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Termination Protection in Germany — Rights and Obligations

When termination protection law applies, which termination grounds are permissible, and how to defend yourself against dismissal.

Deutsche Begriffe: Kündigungsschutz | Kündigungsschutzgesetz | Sozialauswahl | Betriebsrat | Abmahnung | Sonderkündigungsschutz

What is termination protection?

Termination protection protects employees from **arbitrary dismissal** by their employer. The most important law for this is the **Kündigungsschutzgesetz (KSchG)**. It ensures that a dismissal is only permitted on **specific grounds**.

When does the Kündigungsschutzgesetz apply?

The KSchG applies when **both** conditions are met:

- 1.** The business has **more than 10 employees** (full-time positions; part-time counted proportionally)
- 2.** You have been employed for **more than 6 months** (probationary period over)

Important: In **small businesses** (10 or fewer employees), the KSchG **does not apply** — the employer can dismiss more easily (but not discriminatorily!).

Which termination grounds are permissible?

The KSchG allows three types of termination grounds:

1. Termination on operational grounds

The employer must **reduce positions** due to:

- **Decline in orders** — less work available
- **Restructuring** — department is closed or merged
- **Location closure**
- **Outsourcing** — tasks are transferred to external companies

Social selection: The employer must determine which employees have the least need for protection:

| Criterion | More Protection |
|--------------------------|------------------------------------|
| Length of service | Longer service = more protection |
| Age | Older employees = more protection |
| Dependents | Children, spouse = more protection |
| Severe disability | GdB \geq 50 = more protection |

2. Termination on personal grounds

The employee **can no longer** perform their work duties, e.g.:

- **Long-term illness** — if improvement is not expected in the foreseeable future
- **Frequent short-term absences** — if absences are permanently too high (more than 6 weeks/year over 3+ years)
- **Loss of work permit** — for foreigners, if residence status is not renewed
- **Loss of driver's license** — if the position requires a license

Note: Dismissal due to illness is **very difficult** for the employer. They must conduct **occupational reintegration management (BEM)** before dismissal is allowed.

3. Termination for cause

The employee **violates** their contractual obligations, e.g.:

- **Unexcused absence**
- **Refusal to work**
- **Theft** (even minor!)
- **Insult** of supervisors or colleagues
- **Alcohol/drugs** in the workplace
- **Sexual harassment**
- **Data misuse**

Warning: Generally, the employer must **warn** the employee before dismissal for cause — i.e., formally reproach the misconduct in writing and point out the consequences. Only upon **repetition** may dismissal occur.

Exception: For **serious violations** (e.g., theft, violence), **summary dismissal** without prior warning is possible.

Special termination protection

Certain groups of employees enjoy **special protection**:

| Employee Group | Protection |
|--|---|
| Pregnant women | Dismissal prohibited (from pregnancy until 4 months after birth) |
| Parental leave | Dismissal prohibited (from notification, max. 8 weeks before start) |
| Severely disabled (GdB \geq 50) | Consent of integration office required |
| Works council members | Dismissal only for important reason + works council consent |
| Data protection officers | Dismissal only for important reason |
| Maternity protection | Dismissal prohibited (protection period + 4 months after birth) |
| Apprentices (after probation) | Dismissal only for important reason |
| Military service | Dismissal prohibited |

Warning — the yellow card

What is a warning?

A warning is a **formal reprimand** from the employer. It must contain:

- 1. Specific misconduct** — what, when, where (not: "You're always late")
- 2. Demand for improvement** — what the employee should change
- 3. Threat of consequences** — "In case of repetition, dismissal will follow"

Your rights

- You can write a **response statement** (placed in personnel file)

- You can **contest** the warning (if unjustified)
- After **2-3 years** without further incidents, the warning should be removed from your file

Notice period

Statutory notice periods (§ 622 BGB)

| Length of Service | Notice Period (Employer) |
|----------------------------|-------------------------------------|
| Probationary period | 2 weeks |
| Up to 2 years | 4 weeks to the 15th or end of month |
| 2 years | 1 month to end of month |
| 5 years | 2 months to end of month |
| 8 years | 3 months to end of month |
| 10 years | 4 months to end of month |
| 12 years | 5 months to end of month |
| 15 years | 6 months to end of month |
| 20 years | 7 months to end of month |

Collective agreement or employment contract may provide for **longer** periods — but never shorter (except during probation).

Summary dismissal (§ 626 BGB)

In **serious cases**, the employment relationship can be **terminated immediately** (without notice):

- **Important reason** required (e.g., theft, violence, serious insult)
- Must be made **within 2 weeks** of learning of the reason
- Applies to **both parties** — the employee can also terminate immediately (e.g., for mobbing, unpaid wages)

What to do if dismissed

Act immediately!

- 1. Review the dismissal** — Is it in writing? Is the notice period correct? Was the works council consulted?
- 2. Remember the 3-week deadline** — File suit at the labor court **within 3 weeks** of receipt!
- 3. Notify the employment agency** — **Within 3 days** of receiving dismissal, register as a job seeker!
- 4. Contact a lawyer** — labor law attorney, union, or immigration counselor
- 5. Request a work certificate** — Your right to a qualified reference

Lawsuit at labor court

- **Costs:** Each party pays their own lawyer (no cost recovery, even if you win)
- **Legal aid:** If you have low income, the state covers costs
- **Settlement hearing:** About 60% of cases settle (often with severance)
- **Duration:** First instance approx. 3-6 months

Works council — your shield

The **works council** must be **consulted** before every dismissal (§ 102 BetrVG). A dismissal without works council consultation is **void!**

The works council can:

- **Consent** — dismissal is executed
- **Express concerns** — dismissal can be executed despite concerns
- **Object** — employee has a **right to continued employment** until the labor court decides

Tips for foreigners

- 1. 3-week deadline** — the most important deadline! File suit, otherwise the dismissal is valid
 - 2. Check your residence status** — dismissal may affect your status
 - 3. Join a union** — free legal protection in employment law
 - 4. Keep documents** — employment contract, warnings, emails, meeting notes
 - 5. Don't sign hastily** — never immediately sign a severance agreement or dismissal
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