision, the parties must observe the minimum duration of the notice period set out by Law and the collective agreement.

If the employment contract is terminated by the employee, the notice period is 1 month. The employment contract or the collective agreement may arrange for a longer notice period, but it must not exceed 3 months.

If the employer terminates the employment contract of an individual employee or of a smaller number of employees, the notice period is 1 month. In case of dismissal of more than 150 employees or 5% of the total number of employees with the employer, the notice period is 2 months. If the employer terminates the employment contract of a seasonal employee, the notice period is 7 working days. The notice period starts running on the day following the day of the delivery of the decision on dismissal.

However, the employer and the employee are free to agree on pecuniary compensation instead of a notice period. In this case, the employer is obliged to pay the pecuniary compensation to the employee upon handing over the decision on dismissal and it should be paid for the entire notice period, including the day of the termination of the employment.

## Absence of notice period

The employer is entitled to terminate the employment contract of the employee without a notice period in cases of violation

of the working order and discipline or non-fulfillment of the working duties laid down by law, collective agreement, rules for the working order and discipline and the employment contract, especially if the employee:

- a. is unjustifiably absent from work for 3 consecutive working days or 5 working days during one year;
- b. abuses the sick leave;
- c. does not respect the regulations on health protection, safety at work, fire, explosion, harmful effect of poisons and other dangerous materials, and violates the regulations on environmental protection;
- d. takes in, uses or is under influence of alcohol and narcotics;
- e. commits theft, or in connection with the work, intentionally or by extreme negligence, causes damage to the employer;
- f. discloses business, official or state secret.

The law and collective agreement may also define other cases of violation of the working order and discipline and of the working duties for which the employer terminates the employment contract without a notice period.

## Formal requirements

In order to be valid, the dismissal must be in written form and the employer is obliged to explain the reasons for the dismissal in writing, to point out to the employee the legal remedies and to inform him/her about his/her rights arising from insurance against unemployment.

The decision on dismissal must be delivered

to the employee whose employment is terminated in person. The most convenient way is to hand it over directly to the employee at the employer's premises or to send it to his/her permanent address if he/she has one in North Macedonia, or to send it to his/her temporary residence wherefrom he/she comes to work every day.

However, if the employee cannot be reached at the address of residence or if he/she has no permanent or temporary residence in North Macedonia or refuses to receive the decision, the decision on dismissal shall be announced on the notice board in the employer's headquarters. Upon expiry of 8 working days from the announcement on the notice board, the delivery is considered done.

The decision on dismissal has to be reached

by the employer or by the employee authorized by the employer.

## Collective dismissals

If the employer plans to conduct a mass layoff due to business reasons, it is obliged to commence a consultation procedure with the employees' representatives, at least 1 month prior to the commencement of the mass layoff. This obligation for information and consultation applies regardless whether the decision on the mass layoffs has been adopted by the employer or an entity controlling the employer.

A mass layoff occurs if at least 20 employees for a period of 90 days, regardless of the number of employees with the employer, are to be dismissed.

The consultations with the employees' representatives shall include the methods and means for avoiding mass layoff, decrease in the number of laid off employees or mitigation of the consequences by referring to social measures in order to help the laid off employees to find employment.

After the completion of the consultations, the employer is obliged to inform in writing the competent Employment Agency for the purpose of providing help and intermediation services in the employment of the laid off workers. This notification must contain all the relevant information in connection with the planned mass layoffs and the consultations with employees' representatives, in particular the reasons for the layoffs, the number of employees being laid off, the total number of employees with the employer and the period within which the layoffs should occur.



A copy of this notification should be submitted to the employees' representatives too, so they can submit their own proposals to the Employment Agency.

This notification has to be submitted to the Employment Agency at least 30 days before the adoption of the decision for dismissal.

## Employees' representatives and state authorities

Generally, the trade unions and state authorities are not involved in the dismissals, except in the case of mass layoffs, as was explained above. In addition, in the case of pregnancy, childbirth and parenthood, the trade union must give its approval for dismissal; otherwise, the employment contract cannot be terminated.

## Severance payment

In case of dismissal due to business reasons, the employer is obliged to pay the employee a severance pay as follows:

- a. up to 5 years of employment - in the amount of 1 net salary;
- b. from 5 to 10 years of employment - in the amount of 2 net salaries;
- c. from 10 to 15 years of employment - in the amount of 3 net salaries;
- d. from 15 to 20 years of employment - in the amount of 4 net salaries;
- e. from 20 to 25 years of employment - in the amount of 5 net salaries;
- f. over 25 years of employment - in the amount of 6 net salaries.

The base for calculation of the severance pay is the average net salary received by the employee in the last 6 months before the dismissal, but in any case not lower than

50% of the average net salary per employee in the Republic paid in the preceding month before the dismissal.

The severance pay is paid on the day of termination of the employment. The employee who carries out seasonal work lasting up to 3 months does not have the right on severance pay.

## Legal protection for the employee

The dismissed employee has the right to submit a complaint against the decision on dismissal to the governing body of the employer or the employer. The deadline for submitting a complaint is 8 days as of the receipt of the decision and the employer also has a deadline of 8 days to reach a decision on the complaint. However, the complaint does not postpone the enforcement of the decision on dismissal. In case a new decision on the complaint is not adopted or if the employee is not satisfied with the new decision, he/she has the right to initiate a court proceeding in front of a competent court in a period of 15 days as of the receipt of the decision. ■



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# POLAND



## Legal reasons

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 a statement of termination without notice should identify the reason for termination. The declaration of termination of contracts concluded for a fixed term and for a trial period does not need to state the reason of 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 offense which prevents their continued employment. Similarly in a situation where

the employee, through his/her fault, is deprived of the license required to do their job, or is 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 following chapter related to absence of notice period.

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.

## Special protections

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.

## Notice period

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 three months; (iii) 2 weeks if the trial period is 3 months.

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.

## Absence of notice period

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.

## Formal requirements

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 an indefinite term, the employer is also obliged to identify the grounds for termination of the contract, and if the employee is represented by a trade union the employer must also inform the trade union in writing about the intended termination of the contract. 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.

## Collective dismissals

If the employer plans a mass layoff, the Polish legislation (Act) on detailed rules for termination of employment for reasons not attributable to employees applies. The Act is applicable to employers which employ at least 20 employees.

The term “mass layoff” (collective dismissal) 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 workers 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 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.

### Employees' representatives 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 term with notice, and must provide grounds for the termination.

As regards to collective dismissal, 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.

### Severance payment

Severance payment is 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.

### Legal protection for the employee

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 awards compensation.

### Miscellaneous

If employment is terminated by the employer, the employee is entitled to a time-off to seek another job, which does not affect the employee's earnings. The time-off is 2 or 3 days, depending on the length of the notice period. Moreover, after termination the employer must issue a certificate of employment (employment record) and deliver it to the employee. ■



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# PORTUGAL



## Legal reasons

In Portugal, the employees enjoy a very strong protection against dismissal. Therefore, dismissal without just cause is, as a general rule, expressly prohibited. Only very specific modalities 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. 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 damages and risks to the company, or whose number reaches, in each calendar year, five consecutive or ten non-consecutive 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.

- b. Collective dismissal is defined as the termination of employment contracts promoted by the employer and operated within a 3-month period, covering at least 2 employees if the company has fewer 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 (namely, changes in the techniques or procedures of production, automation of production, control, computerization of services, automation of means of communication).

- c. 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 modality of collective dismissal or dismissal due to extinction of the work position applicable 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 invoked for the extinction of the work position must not be caused by a deliberate conduct of the employer or the employee; (ii) the maintenance of the work relationship must be practically impossible; (iii) there are no term labor contracts in the company for the same tasks as those of the work position that is to be extinguished; (iv) the collective dismissal does not apply.

- d. 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 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. 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 on more complex technology, in the six months prior to the start of the procedure; (ii) there has been provided professional training

to the modifications of the job; (iii) the employee has been provided, after training, with an adaptation period of at least 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 depending upon the seniority of the employee.

In collective dismissal, dismissal due to extinction of the work position and dismissal

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, if the employee has a seniority greater than 10 years, the notice period is 75 days.

In the disciplinary dismissal, 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 of the parties, it may be possible to, during the prior notice period, exempt the employee from work.

The mutual termination agreements (employment contract revocation agreements) do not provide for the application of minimum prior notice period, the date of the termination agreement takes effect immediately. And as referred in question above, in the disciplinary dismissal, the final communication of the dismissal decision is immediately effective on the date the employee receives it.

## Formal requirements

The dismissal must be in written form to be valid. 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 there is a termination of employment contracts promoted by the employer and operated within a 3-month period, covering at least 2 employees if the company has fewer than 50 employees, or five 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 criteria for selecting employees to be dismissed, the number of employees dismissed and respective professional categories, duration of the dismissal procedure, the method of calculating the severance payment and any other labor credits due to the employee and the date of termination of the contract.

On a date prior to 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 fostering of collective contracting. In the next 5 days,

the employer promotes an information and negotiation phase (supervised by DGERT) with the workers' representative structure, with a view to an agreement on the size and effects of the measures to be applied.

After reaching an agreement or, in its absence, after 15 days counting from the initial notification, the employer must issue the final Collective Dismissal decision. The employer shall notify its decision in a copy or transcription to the employee involved (and if the employee is a union representative, to the respective trade union), to the workers' committee (or in its absence, to the inter-union committee or the union committee), and also to DGERT, with the same minimum advanced notice as with collective dismissals. The decision needs to be exhaustive, comprehensive and clearly contemplate the reasons why the collective dismissal was necessary, making it lawful.

## Employees' representatives and state authorities

Under the Portuguese Labor Code, in case of dismissals by initiative of the employer, the employer may be required to carry out communications to the representative structures of the employees if any such structures exist.

In the case of disciplinary dismissal, after the conclusion of the instruction phase, the employer must submit a full copy of the disciplinary procedure to the worker's 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). In the case of collective dismissals, it is necessary to carry out a communication to the competent entity of the Labor Ministry (DGERT), which should supervise the whole procedure, and also intervene and participate in it.

In the case of dismissal due to extinction of the work position, and of dismissal 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 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 the duration of the employment contract (this will only have a reflection on the calculation of the severance and therefore on the amount of the same).

The modalities of termination under which an employee is entitled to this severance 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 the employees the right to severance.

For the collective dismissal, dismissal due to extinction of the work position and dismissal due to non-adaptation of the employee, employees are entitled to compensation corresponding to at least 12 days of base salary and seniority bonuses for each full year of seniority (proportional in case of fraction of year). There are special rules in place for employees who were hired prior to the 1st of October 2013 (namely, the calculation of compensation takes into account 30 days 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 (is considered involuntary unemployment the collective dismissal, dismissal due to extinction of the work position and dismissal due to non-adaptation of the employee).

Under the terms of the Labor Code, an employee can challenge the legality of his/her 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 damages suffered, patrimonial and non-patrimonial; (ii) receive the remunerations which they would receive from the dismissal until the final decision of the court that declares the illegality of the dismissal; (iii) reinstatement in the same establishment of the company, without prejudice to its category and seniority. However, that reinstatement may be substituted by an additional indemnity, ranging from 15 to 45 days of base salary and seniority bonuses for each full year or fraction of seniority, taking into account the amount of the remuneration and the degree of illegality. ■



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# ROMANIA



## Legal reasons

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 2 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.).

a. 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 losses, 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.

b. 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.)

i. 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 fulfill 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 (i.e. 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.

ii. 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.

iii. 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.

- iv. 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.

## Special protections

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/she 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.

## Notice period

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.

## Absence of notice period

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. Other probation periods are provided by the Labor Code for specific situations. The employer cannot, however, extend the probation period at its sole discretion beyond the limits set forth by the law.

## Formal requirements

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.

## Collective dismissals

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 includes 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 of 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 and AJOFM within the headquarters of the company, as copy, to the trade union or employees' representatives, as the case

may be at least 30 calendar days before issuing the dismissal decisions.

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 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 postal 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.

## Employees' representatives and state authorities

If a works council or trade unions exist, they must be heard in case of massive layoffs, as mentioned in the collective dismissals chapter.

## Severance payment

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.

## Legal protection for the employee

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. ■



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# SERBIA



## Legal reasons

An employer may terminate the employee's employment contract for just cause which relates to employee's workability and his/her conduct, such as:

- a. If he/she does not achieve the work results or does not have the necessary knowledge and skills to perform his/her duties.
- b. If he/she is legally convicted of a crime in the workplace or related to workplace.
- c. If he/she 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/her own fault commits a breach of a work duty, as follows:

- a. If he/she is negligent or reckless in performing the work duty.
- b. If he/she abuses his/her position or

exceeds authority.

- c. If he/she unreasonably and irresponsibly uses means of work.
- d. If he/she does not use or uses inappropriately allocated resources and personal protective work equipment.
- e. If he/she commits other breaches 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:

- a. If he/she unreasonably refuses to perform work and execute the orders of the employer in accordance with the law.
- b. If he/she does not submit a certificate of temporary incapacity for work in terms prescribed by Labor Law.
- c. If he/she abuses the right to leave due to temporary incapacity for work.
- d. If he/she 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.

- e. If he/she gave incorrect information that was critical for concluding the employment relation.
- f. 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.
- g. If he/she does not respect labor discipline prescribed by an act of the employer, or if his/her conduct is such that he/she 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/her 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:

- a. 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).
- b. If he/she refuses to conclude the annex of the contract in cases of 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.

## Special protections

Special protection against termination of employment contract is prescribed under the Serbian Labor Law.

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 terminate the employment contract of the employee. Additionally, the period of employment of the employee employed for a definite period of time referred above (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.

The employer can neither terminate the employment contract, nor in any other way put the employee in a disadvantageous position because of his/her status or activity as an employee representative, trade union member, or because of his/her participation in trade union activities. The burden of proof that the termination 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/her participation in trade union activities, is on the employer.

## Notice period

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 due to employee's failure to achieve the work results or if employee does not have the necessary knowledge and skills to perform his/her duties. 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.

## Absence of notice period

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 above.

## Formal requirements

Termination procedure entails: (i) adoption of written warning notice which needs to state legal basis for termination, facts and evidences; (ii) time period for employee's reply to warning notice not shorter than 8 days, and (iii) 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/her reply to warning notice the opinion of the trade union whose member he/she 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 termination on the basis of redundancy, termination notice must be in writing but there is no prior written warning notice.

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.

## Collective dismissals

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 workload 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:

- a. 10 employees whereby the employer employs more than 20, and less than 100 employees engaged on a permanent contract (i.e. indefinite term contract);
- b. 10% of employees whereby the employer employs a minimum of 100, and a maximum of 300 employees engaged on a permanent contract;
- c. 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 3 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.

## Employees' representatives and state authorities

Employee may attach to his/her reply to warning notice the opinion of the trade union

whose member he/she 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.

## Severance payment

Serbian law does not provide a general legal obligation to pay a severance in the event of a dismissal. The Labor Law mandates payment of severance in case of dismissal due to redundancy and in case of employment termination due to employee's retirement.

## Legal protection for the employee

If the employee is of the opinion that the dismissal is invalid, he/she must file a lawsuit against the resolution on employment termination within 60 days as of its receipt.

a. 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/her corresponding contributions for compulsory social insurance shall be paid for the period in which the employee has not worked.

- b. The compensation of damages referred to in (a) 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.
- c. The compensation of damages referred to in (a) 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.
- d. 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 (b) above.
- e. 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.
- f. 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 (e) above.

- g. 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 6 salaries.
- h. Salary under (e) and (g) above shall be considered as salary which the employee earned in the month preceding the month in which his/her employment relation was terminated.
- i. Compensation from (a), (e), (f) and (g) above shall be reduced by the amount of income that the employee earned working after termination of employment relation. ■



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# SLOVAKIA



## Legal reasons

In Slovakia an employment relationship may be terminated for the reasons stipulated in the Labor Code, which include (i) termination by agreement, (ii) termination by notice, (iii) immediate termination, and (iv) termination within a probationary period. An employer may give notice to an employee only for the reasons explicitly stipulated in the Labor Code, while the legislation differs between the organizational reasons and personal reasons.

Examples of organizational reasons for the employer to terminate the employment relationship are if (i) the employer is wound up or (ii) is relocated and the employee does not agree with the change in the agreed location for performance of work, or if (iii) an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on change in duties, technical equipment or reduction in the number of employees with the aim of securing work efficiency, or (iv) on other organizational changes, or (v) the medical opinion states that the employee's health condition has caused the long term loss of

his/her ability to perform his/her previous work or if he/she can no longer perform such work as a result of an occupational disease or the risk of such an disease, or if he/she has already received the maximum permitted level of exposure in the workplace as determined by a decision of a competent public health body.

Examples of personal reasons for the employer to terminate the employment relationship are if (i) the employee does not meet the preconditions set by legal regulations for the performance of the agreed work, or (ii) does not fulfill due to no fault of the employer, the requirements for the proper performance of the agreed work determined by the employer in internal regulations, or (iii) does not satisfactorily fulfill the work tasks, and the employer has in the preceding 6 months challenged him/her in writing to rectify the insufficiencies, and the employee failed to do so within a reasonable period of time.

An employer may give an employee notice, unless given on grounds of unsatisfactory fulfillment of working tasks, for (i) less serious breach of labor discipline or for (ii) reasons for which immediate termination of

employment relationship is applicable, only in such case where the employer does not have the possibility to further employ the employee, not even for a reduced working time, in the place, which was agreed as the place of work performance, or the employee is not willing to shift to other work appropriate and offered to him/her by the employer at the place of work agreed as the place of work performance or undertake the necessary training for this other work. Special conditions may be agreed in a collective bargaining agreement for the performance of the employer's duty.

As was mentioned above, the Labor Code also recognizes the immediate termination of employment relationship. An employer, due to breach of labor discipline or for reason immediate termination of employment relationship, may only give notice to an employee within a period of 2 months from the day the employer became acquainted with the reason for notice, and breaching of labor discipline in abroad, within 2 months from the employee's return from abroad, this always within 1 year from the day when the reason for notice occurred. If the employer intends to give a notice to an employee on grounds of breach of labor discipline, he/she shall be obliged to acquaint the employee with the reason for such and enable him/her to give his/her statement on this.

Termination of employment relationship within the probationary period is possible. During the probationary period the employer and the employee may terminate the employment relationship in writing for any reason whatsoever or without giving a reason. The employer may terminate the employment contract of a pregnant woman, a mother who has given birth within the last nine months or a breastfeeding woman only in writing, in exceptional cases not relating

to her pregnancy or maternal function, giving appropriate reasons in writing, otherwise the termination shall be invalid. Written notification on the termination of an employment relationship shall be delivered to the other party, as a rule, within the minimum of 3 days prior to the day the employment relationship is to termination.

## Special protections

An employer may give notice to an employee with 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 where notice was given to an employee who has reached the age entitling him/her to senior pension. Other reason is if the employer or part is wound up or is relocated and the employee does not agree with the change in the agreed location for performance of work, and also if there are reasons on the part of the employee, for which the employer might immediately terminate the employment relationship with him/her, or by virtue of less grave breaches of labor discipline.

An employer cannot immediately terminate the employment relationship with a pregnant employee, a female employee on maternity leave, or a female or male employee on parental leave, with a lone female or male employee caring for a child younger than 3 years of age, or with an employee who personally cares for a close person who is a person with severe disability. An employer may however terminate an employment relationship with them by giving notice, except for the female employee on maternity leave and male employee on parental leave, for reasons that an employer was lawfully sentenced for committing a willful offense or was in serious breach of labor discipline.

## Notice period

The period of notice shall be at least 1 month. The notice period for an employee who is given notice for the reasons; (i) if the employer or part is wound up or is relocated and the employee does not agree with the change in the agreed location for performance of work, and (ii) if an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on change in duties, technical equipment or reduction in the number of employees with the aim of securing work efficiency, or on other organizational changes, or (iii) the employee's health condition has, according to a medical opinion, caused the long term loss of his/her ability to perform his/her present work, shall be at least 2 months if the employer in employment relationship has employed the employee for at least 1 year and less than 5 years as at the date of delivery of notice, and at least 3 months if the employer in employment relationship has employed the employee for at least 5 years as at the date of delivery of notice.

The notice period for an employee who is given notice for reasons other than those are mentioned above shall be at least 2 months if the employer in employment relationship has employed the employee for at least 1 year as at the date of delivery of notice.

If notice is given by an employee who has been employed in employment relationship by the employer for at least 1 year as at the date of delivery of notice, the notice period shall be at least 2 months.

## Absence of notice period

An employer may terminate an employment relationship exceptionally, only in cases

where the employee; (i) was lawfully sentenced for committing a willful offense, or (ii) the employee was in serious breach of labor discipline.

The subjective period for immediate termination of employment by the employer is 2 months from the date on which he /she became aware of the reason for immediate termination 2 months from the date on which he/she became aware of the reason. The objective period is set at 1 year from the date on which the reason for immediate termination arose.

## Formal requirements

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.

An employer may only give notice to an employee for reasons expressly stipulated in Labor Code. The reason for giving notice must be defined in the notice in terms of fact such that it may not be confused with a different reason, or the notice shall otherwise be deemed invalid. The reason for giving notice may not be subsequently amended.

Moreover, notice that was delivered to the other party may only be revoked with his/her consent. Revocation of notice, and the consent to its revocation must be made out in writing.

## Collective dismissals

The Labor Code requires the employer to discuss with employee representatives, at the latest 1 month before the start of the mass layoff, measures to prevent or reduce the mass layoff. The content of the

discussion also includes the possibility of placing employees in suitable employment at other workplaces of the employer and measures to mitigate the consequences of mass layoff. An employer who does not have employee representatives is obliged to negotiate directly with the employees.

After discussing mass layoff with employee representatives, the employer is obliged to deliver written information on the outcome of the Labor Office and employee representatives.

In the event that the employer violates his/her notification obligation in relation to the relevant Labor Office, the employee with whom the employer terminates the employment relationship is entitled to a wage refund in the amount of twice the average salary. This is a kind of satisfaction for the employee and sanctions against the employer, which should primarily act preventively against the employer in order to consistently fulfill all legal obligations related to mass layoff.

The above sanction for an employer does not apply to the termination of an employment relationship concluded for a certain period of time at the end of the agreed period. It also does not apply to employers who have been declared bankrupt by a court.

## Employees' representatives and state authorities

Termination of employment relationship by the employer with notice or with immediate termination of employment relationship must be negotiated in advance between the employer and employees' representatives otherwise the termination of employment relationship with notice or with immediate

termination of employment relationship shall be invalid. An employee's representative is obligated to negotiate on notice given by the employer within 7 working days of the date of delivery of the employer's written request and immediate termination of employment relationship within 2 working days of the delivery of the employer's written request. If negotiation does not take place within the stated period, negotiation shall be deemed to have taken place.

In addition, the employer may terminate or immediately terminate the employment of a member of the relevant procurement body, the works council or the employee trustee only with the prior consent of such employees' representatives. Prior consent shall also be deemed to have taken place if the employee's representatives have not refused to give their consent to the employer in writing within 15 days of the date on which the employer so requests. The employer may use the prior consent only within a period of 2 months from its granting. If the employee's representatives refused to give their consent, the termination or immediate termination of employment by the employer is invalid.

This condition of validity is not absolute, as the law allows that if the other conditions for termination or immediate termination of employment are met and the court finds in a dispute over the invalidity of the termination of employment that the employer cannot justly be required to continue employing the employee, termination or immediate employment is considered as valid.

## Severance payment

Slovak law does not provide a general legal obligation to pay a severance in the event of a dismissal.



Under the Slovak legislation, an employee is entitled to severance pay only in limited cases. This is the case when the employment relationship is terminated due to the fact that the employer or part of it is terminated or relocated and the employee does not agree with the change of the agreed place of work. Also, when an employee becomes redundant due to a written decision by the employer or the competent authority to change his/her tasks, technical equipment or staff to reduce efficiency or other organizational changes and the employer who is a temporary employment agency, even if the employee becomes superfluous in view of the end of the secondment before the expiry of the period for which the fixed-term employment relationship was agreed. In the third case, it is at the end of the employment relationship due to the fact that the employee has lost the long-term ability to perform the previous work due to his/her health condition, according to a medical opinion.

It is not decisive for the entitlement to severance pay whether the employment relationship was terminated by notice or agreement, even if this fact affects the amount of severance pay.

## Legal protection for the employee

Both the employee and the employer can defend themselves in court against invalid termination of employment within the limitation period of 2 months. In the case of invalid termination of employment, it is a relative invalidity, which can be invoked only by the participant who is affected by the reason for invalidity.

Disputes concerning invalid termination of employment are decided by the courts

on the basis of causal jurisdiction in accordance with the Civil Procedure Code. Both participants in an employment relationship are subject to a 2-month limitation period for claiming an invalid termination of employment, which begins to run from the day when the employment relationship was to end on the basis of this legal act. Claims for invalid termination of employment only apply to cases of termination of employment on the basis of a legal act. Until a final court decision, the employment relationship is considered validly terminated. The basic precondition for the employer to claim invalidity of the termination of employment is the notification of the employee to the employer that he/she insists that the employer continue to employ him. The duration of the employment relationship is linked to that notice.

## Miscellaneous

If the invalidity of the termination of the employment relationship has been determined on the basis of a valid court decision, but the employee announces that he/she does not insist that the employer continues to employ him, the employment relationship is terminated by agreement on the basis of fiction. The fiction of the agreement is valid only if the participants do not agree otherwise. ■



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# SLOVENIA



## 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. 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.

b. 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).

c. 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.

d. A dismissal due to the disability reason is possible if the employee is incapable to carry 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.

- e. A dismissal due to unsuccessful completion of a probationary period is possible at any time during the duration of the probationary period.

## 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 until 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 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 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 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 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, however not more than 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 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 in 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 issued 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 would breach 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 to dismiss 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 right 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 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 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 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 and the criteria laid down for selecting the workers to be made redundant. The employer and the works council must, with the intent to reach 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 performed consultation 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 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 Agency 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) 1/4 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 branch agreement. In case of composition proceedings, the employer and employee may agree to a lower amount of the 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 branch 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 agrees otherwise with the collective branch 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 day 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).

### Miscellaneous

A special feature under the Slovenian law is in the consequences of the judicial protection, i.e., the invalidity of the termination results in the employer's obligation to pay to the employee salary compensation for the period from the invalid termination to the court re-establishment of the employment relationship and to register the employee into the obligatory insurances for the missing period until re-establishment. ■



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### Legal reasons

According to the Spanish Workers' Statute, there are two types of dismissals; (i) objective dis-missals; and (ii) disciplinary dismissal.

- a. Objective dismissals: depending on the number of employees affected, the employer may implement an individual or a collective dismissal.

The individual dismissal is based on objective reasons and these are specifically identified by the law: (i) employee's ineptitude (i.e. loss of driving license if the worker is a driver); (ii) employ-ee's lack of adaption to technical modifications relevant to his role; or (iii) based on economical, technical, organizational or productive grounds.

The collective dismissal are only based on economic, technical, organizational or productive reasons and employers must follow the procedure for this type of dismissal when it affects to a determined number of employees in a given period of 90 days: (i) at least 10 employees in com-pa-nies or work centers with less

than 100 employees; or (ii) at least 10% of workforce in compa-nies or work centers with 100-300 employees; (iii) or at least 30 employees in companies or work centers with more than 300 employees; or (iv) in cases of cease of the activity that affect to all the workforce and represent more than 5 employees.

- b. Disciplinary dismissal: the employer can terminate the employment relationship by discipli-nary reasons when the employee commits serious and negligent breach of contract, for example, consisting of: (i) repeated and unjustified absences from work or punctuality; (ii) a lack of disci-pline or disobedience at work; (iii) verbal or physical offense against the employer, or persons working in the company; (iv) breach of contractual good faith; or (v) regular drunkenness or drug addiction if this has a negative effect on the employee's work.

Collective bargaining agreements usually provide with specific and additional misconducts in which the disciplinary dismissal can be based on.

## Special protections

There are several groups of employees with special protection against dismissal.

The first type of protection applies to employees that have enjoyed a leave or protection right related to a pregnancy, to child care or to the care of a family member with disability. The protection for the employees is that the dismissal could only be declared as fair (if all legal requirements are met) or as null (if the legal requirements for the dismissal are not met); but it is not possible that the termination could be declared as unfair.

Another type of protection is referred to employees that have been subject to discrimination or a violation of their fundamental rights and public freedoms. In this case, the termination would be considered as null and void, which would entail the obligation for the employer to reinstate the employee and the payment of the salaries between the termination and the reinstatement.

A last type of protection is the one referred to employees' legal representatives. In the event these employees are terminated and such termination is declared as unfair, they have the right to choose between the reinstatement (plus the salaries until such reinstatement) or a severance compensation (plus the salaries until such reinstatement).

Also, employees' legal representatives have a special protection in case of certain objective dismissals, since they have recognized a permanency right that entitles them to not be selected for this type of dismissals over other employees. Additionally, in case of disciplinary dismissal,

employers must conduct a disciplinary procedure prior to the final termination.

## Notice period

The notice period depends on the type of dismissal that the employer carries out. In case of dismissal due to objective grounds –individual or collective - the employer must comply with a notice period of 15 days. In case of disciplinary dismissal, there is no notice period to be followed.

## Absence of notice period

In case of objective dismissal (individual or collective) it is possible for the employer to pay in lieu of the notice period, a compensation equivalent to the salaries of the period notice not given. Moreover, in case of disciplinary dismissal, no notice period is required.

## Formal requirements

All types of dismissal must be communicated to the employee in writing, specifying the reasons for the dismissal and the date on which it takes effect.

In case of objective dismissal – individual or collective – the employer would also have to: (i) pay to the employee the severance compensation legally established at the moment the notice letter is delivered to the employee; and (ii) send a copy of the dismissal letter to the employees' representatives (if any).

In case of disciplinary dismissal of employees' representatives, employers are required to hear the rest of the employees' representatives prior to executing the disciplinary dismissal. In case the disciplinary dismissal affects a trade union member, the

trade union will be entitled to contest the charges before the employer executes the disciplinary dismissal.

Normally the dismissal letter (for any kind of dismissal) is handed over to the employee and he/she is required to sign the acknowledge receipt. If this is not possible, it would also be possible to send the dismissal letter by any other means that guarantee proof of the delivery to the employee (post office, etc.). If the employee refuses to sign the acknowledge receipt of the dismissal letter, it would also be possible that two employees sign it as witness of the delivery attempt.

## Collective dismissals

The Spanish Workers' Statute establishes a legal procedure for implementing a collective dismissal ("mass layoff") that employers are obligated to follow. For starting a collective dismissal, the employer must notify the intention of carrying out this procedure to the potential employees' representatives. After 7-15 days, the employer would then be able to start the formal procedure with the designated employees' legal representative for a period of 15-30 days (depending on the size of the workforce). The start of the procedure should also be communicated to the competent labor authority.

At the start of the procedure, the employer should provide several legal documentation and information to the employees' legal representatives and to the labor authority referring to, among others: (i) the objective reasons in which the dismissal is based, (ii) the number and professional classification of the workers affected, (iii) the period envisaged for carrying out the dismissals, (iv) and the criteria taken into account for the appointment of the workers.

The negotiation period should be focused on the possibilities of avoiding the number of redundancies and mitigating their consequences through accompanying social measures (i.e. out-placement, training, increased severance compensation, transfers of workers to other workplaces, substantial changes in working conditions, early retirement, special protection for workers over 55 years of age, among others).

At the end of the negotiation period, the employer must inform the employee' legal representatives and the labor authority of the result, which may be with or without agreement. If it ends without agreement, the employer could execute the dismissals anyway.

## Employees' representatives and state authorities

As mentioned above, in case of collective dismissal, there is a mandatory negotiation period with the employees' representatives. With regards to the labor authority, the employer is only obligated to inform to such authority about the start and the finalization of the negotiation.

Moreover, there are also other mandatory participations of the employees' representatives in case of disciplinary dismissal of employees' representative members, or of trade union members, as explained above.

## Severance payment

According to Spanish Worker's Statute, in case of the disciplinary dismissal, the employee is not entitled to any severance compensation (unless it is declared as unfair by a court).

In cases of dismissal due to objective reasons – individual or collective – the Spanish Workers' Statute only establishes a minimum legal severance compensation which is equivalent to 20 days of salary per year of service (pro rata per month for periods of less than one year), up to a maximum of 12 months' salary.

However, as stated above, severance compensation is usually increased during the negotiation of collective dismissals.

## Legal protection for the employee

Regardless of the type of dismissal carried out by the employer, the employee can file individual lawsuits challenging the dismissal and claiming that the termination is considered null and void, or unfair.

The dismissal is considered null and void, for example, in cases where the dismissal has violated the employees' fundamental rights, or on the special protection scenarios mentioned above.

If the dismissal is declared null and void, the employer must reinstate the employee and pay the lost wages since the date of dismissal. Additionally, it is possible that an additional severance compensation is granted to the employee due to the violation of his/her fundamental rights. This additional compensation is not limited by law.

A dismissal would be considered as unfair when the employer has not complied with the formalities required to carry out the dismissal (e.g. failure to formalize the dismissal in writing) or when the employer has failed to prove the grounds for dismissal.

If the dismissal is declared as unfair, the employer may choose between: (i) the reinstatement of the employee and the payment of lost wages; or (ii) the payment of a severance compensation including the following two periods:

- a. 45 days of salary per year of service up to a maximum of 42 months for the period between the start of employment and February 2012; and
- b. 33 days of salary per year of service with a maximum of 24 months for the period from February 2012 until termination of the contract.

A total limit of 720 days of salary applies for both periods, unless a higher amount is provided from the period 1.

Please note that in case the employee dismissed is an employees' legal representative, he/she would be entitled to choose between these two options, and if choosing the severance compensation, they will also be entitled to be paid the lost wages.

Moreover, in cases of collective dismissals, the employees' legal representatives would be entitled to challenge the dismissal in a collective lawsuit, in which they could claim that the collective dismissal is declared as null and void, or as unfair (with the same consequences as explained before, but with effects to all employees included in the collective dismissal). In case this collective lawsuit is filed, all individual claims filed by employees would be suspended until its final resolution.

## Miscellaneous

Collective bargaining agreements often include specific regulations relevant for

disciplinary and objective dismissals, such as the following:

- a. Additional employees' misconducts in which a disciplinary dismissal can be based on.
- b. Contradictory proceedings applicable to all employees that must be followed prior to terminating based on disciplinary reasons.
- c. Additional guarantees and protections in case of collective dismissal (including mandatory negotiation procedures prior to the legally established one). ■



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# SWITZERLAND



## Legal reasons

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 taking into account 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 his/her reasons in writing if requested by the other party.

## Special protections

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 defense service or Swiss alternative civilian service or, where such service lasts for more than 11 days, during the 4 weeks preceding or following it; (ii) while the employee through no fault of his/her 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 16 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 defense 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/she carries out trade union activities in a lawful manner.

## Notice period

During the probation period, either party may terminate the contract at any time by giving 7 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 employment contract; however, the probation period may not exceed 3 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: 1 month's notice during the first year of service, 2 months' notice in the second to ninth years of service and 3 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 employment contract; however, they may be reduced to less than 1 month only by collective employment contract and only for the first year of service.

## Absence of notice period

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 his/her 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/her own.

Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, that party is fully liable in damages with due 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.

## Formal requirements

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.

## Collective dismissals

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:

- a. 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;
- b. 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);
- c. 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 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 has to be followed in order to avoid violation of the 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 the organization that represents the employees or, where there is none, the employees themselves.

## Employees' representatives 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 the organization that represents the employees or, where there is none, the employees themselves. He/she 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 he/she 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.

## Severance payment

This obligation to offer severance payment arises, for instance, where an employment relationship with an employee of at least 50 years of age ends after 20 years or more 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 people to whom he/she had a duty to provide support.

The amount of the severance allowance may be fixed by written individual agreement, standard employment contract or collective employment contract, but may never be less than 2 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 8 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 himself has terminated it with immediate effect for good cause or where the payment of such allowance would inflict financial hardship on him.

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 employment contract 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.

## Legal protection for the employee

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/she 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/she earned by performing other work or would have earned had he/she 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 6 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. ■



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## Legal reasons

The Labor Code of Ukraine sets forth the exhaustive list of dismissal grounds, which from perspective of a private company, are as follows: mutual agreement of an employer and an employee; termination of a fixed-term employment agreement; military conscription of an employee; 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 company; refusal of an employee to be transferred to another company 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 an employee from performing job duties; dismissal grounds provided for by an employment contract; dismissal grounds provided for by other laws (i.e. violation of conflict of interest rules under the Law of Ukraine "On Limited Liability and Additional Liability Companies").

### a. 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 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. An employee is entitled to early terminate a fixed-term employment agreement only on the reasons of the state of health or breach by an employer of labor laws, a collective bargaining or an employment agreement.

### b. Termination at the employer's initiative

The list of dismissal grounds at the employer's initiative is also exhaustive: (i) changes in organization of production and work, including liquidation, reorganization, bankruptcy of a company, redundancy. The dismissal on this ground shall be prior agreed

with a trade union; (ii) inconsistency between job duties and an employee's qualification or health. The dismissal on this ground shall be prior agreed with a trade union; (iii) failure of an employee to perform on a regular basis without a valid reason his/her job duties provided that this employee has been subject to at least two disciplinary reprimands within the last year. The dismissal on this ground shall be prior agreed with a trade union; (iv) unauthorized absence from work (including absence from work for 3 hours during a working day) without a valid reason. The dismissal on this ground shall be prior agreed with a trade union; (v) absence from work due to a sick leave for more than 4 consecutive months (except maternity leave), unless a longer period of absence is established by the laws for a particular disease. This rule shall not apply to persons having a professional disease or injured as a result of work-related accidents; (vi) reinstatement to a position of an employee, who held it earlier; (vii) appearance at work in a drunken state or a state of intoxication. The dismissal on this ground shall be prior agreed with a trade union; (viii) teal of an employer's assets which fact is established by a court decision that entered into force; (ix) military conscription of an individual – employer; (x) inconsistency between job duties and an employee's qualification determined in the course of a probation.

In addition to the above grounds, an employer may dismiss at its initiative:

- a. those employees that have status of a company's officers or exercise some managerial functions on the following grounds: (i) one-time gross violation of job duties; (ii) guilty actions of a director

which entailed untimely payment of a salary or payment of a salary in the amount lower than the statutory minimum; (iii) termination of authorities of a company's officer;

- b. employees working with material values in case their guilty actions resulted in their miscredit on the management side. The dismissal on this ground shall be prior agreed with a trade union.

## Special protections

An employer is generally 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 listed in items 1, 2 and 6 above is permitted only if an employee may not be transferred to another position within the same employer.

It is not allowed to dismiss at the employer's initiative pregnant women and women with children under the age of 3 (up to 6 years - if the child needs home care), single mothers with a child under the age of 14 or a child with a disability. The same prohibition also applies to 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 to guardians (tutors), one of the adoptive parents, one of the parent-caregivers.

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:

- a. family persons - in case of 2 or more dependents;

- b. persons in whose family there are no other person with independent earnings;
- c. employees with long-term continuous work experience at a given enterprise, institution, organization;
- d. employees that are in-service studying in higher and secondary specialized educational institutions;
- e. combatants, victims of the Revolution of Dignity, war disabled and persons to which the Law of Ukraine "On the status of war veterans, warranties of their social protection" applies, 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;
- f. authors of inventions, utility models, industrial designs and rationalization proposals;
- g. employees affected by work injury or an occupational disease at this enterprise, institution, organization;
- h. employees deported from Ukraine within 5 years upon their return to the permanent place of their residence in Ukraine;
- i. military personnel serving, mobilized soldiers of compulsory military service for a special period, officers of compulsory military service and soldiers of alternative (non-military) service - within 2 years from the date of their dismissal from service;
- j. employees who have less than 3 years before the retirement age, upon which the person is entitled to receive pension payments.

As a general rule, a dismissal of former members of trade unions' elected bodies is prohibited within one year following termination of his/her authorities. A consent of an elected body of a trade union and of a superior elected body of such trade union or association of trade unions (as applicable) is required for dismissal of members of elected bodies of trade unions.

## Notice period

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 of a company, redundancy, 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 the employee a 3 days' notice in writing.

## Absence of notice period

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.

An employee is also entitled to submit a dismissal application at any time on the reason of breach by an employer of labor laws, a collective bargaining agreement or an employment agreement, in which case an employer must terminate employment relationships with the employee within a term requested by the employee.

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.

## Formal requirements

Basically, there are no statutory requirements to 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.

## Collective dismissals

According to the Law of Ukraine "On Employment", a mass layoff is a dismissal:

- a. Within 1 month;
  - i. of 10 employees or more - for companies employing 20-100 employees;
  - ii. of 10 % of employees or more - for companies employing 101 - 300 employees;

- b. Within 3 months - 20% of employees or more - for companies notwithstanding a number of 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. Measures preventing a critical augmentation of unemployment in a region as a result of a mass lay-off may be adopted by special commissions to be created as provided for by a special regulation of the Cabinet of Ministers of Ukraine.

Employers 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 reorientation of a company, redundancy not later than 2 months prior to a dismissal.

## Employees' representatives and state authorities

According to the Labor Code, liquidation, reorganization of an enterprise, change of an ownership form, 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 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 underlying decision shall negotiate with the trade union on measures that may prevent/minimize the number of dismissals. At the same time, the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of their

Activity" contains a much broader wording on this matter, requiring such negotiations to be conducted in case a future dismissal is caused by economic, technological, structural or analogs reasons 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 above, shall be prior agreed with the trade union. The Labor Code establishes the following general rules for getting such consent of a trade union:

- a. An employer shall file a justified dismissal request to a primary organization of a trade union (its elected board or a local representative) which member an employee is.
- b. The request shall be considered by the trade union within 15 calendar days.
- c. 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.
- d. 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.
- e. 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.

- f. The employer shall dismiss the employee not later than 1 month following obtainment of the trade union's consent to dismissal.
- g. 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 officers.

A trade union is authorized to request dismissal of a company's director in case such director violates labor laws, collective bargaining agreements.

## Severance payment

A severance payment shall be paid by an employer in cases set forth by the Labor Code, namely:

- a. A severance payment in the amount of at least one average monthly salary shall be paid in case of dismissal on the grounds of: refusal of an employee to be transferred to another company or to continue working under the changed material conditions of work, changes in organization of production and work, inconsistency between job duties and an employee's qualification or health, reinstatement to a position of an employee, who held it earlier.
- b. Dismissal on the basis of termination of authorities of a company's officer is subject to payment of a severance

payment in the amount of 6 average monthly salaries.

- c. A military conscription of an employee dismissal ground entitles an employee to a severance payment in the amount of 2 minimum salaries.
- d. Dismissal at an employee's initiative on the reason of breach by an employer of labor laws, a collective bargaining or an employment agreement is subject to payment of a severance payment in the amount of at least three average monthly salaries, unless a bigger amount is provided for by the collective bargaining agreement.

## Legal protection for the employee

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. The consequences of a court decision in favor of an employee may be as follows:

- a. Reinstatement of unduly dismissed employee to a position, from which he/she was unduly dismissed, and payment to him/her a salary for the whole period of undue dismissal starting from a dismissal date and up to a reinstatement date.
- b. In case an employer failed to pay to a dismissed employee all amounts to him/her in connection with dismissal on the last working day (which amounts shall include salary, compensation for unused days of vacations, a statutory severance payment), 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).

As litigations in Ukraine may usually last for a couple of years, the final amounts that may be potentially awarded to unduly dismissed employees may be rather substantial.

## Miscellaneous

Ukrainian employment laws are very employees oriented. So are Ukrainian courts. It shall be noted that each dismissal ground at the employer's initiative requires a substantial documentation and justification. As there are no statutory rules or guidelines how such justification shall be collected and comprised of, this is always a subjective matter thus always leaving a room for challenging such dismissal in court. In view of the above, documentation of the employer's reasons for dismissal (notwithstanding a dismissal ground) and implementation of a dismissal in full compliance with all applicable labor laws requirements shall be the principal factors determining if the dismissal will be successful or not. Based on our experience, involvement of qualified lawyers at the preparatory stage of the dismissal is always cheaper and better protects employers from stress and reputational risk than attempts to justify a dismissal in court. ■



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This guide provides an overview of the termination procedures by each country as it relates to Employment and Labor Law provisions regulations by local governments. This guide includes information as it pertains to specific countries on general Employment measures, in specific countries as provided by the member and collaborating firms of Andersen Global.

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