

Received notice of termination? – What can you do?



EN

GUTE ARBEIT FÜR
SACHSEN

BABS Beratungsstelle für
ausländische Beschäftigte
in Sachsen

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Termination

The employment relationship can be terminated by either party (employer or employee) under certain conditions before the expiration of the employment contract. Termination is legally valid, provided the requirements set forth in labour law or collective agreements are met.

Form of the notice of termination

Notice of termination must be given in writing (§623 BGB / German Civil Code). Oral notice and notice by e-mail or SMS are not permitted! A written notice of termination is valid as a printed document sent by post. The notice of termination must be received; in the event of termination by the employee, delivery by registered mail is recommended.

The notice must be signed.

Date

The date on which the notice of termination was given is very important. Retroactive notice is not possible.

Protection against termination

According to the Dismissal Protection Act, termination of the employment relationship of an employee who has been employed by the same company or organization without interruption for more than six months is legally invalid if it is socially unjustified.

According to the general regulations regarding protection against dismissal, termination by the employer is socially justified only if there are reasons relating to the employee's person (e.g. insufficient suitability), the employee's conduct

(e.g.refusal to work, false claims of incapacity to work) or if urgent operational reasons apply.

Certain groups enjoy special protection against dismissal (e.g.the requirement of approval by the authorities or the exclusion of ordinary dismissal): **Severely disabled persons, women during pregnancy and for four months after childbirth, persons on parental leave (family leave), members of works councils, trainees, persons in care periods and holders of elective political offices.**

In companies in which a works council or staff council has been set up, the works council must be heard before any notice of termination is issued.

An employee termination is effective without stating the reason for termination! No reason for termination is necessary for a regular termination of the employee.

Notice periods pursuant to the German Civil Code

The employment relationship may be terminated by either party (employer or employee) with a notice period of **four weeks** to the fifteenth or to the end of a calendar month (§ 622 BGB).

The period of notice runs from the moment the letter of notice is sent. For this reason, it is very important to send the letter of notice by registered mail or to hand it over in the presence of witnesses.

A notice of termination **does not have to be confirmed** by the other party. If the employee gives notice, he or she does not have to wait until the employer signs or accepts the resignation. The notice period begins at the moment of delivery. The same applies to termination by the employer. If the notice of termination is not unjustified for other reasons, the notice period has been observed and no legal action for protection against dismissal has been initiated within 3 weeks, the notice of termination is valid. If the notice of termination does not meet the above requirements, it is invalid and you must resume work immediately.

If other notice periods have been agreed upon in the employment contract, the so-called **Günstigkeitsprinzip (principle of favourability)** applies. The principle of favourability means that, in cases in which more than one provision of the law is applicable, the legal provision that is more favourable to the employee concerned applies.

Contractual penalty in the event of termination

Failure to comply with the notice period in the event of termination by the employee may result in a contractual penalty. However, the employer may demand a contractual penalty from the employee only if this was agreed upon in the employment contract (or collective agreement) and if it is appropriate and the employee is not unreasonably disadvantaged ...

Periods of notice during the probationary period

During a probationary period specified by agreement (for a maximum of six months), the employment relationship may be terminated with a notice period of two weeks (§ 622 BGB).

Periods of notice according to collective agreements

Different provisions may be set forth in collective agreements. A collective agreement contains legal provisions that regulate the content, conclusion and termination of employment relationships and operational issues and define the rights and obligations of the parties to the collective agreement.

Collective agreements have different areas of application. There are **company or in-house collective agreements** in which the employer himself is a party to the agreement and the agreement applies only to a specific company. Then there are collective agreements which have been concluded within a collective bargaining union, i. e. between trade unions and employers' associations, for example. Such a collective agreement applies to an employment relationship if the employer is a

member of the employers' association that concluded the collective agreement and if the employee is member of a trade union. Then there are **generally binding collective agreements** which apply to a specific industry and to all employers and employees within that industry. The generally binding nature of the collective agreement is declared by the Federal Ministry of Labour and Social Affairs (§ 5 TVG). In addition, there are still collective agreements which apply only in certain German states. More information about collective agreements that apply in Saxony can be found at: <http://www.arbeit.sachsen.de/894.html>

The following examples illustrate the differences between statutory notice periods and collective bargaining notice periods. For **further information** on collective agreements, please contact the **Advisory Center for Foreign Employees in Saxony** or your trade union.

Periods of notice – building cleaning services

A collective agreement addresses the specific features of the building cleaning sector and is **binding for all employees and employers in the building cleaning sector**.

An employment relationship in the building cleaning sector can be terminated by either party with two weeks' notice (even after the end of the probationary period).

During the first two weeks of employment, notice of termination may be issued with a notice period of one **working day**.

During the period from 1 November to 31 March, the employer has the option of terminating the employee's employment by giving one working day's notice due to weather conditions. However, this is possible only if the employee cannot be employed elsewhere in the company. Such cases must be discussed with the works council, and the employee concerned has the right to reinstatement.

Periods of notice – Temporary work

There are two collective agreements in the temporary employment sector – iGZ-DGB-Tarifgemeinschaft und BAP/DGB-Tarifgemeinschaft. Your employment contract specifies which collective agreement applies to you.

Periods of notice according to iGZ-DGB-Tarifgemeinschaft collective agreement

The first six months are considered a probationary period.

During the first four weeks of the probationary period, the employment relationship may be terminated with a notice period of **two working days**.

From the fifth week until the end of the second month the notice period is one week. The notice period is two weeks from the third month until the sixth month of the employment relationship.

From the seventh month of the employment relationship, the statutory notice periods apply to both parties – that is, **four weeks** to the fifteenth or the end of a calendar month.

Periods of notice according to the collective agreement for the BAP/DGB tariff community

The first six months are considered a probationary period.

During the probationary period, the employment relationship may be terminated during the first three months with **one week's notice**. Thereafter, i. e. between the third and sixth month, the statutory notice periods apply during the probationary period, i. e. **two weeks**.

After the probationary period, the employment relationship may be terminated with a notice period of **four weeks** to the fifteenth or to the end of a calendar month.

In the case of new hires, the notice period may be shortened to **one day** during the first two weeks of the employment relationship.

Periods of notice – construction industry

The employment relationship may be terminated by either party during the first six months by giving **six working days'** notice.

After six months or after commencement of employment following successful vocational training, both parties may terminate the employment relationship with a notice period of **twelve working days**.

The employment relationship cannot be terminated during the period from 1 December to 31 March (bad weather period) due to weather conditions.

Extraordinary termination

The employment relationship may be terminated **without prior notice** by any party to the contract **for cause** if facts exist on the basis of which the continuation of the employment relationship until expiration of the notice period or until the contractually specified date of termination of the employment relationship cannot be reasonably expected (§ 626 BGB), e.g.refusal to work, theft, etc.

As a rule, extraordinary termination must be preceded by a **warning letter**. Notice of termination must be issued **within two weeks**. This period begins on the date on which the party entitled to terminate the contract becomes aware of the facts cited in justification of termination.

The terminating party must inform the employee concerned of the reason for termination in writing upon request.

Termination agreement

A termination or cancellation agreement is an agreement between the employee and the employer to terminate the employment relationship. Under the terms of such an agreement, the parties do not have to comply with the statutory notice periods – the date of termination is specified in the agreement.

Unlike a notice of termination, a termination agreement requires the consent of both the employee and the employer. The termination agreement is valid **only if signed by both parties**.

The termination agreement must be **recorded in writing**.

The termination agreement may have certain advantages as well as disadvantages for the employee. The termination agreement is a good instrument for the employee if he or she is unable to comply with the notice periods for various reasons – for example if he or she wishes to accept a new job before the end of the notice period.

The employee should not sign the termination agreement if he or she does not have another job. After the termination agreement has been concluded, a **12-week blocking period** at the Agentur für Arbeit (National Employment Agency) must be expected. Since the termination agreement requires the employee's consent, it is regarded by the Agentur für Arbeit as equivalent to termination by the employee. No unemployment benefits are paid during the blocking period, and the unemployment benefit is reduced by 25% thereafter. There is no entitlement to health insurance during the blocking period! The employee must take out private health insurance during this period.

Notice of termination and unemployment notification

According to § 38 Abs. 1 SGB III, persons whose employment relationship ends must register with the Employment Agency at least three months before the end of their employment. If the notice period is less than 3 months, the employee must report to the Employment Agency within three days.

Termination and health insurance

In Germany, the employer may dismiss their employees during periods of incapacity for work. In the event of dismissal during illness, the statutory and collective agreement notice periods must be observed.

According to § 19 SGB V, employees are entitled to benefits for **one month** after termination, even if they are not gainfully employed.

In the event of incapacity to work, insured persons are obliged to inform their health insurance fund **within seven days** and hand in their health insurance certificates.

If you comply with this obligation, you can receive health insurance benefits for **up to 78 weeks** after termination. The sickness benefit amounts to 70% of your last gross salary.

If you do not comply with this obligation, you will automatically be registered as **privately insured** by the health insurance fund and will have to pay your own health insurance contributions.

Legal action in cases of dismissal

If the employee considers a dismissal to be socially unjustified, he or she can file an appeal with the **works council** (if one exists) **within one week of dismissal**. If the works council considers the objection to be justified, it must attempt to reach an agreement with the employer (§ 3 KSchG).

If an employee wishes to claim that a notice of termination is socially unjustified or legally invalid for other reasons, he or she must file a complaint before the **Labour Court** within **three weeks** of receipt of the written notice of termination. If the employee has filed an objection with the works council, he or she should attach a statement by the works council to the complaint (§ 4 KSchG).

Other reasons why a notice of termination may be invalid include the following: notice has not been issued in the proper form (but rather orally or by email); the employee is a member of the works council, the employee is pregnant, the employee is severely handicapped, the employee was terminated without notice and without warning, although the requirements were not met, etc.

Any employee may file a dismissal protection complaint with the appropriate labour court himself at the legal request office (1st instance). Here the judicial officers help with the filing of an application or also with the elevation of a complaint (here there is however no legal advice).

If the decision is appealed in 1st instance, the employee must be represented by a lawyer.

You will find contact information for the respective labour courts at: <https://www.justiz.sachsen.de/content/argb.htm>

Employees who are members of a trade union are entitled to free legal advice and representation before the labour court after three months of membership.

More information on trade unions can be found at: <http://sachsen.dgb.de/>.

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