



Mastering Employee Terminations in Germany: A Practical Guide for U.S. Employers

Insights

9.30.24

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Navigating Germany's strict termination and severance rules can be daunting for U.S.-based companies. Unlike in the U.S., German law requires valid reasons for termination, formal warnings, and strict adherence to notice periods. Employees in protected groups, like pregnant women or works council members, enjoy enhanced job security, while severance is often negotiable but not guaranteed. Consulting the works council and local legal experts is vital to ensuring compliance and avoiding costly legal challenges. Dive into this guide to master the key aspects of German employment law and streamline your HR operations overseas.

8 Key Takeaways

- 1. Understand Germany's Strict Termination Laws:** Unlike the U.S., Germany requires valid reasons for termination and adherence to formal procedures.
- 2. Review Special Protections:** Certain employee groups, such as pregnant women and works council members, have enhanced job security.
- 3. Know When Severance Is Owed:** Severance pay isn't automatic but may be required under specific conditions or negotiated agreements.
- 4. Understand the Importance of Formal Warnings:** Before terminating for misconduct, employers must generally issue a formal warning.
- 5. Involve the Works Council:** Employers must consult with the works council before terminations in companies where one exists.
- 6. Observe Notice Periods and Formalities:** Strict notice periods apply, and terminations must be in writing to be valid.
- 7. Review Special Rules for Mass Layoffs and Small Businesses:** Additional obligations exist for mass layoffs, while small businesses have some exemptions.

8. Consult Legal Experts: Due to the complexities, seeking local legal counsel is essential when navigating terminations in Germany.

Termination Basics: What U.S. Companies Need to Know

Terminating an employee in Germany is a complex process governed by stringent laws that differ significantly from those in the United States. For U.S. HR professionals, in-house counsel, and employment lawyers overseeing German operations, understanding these differences is crucial to avoid legal pitfalls and ensure compliance.

This guide provides an overview of the essential aspects of German termination and severance laws, including who can be terminated, required reasons for termination, the role of severance pay, and the importance of involving the works council.

What Constitutes a Termination?

In Germany, a termination is the unilateral ending of an employment relationship by either the employer or the employee (the latter known as resignation). Unlike in the U.S., terminations must adhere to statutory or contractually agreed notice periods, which means immediate dismissals are rare and highly regulated.

Who Is Specially Protected?

Certain employee groups enjoy special protection and cannot be easily terminated:

- **Fixed-Term Employees:** Can only be terminated if the possibility was agreed upon before termination (Art. 15 (3) Part-Time and Fixed-Term Employment Act).
- **Pregnant Women:** Protected from termination during pregnancy and up to four months post-childbirth (Art. 17 Maternity Protection Act). Exceptions require government approval.
- **Employees on Parental Leave:** Cannot be terminated from the request date (up to eight weeks before leave starts) through the end of the leave (Art. 18 Federal Parental Allowance and Parental Leave Act).
- **Caregivers:** Employees on caregiver leave are protected from termination (Art. 5 Caregiver Leave Act).
- **Works Council Members:** Have strong protections and can only be terminated for serious reasons (Art. 15 Employment Protection Act).
- **Severely Disabled Employees:** Termination requires prior approval from the Inclusion Office.
- **Apprentices:** Can only be terminated during the probationary period unless for serious cause.
- **Special Officers:** Data protection, emissions, and waste officers have protections during and after their appointment.

- **During Business Transfers:** Employees cannot be terminated due to the transfer itself (Art. 613a (4) German Civil Code).

When is a Reason for Termination Required?

Under the Employment Protection Act (Kündigungsschutzgesetz, KSchG), a valid reason is required if:

- **Employment Duration:** The employee has been with the company for more than six months.
- **Company Size:** The company employs more than ten employees (post-2003 hires) or more than five employees (pre-2003 hires with at least five still employed).

If these conditions aren't met, while termination may be easier, it still cannot be discriminatory or violate other legal protections.

Valid Reasons for Termination

Germany recognizes three main grounds for termination under the KSchG:

- **Personal Reasons:** Related to the employee's ability to work, such as long-term illness or loss of necessary qualifications (e.g., a driver's license for a driving position). Employers may need to explore options like workplace adjustments before terminating.
- **Behavioral Reasons:** Due to the employee's misconduct or breach of duty (e.g., repeated tardiness, violation of company policies). A formal warning is usually required before termination.
- **Operational Reasons:** Based on business needs, such as restructuring or downsizing. Employers must conduct a "social selection" process, considering factors like age, tenure, family obligations, and disabilities to decide who to terminate.

Can Employees Demand Severance Pay?

While severance pay isn't automatically granted upon termination in Germany, it may be owed under certain circumstances:

- **Operational Terminations:** Employers can offer severance to avoid potential litigation. Under Art. 1a KSchG, if the employer mentions severance in the termination notice and the employee doesn't challenge the termination, they're entitled to half a month's salary per year of service.
- **Collective Agreements or Social Plans:** Severance terms may be outlined in agreements with the works council or in collective bargaining agreements.
- **Settlement Agreements:** Employers and employees often negotiate severance as part of a mutual agreement to end the employment relationship.

The Role of the General Equal Treatment Act (AGG)

Terminations must comply with the General Equal Treatment Act (AGG), which prohibits discrimination based on race, ethnic origin, gender, religion, disability, age, or sexual identity. A termination violating these principles can be deemed invalid.

Importance of Formal Warnings

Before terminating an employee for behavioral issues, German law generally requires:

- **Formal Warning (Abmahnung):** The employer must issue a written warning specifying the misconduct and warning of possible termination upon repetition.
- **Exceptions:** A warning may not be necessary if the misconduct is severe enough that the employer cannot reasonably be expected to continue the employment. Whether the conduct is severe enough in the specific case is usually determined by a court in a lawsuit after termination.

Involving the Works Council

In companies with a works council, employers must:

- **Inform and Consult:** Provide detailed information about the intended termination, including reasons and employee details (Art. 102 Works Constitution Act).
- **Wait for Response:** The works council has up to one week to respond. While they can't prevent a termination, failure to involve them properly can make the termination invalid.

Observing Notice Periods and Formalities

- **Statutory Notice:** Ranges from four weeks to seven months, depending on the employee's length of service.
- **Contractual Notice:** May be longer but not shorter than the statutory minimum.

Formal Requirements

- **Written Form:** Terminations must be in writing and personally signed (Art. 623 German Civil Code). Emails or faxes are invalid.
- **Delivery Proof:** Employers must ensure they can prove the employee received the termination notice.

Obligations Regarding Unemployment Reporting

Employers must inform employees about:

- **Obligation to Register:** Employees must register with the Federal Employment Agency at least three months before the end of employment to avoid delays in unemployment benefits.

Handling Mass Layoffs: Key Obligations

For larger layoffs, additional steps include:

- **Notification:** Employers must notify the Federal Employment Agency before proceeding (Art. 17 KSchG).
- **Thresholds:** These vary based on company size and the number of employees being terminated within a 30-day period.
- **Works Council Involvement:** You must consult with the works council and consider their input.

Failure to comply with these requirements can render terminations invalid.

Extraordinary (Immediate) Termination

- **Severe Cause Required:** Immediate termination without notice is only allowed for serious misconduct making continued employment unreasonable (e.g., theft, violence).
- **Two-Week Window:** The employer must act within two weeks of becoming aware of the misconduct.

Small Business Exemptions

- **Exemptions:** Companies with ten or fewer employees are not subject to the KSchG's strict requirements.
- **Basic Protections Remain:** Terminations cannot be discriminatory or violate good faith principles.

Conclusion

Terminating employment in Germany involves navigating a complex set of laws designed to protect employees. For U.S. companies, it's essential to understand these differences and comply with German regulations to mitigate risks. Engaging local legal counsel experienced in German employment law is highly recommended when handling terminations.

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