

Overview

Labour Law



Hjalmar B. Hütte, Rechtsanwalt
Hütte Rechtsanwälte Partnerschaft mbB
Bethmannstraße 8, 60311 Frankfurt, Germany
h.huette@huetten-legal.com – Tel. +49-69-2475612-10

Overview

Labour Law – Learning Outcomes

Upon successful completion of this lecture, students shall be able to:

- master basics on employment contracts and employer-employee relationships,
- identify situations in labour law which require special actions,

Overview

Labour Law – Learning Outcomes

- Individual and collective labour law:
- Employment contract: parties, content, form
- Salary: basic salary, bonus, benefits
- Employer-employee relationship: rights and obligations - employer/employee
- Disciplinary actions: principles, warning letter, promotion/demotion
- Termination: ordinary termination (business reasons, personal reasons, behavioral reasons), extraordinary termination, termination notice
- Legal procedures: action against termination notice/Termination Protection Act
- Co-determination: works council, election, rights and obligations, status of the works council members

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- D. Works Council

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A. Legal Sources

. General Regulations about Employment

- Examples:
- General Terms and Conditions
- Claims and Obligations
- Ordinary Termination with Prior Notice
- Extraordinary dismissal
- Dismissal Notice Period
- Letter of Reference

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- I. German Civil Code
- II. **General Equal Treatment Act**
- III. Act on Notification of Conditions Governing an Employment Relationship
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A. Legal Sources

Prohibition of the discrimination on the basis of

- Race
- Religion
- Handicap
- Age
- Gender



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A. Legal Sources

•Examples:

- Prohibition of discrimination of gender in advertisement for recruitment without rational reasons
- Prohibition of discrimination in wages, promotions etc.
- Preventive measures against harassment

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A. Legal Sources

Employment Agreement

✓ Form:

- In writing (signed document)
- Latest: one month after the start of employment

✓ Content:

- Contract Partner
- Starting date of the contract
- Time and place of work
- Holidays
- Termination date
- Ideally in German language

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A. Legal Sources

- Fixed term employment is limited to 2 years
(exception for new companies: 4 years)
- But: Contracts can be sequenced up to 3 times
- Termination is in general forbidden

- Fixed term employment needs an explicit agreement for validation

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A. Legal Sources

- **Exceptions:**
- **Reasonable grounds:**
- Corporate matters
- Back up's for maternity leavers
- Personal reasons of the employee
- Probationary Period
- 4 months unemployed and over
52 years olds (Max. term of
5 years)

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A. Legal Sources

•Working Time:

not more than 8 hours a day

•Overtime Work:

not more than 2 hours a day

•In a six months period the average of 8 hours per day shall not be exceeded

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A. Legal Sources

Breaks:

- During 6 - 9 hours working time:
30 minutes
- After more than 9 hours working time:
45 minutes
- Infringement of these rules may lead to a up to 15.000 € fine or to up to a 1 year prison sentence
- Exceptions are lawful in benefit of the employee

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A. Legal Sources

- 24 holidays minimum per year (based on a 6 days working week)
- Sick days do not count as holidays
- Time of holiday has to be respected by the employer
- Employee has to respect the interest of the employer



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- Claim arises after six months of working time
- Claim expires latest on the 31st of March of the following year
- Exceptions are lawful in benefit of the employee

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A. Legal Sources

Maternity Protection Act

- Obligation of the employee to inform the employer
- Obligation of the employer to inform the competent authority (Regierungspräsidium Darmstadt)
- Before birth: Six weeks of work prohibition (relative)
- After birth: eight weeks
of work prohibition
(absolute)
- Night shift or physical
work is forbidden

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A. Legal Sources

Invalid termination

- During pregnancy and 4 months after birth
- If the pregnancy is occurring just two weeks after the notice of termination



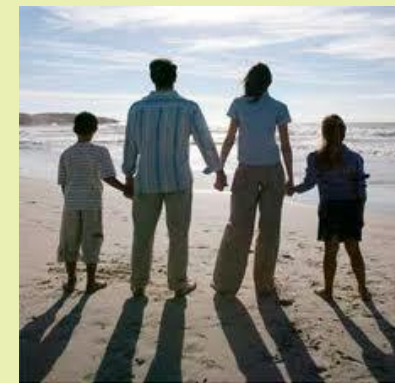
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A. Legal Sources

Act on Federal Parental Benefit and Parental Leave

- There is up to three years of maternity leave, one year can be taken flexible till the 8th year of the child's
- Seven weeks deadline for applying



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A. Legal Sources

- Right to claim of part time work (< 30 hours a week) on the condition of a 6 months working time of the employee and at least 15 employees employed in the company
- First year of the maternity leave is benefitted with a payment ranging from 300 € - 1,800 €
- If both parents take the leave together the payment is due up to 14 months

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Employment Protection Act

- < 10 employees in the company
- German law applicable
- Claim for Employment Protection
- Law Suit
- Conciliation hearing:
90% success rate
- if not: trial
- Labour court

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A. Legal Sources

- Labour Law Suit
- Labour court
- Conciliation hearing:
90% success rate
- if not: trial
- Duration ca. 5 – 12 months



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Works Constitution Act

- More than five employees in the company lead to right of the establishment of a works council
- Employees elder than 18 years can vote
- Works council members are protected by special termination protection
- Leading employees and board members are not allowed to stand for elections of works council

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A. Legal Sources

• Election is every 4 years between the 1st of March till 31st of May

• Members:

- 5-20 employees: 1 works council member
- 21-50 employees: 3 works council members
- 51- 100 employees: 5 works council members
- 101-200 employees: 7 works council members
- 201-400 employees: 9 works council members
- 401-700 employees: 11 works council members
- 701-1000 employees: 13 works council members
- 1001-1500 employees: 15 works council members
- 1501-2000 employees: 17 works council members
- 2001-2500 employees: 19 works council members
- 2501-3000 employees: 21 works council members
- 3001-3500 employees: 23 works council members
- 3501-4000 employees: 25 works council members
- 4001-4500 employees: 27 works council members

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A. Legal Sources

- § 87 Co-determination Rights
- § 94 Questionnaire for Staff
- § 95 Guidelines for Selection
- § 99 Co-determination Right on Individual Measures

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A. Legal Sources

- § 102, 103 Codetermination Right on Terminations
- § 112 Social Plan
- Companies with more than 21 employees have to give Co-determination Rights in cases of transfer, terminations and recruiting

Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

B. Beginning of the Employment

- Questions are only lawful if work related
- Consequents of unlawful questions: candidate is allowed to lie



Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

B. Beginning of the Employment

Unlawful Questions:

- About union membership
- About religion
- About pregnancy
- About sickness
- About alcoholism
- About parents

Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

B. Beginning of the Employment

- Reference/ interim reference
- Rating of the employee about his knowledge, behaviour and work ethics



Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

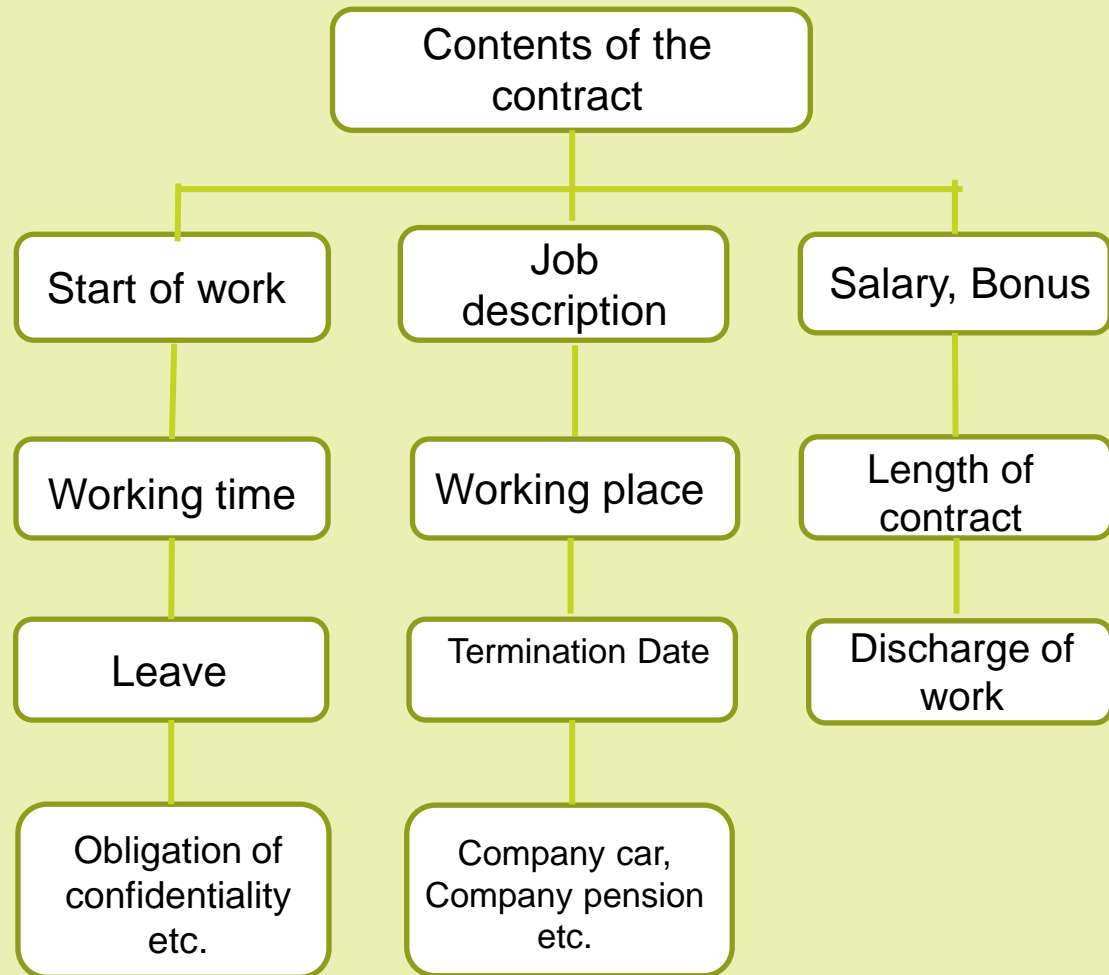
B. Beginning of the Employment

- Examples:
- Er hat seine Aufgaben **stets zu unserer vollsten Zufriedenheit** erfüllt. X Verhalten zu Vorgesetzten und Mitarbeitern war **stets vorbildlich**.
- Er hat seine Aufgaben **zu unserer vollsten Zufriedenheit** erfüllt. X Verhalten zu Vorgesetzten und Mitarbeitern **war vorbildlich**.
- Er hat seine Aufgaben **zu unserer vollen Zufriedenheit** erfüllt. X Verhalten zu Vorgesetzten und Mitarbeitern war vorbildlich.
- Er hat seine Aufgaben **im Allgemeinen zu unserer Zufriedenheit** erfüllt. X Verhalten zu Vorgesetzten und Mitarbeitern war vorbildlich.

Overview

- I. Interview
- II. **Working Contract**
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B. Beginning of the Employment



Overview

- I. Interview
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B. Beginning of the Employment

✓ General Terms of Business

- Standard business terms are all contract terms pre-formulated for more than two contracts which the employer presents to the employee upon the entering into the contract



Overview

- I. Interview
- II. **Working Contract**
- III. Residence Permit

B. Beginning of the Employment

- Usually the employee has no possibility to negotiate
- Surprising and ambiguous clauses are invalid
- The clauses ought to be transparent, every doubt leads to the disadvantage of the employer
- Employment contracts lead to the assumption of general terms of business

Overview

- I. Interview
- II. **Working Contract**
- III. Residence Permit

B. Beginning of the Employment

✓ Probation Period

- First six months from the start of work
- Employment Protection Act does not apply
- Minimum notice of 2 weeks



Overview

- I. Interview
- II. **Working Contract**
- III. Residence Permit

B. Beginning of the Employment

✓ 13th Month Salary

- No obligation, if not agreed on or if not deriving from an applicable tariff agreement
- Claim does arise, if repeatedly paid during the last three years or agreed in employment agreement
- Bonus Agreement Clause has to follow the Transparency Principle



Overview

- I. Interview
- II. **Working Contract**
- III. Residence Permit

B. Beginning of the Employment

✓ Transfer/ branch transfer

- Right of transfer for the employer has to be set in the employment agreement
- Example:

The employer has the right to transfer the employee for corporate reasons

- Without contractual agreement, a transfer is valid if the employee approves
- Private/family matters and suitability have to be taken into consideration



Overview

- I. Interview
- II. **Working Contract**
- III. Residence Permit

B. Beginning of the Employment

✓ Sick leave

- Not equal to holidays
- No medical certificate needed till the third day
- No time limit if a medical certificate is presented



Overview

- I. Interview
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- III. Residence Permit

B. Beginning of the Employment

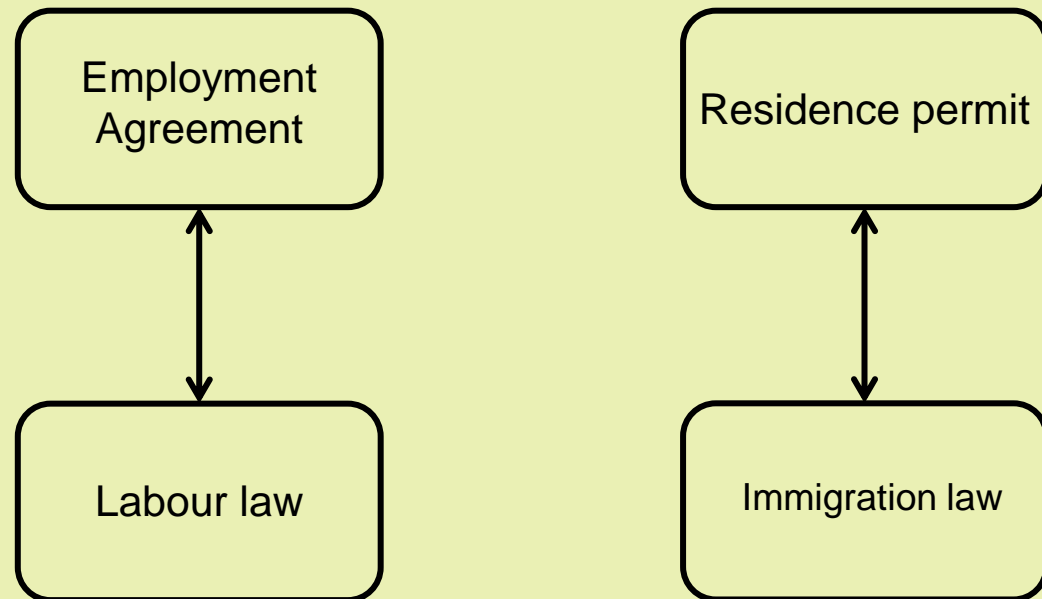
- ✓ If the medical certificate/sickness raises doubts, the employer is allowed to:
- Employ the medical service of the public health insurance
 - Hire a detective
 - Conduct unannounced visits



Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

B. Beginning of the Employment



Overview

- I. Interview
- II. Working Contract
- III. Residence Permit

B. Beginning of the Employment

✓ Different types of Visas

- Visa
- Residence Permit
- Settlement Permit



Overview

- I. Interview
- II. Working Contract
- III. **Residence Permit**

B. Beginning of the Employment

- The visa grants three months of residence in Germany without a working permit

Exceptions:

- Fairs and contract negotiations
- For a longer residence you have to apply for a residence permit



Overview

- I. Interview
- II. Working Contract
- III. **Residence Permit**

B. Beginning of the Employment

- Before the residence permit is granted, the candidate is not allowed to work.
- Till the end of the application process the candidate is only allowed to stay in Germany.
- Penalties for infringements:

Employee	Employer
Departure Fine of max. 50.000 Euro Max. 3 years prison sentence	Fine of max. 500.000 Euro Max. 10 years prison sentence

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- II. Work Protection
- III. Compensation
- IV. Termination Agreement

C. End of Employment

✓ Notice Period

§ 622 BGB

Notice period for an employee termination is
4 weeks to the 15th or the end of a month.

Notice period for employer termination is as follows if the
employment in the business or the company

- had a duration of two years: one month to the end of a calendar month,
- had a duration of five years, two months to the end of a calendar month,
- had a duration of eight years, three months to the end of a calendar month,
- had a duration of ten years, four months to the end of a calendar month,
- had a duration of twelve years, five months to the end of a calendar month,
- had a duration of fifteen years, six months to the end of a calendar month,
- had a duration of twenty years, seven months to the end of a calendar month.

Overview

- I. Termination
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- IV. Termination Agreement

C. End of Employment

✓ Form:

- In writing, if not the notice is invalid
- Personal delivery or registered mail
- Duty to inform the employee about registration at the labour office of upcoming unemployment



Overview

- I. Termination
- II. Work Protection
- III. Compensation
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C. End of Employment

- ✓ Works Council Hearing:
 - before notice
 - if not: notice is invalid



Overview

- I. Termination
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- III. Compensation
- IV. Termination Agreement

C. End of Employment

- ✓ Duty to inform the works council about:
 - Name, reason of termination and date of termination
 - Works council has a one week time for objections
 - Exceptions: in case of an extraordinary termination the time for response is only 3 days



Overview

- I. Termination
- II. Work Protection
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C. End of Employment

✓ Mass dismissal

- Notice to the labour office 30 days in advance to the mass lay-off, for valid terminations
- Notice to the works council with all relevant information



Overview

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C. End of Employment

Conditions:

- 21 - 60 employees and a lay-off of min. 6 employees
- More than 60 employees and a lay-off exceeding 10% or over 26 employees
- More than 500 employees and a lay-off exceeding 30 employees

Overview

- I. Termination
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C. End of Employment

✓ Termination protection

- Employer has to proof that continuing of the employment is damaging the company
- If termination protection applies, a termination of the employment is difficult to achieve



Overview

- I. Termination
- II. **Work Protection**
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C. End of Employment

✓ § 23 Work Protection Act:

- Before 2003: more than 5,25 Employees
- After 2004: more than 10,25 Employees
- Part time workers under 20 hours a week count as 0,5; under 30 hours a week count as 0,75

✓ § 1 Work Protection Act:

- Minimum of 6 months working time



Overview

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C. End of Employment

✓ Reason of Termination

- If the termination protection law applies, the termination is regarded as social unacceptable
- 3 weeks protection deadline after notice of termination: employee has to sue against the termination at the labour court



Overview

- I. Termination
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C. End of Employment

✓ Justified Reasons for Terminations:

- 1. Personal Reasons
- 2. Behaviourial Reasons
- 3. Corporate Reasons
- Work Council has to be heard before giving notice

Overview

- I. Termination
- II. **Work Protection**
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C. End of Employment

✓ Personal Reasons:

- Typical Example: Sickness of the Employee
- But: a termination based on the sick days is invalid

Overview

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C. End of Employment

✓ Employer has to proof:

- Damage to the Company and lack of working performance
- The sickness continues also in the future



Overview

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C. End of Employment

✓ Behavioral Reasons:

- Breach of main obligations and related obligations
- Breach of the employment agreement
- Warning notice is necessary

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C. End of Employment

✓ Examples:

- No performance, breach of the criminal code, irregular behavior outside of work
- alcoholism, internet surfing, private phone calls, violence in the office, steady lateness, side jobs



Overview

- I. Termination
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C. End of Employment

✓ Corporate Reasons

- In general: freedom of business
- But: no free disposal

Examples:

- Shortness of Productivity or the Corporation, Relocation



Overview

- I. Termination
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C. End of Employment

✓ **Social Selection is necessary**

- Age, length of service, support duties (partner, children), disability
- The employee with the lowest need of protection has to be dismissed first

Exception: employee with

- special knowledge,
- special abilities,
- or superb performance

Overview

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C. End of Employment

Social Selection

Example: Point System, § 1 VI KSchG

Age: 1p,
over 50years: 2p

Length:
1p

Duty to
support: 10p

Disability:
15p

	Age	Length	Duty to support	Disability	
A	55	35	No	No	60+35
					95
B	41	15	No	Yes	41+15+15
					71
C	35	15	2	No	35+15+20
					70
D	33	8	3	No	33+8+30
					71

Overview

- I. Termination
- II. **Work Protection**
- III. Compensation
- IV. Termination Agreement

C. End of Employment

- Extraordinary Termination

- § 626 BGB

- Important reason

Examples:

- Violence, fraud,

- 2 weeks deadline starting from the knowledge of the reason

- Works council hearing



Overview

- I. Termination
- II. **Work Protection**
- III. Compensation
- IV. Termination Agreement

C. End of Employment

✓ Exchange Notice

- E.g. Reduction of the salary: termination of the employment and offer of a new employment with a lower salary
- Termination protection applies
- change of salary by order:
Almost impossible

Overview

- I. Termination
- II. Work Protection
- III. **Compensation**
- IV. Termination Agreement

C. End of Employment

✓ Compensation

- Suing for termination protection does not include matters of compensation
- Compensation is not regulated



Overview

- I. Termination
- II. Work Protection
- III. **Compensation**
- IV. Termination Agreement

C. End of Employment

✓ **Exception:**

- § 1a Termination Protection Act
- Claim for Compensation is valid in cases of termination based on important corporate reasons, if the employee does not sue for termination protection

Calculation:

- length of service x 0,5 monthly salary

Overview

- I. Termination
- II. Work Protection
- III. Compensation
- IV. Termination Agreement

C. End of Employment

Termination Agreement

✓ Form

- Writing
- Works council is not to participate

✓ Content:

- (Reason for termination)
- Compensation
- Return of Company property
- Outplacement
- Holidays
- Obligation of confidentiality
- Reference



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

✓ Free choice of the employees

- Condition: five or more permanent employees elder than 18 years
- Setting up by voting
- Voting by the employees of one company or by separate departments of a company



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- **Voting rights:**

All employees of the company who are 18 years of age or older

- **Eligibility:**

All employees with voting rights who have been employed for min. six months

- **Regular Elections:**

Every 4 years, between 1 March and 31 May



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

•Reasons for Extraordinary Elections:

- If the number of employees regularly employed has increased or decreased by one half but by not less than fifty in any case
- the total membership of the works council has fallen below the prescribed number;
- the works council decides to resign by the vote of a majority of its members
- the works council election results are successfully contested
- the works council is dissolved by court order or
- there is no works council in the company

Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

✓ Election Process:

- electoral board shall be elected at a works meeting of the employees or be appointed by the central works council
- electoral board shall call the election, carry it out according to the **election procedure** and announce the results
- Simplified electoral procedure for small companies



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- The works council shall be elected directly by secret voting
- The election shall be conducted according to the principles of proportional representation
- Each list of candidates submitted by the employees shall be signed by a minimum set out in § 14 Works Constitution Act

Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- No person shall obstruct the election of a works council
- works council should be composed as far as possible of employees of the various organization units and the different employment categories of the workers employed in the company
- The gender that accounts for a minority of staff shall at least be represented according to its relative numerical strength whenever the works council consists of three or more members
- costs of the election shall be borne by the employer

Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- **Central Works Council (§ 54 BetrVG)**

- **Combined Works Council (§ 47 BetrVG)**

- **Chairman**

two of its members as chairman and vice-chairman

- **Works Committee (§ 27 BetrVG)**

If Works Council with nine or more members



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- The employer and the works council shall work together in a spirit of mutual trust

- Tasks:**
 - to ensure that effect is given to acts, ordinances, safety regulations, collective agreements
 - Negotiate works agreements for the benefit of the employees;
 - to make recommendations to the employer for action benefiting the company and the staff

Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- to promote the implementation of actual equality between women and men,
- to promote reconciliation of family and work
- to receive suggestions from employees and the youth and trainee delegation



Overview

- I. Founding
- II. Election
- III. Organisation
- IV. Tasks

D. Works Council

- to promote the rehabilitation of severely handicapped persons and other persons in particular need of assistance;
- to prepare and organize the election of a youth and trainee delegation and to cooperate with them;
- to promote the employment of elderly workers in the company;
- to promote the integration of foreign workers in the company
- to promote and safeguard employment
- to promote health and safety at work and the protection of the environment

Overview

Section 87 Right of co-determination

- (1) The works council shall have a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:
1. matters relating to the rules of operation of the establishment and the conduct of employees in the establishment;
 2. the commencement and termination of the daily working hours including breaks and the distribution of working hours among the days of the week;

Overview

Section 87 Right of co-determination

3. any temporary reduction or extension of the hours normally worked in the establishment;
4. the time and place for and the form of payment of remuneration;
5. the establishment of general principles for leave arrangements and the preparation of the leave schedule as well as fixing the time at which the leave is to be taken by individual employees, if no agreement is reached between the employer and the employees concerned;

Overview

Section 87 Right of co-determination

6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;
7. arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations;
8. the form, structuring and administration of social services whose scope is limited to the establishment, company or combine;
9. the assignment of and notice to vacate accommodation that is rented to employees in view of their employment relationship as well as the general fixing of the conditions for the use of such accommodation;

Overview

Section 87 Right of co-determination

10. questions related to remuneration arrangements in the establishment, including in particular the establishment of principles of remuneration and the introduction and application of new remuneration methods or modification of existing methods;
11. the fixing of job and bonus rates and comparable performance-related remuneration including cash coefficients;

Overview

Section 87 Right of co-determination

12. principles for suggestion schemes in the establishment;
13. principles governing the performance of group work; group work within the meaning of this provision is defined as a group of employees performing a complex task within the establishment's workflows, which has been assigned to it and is executed in a largely autonomous way.
- (2) If no agreement can be reached on a matter covered by the preceding subsection, the conciliation committee shall make a decision. The award of the conciliation committee shall take the place of an agreement between the employer and the works council

Overview

Section 99 Co-determination in individual staff movements

- (1) In companies normally employing more than twenty employees with voting rights the employer shall notify the works council in advance of any recruitment, grading, regrading and transfer, submit to it the appropriate recruitment documents and in particular supply information on the persons concerned; he shall inform the works council of the implications of the measure envisaged, supply it with the necessary supporting documentation and obtain its consent to the measure envisaged.

Overview

Section 99 Co-determination in individual staff movements

In the case of recruitments and transfers the employer shall in particular supply information on the job and grading envisaged. Members of the works council shall refrain from divulging any information relating to the personal circumstances and private affairs of the employees concerned that has come to their knowledge in connection with the staff movements referred to in the first and second sentences, where such information is of a confidential nature by reason of its implications or contents; the second to fourth sentences of section 79 (1) shall apply, mutatis mutandis.

Overview

Section 99 Co-determination in individual staff movements

- (2) The works council may refuse its consent in the following cases:
 - 1. if the staff movement would constitute a breach of any Act, ordinance, safety regulation or stipulation of a collective agreement or works agreement, or of a court order or official instruction;
 - 2. if the staff movement would amount to non-observance of a guideline within the meaning of section 95;
 - 3. if there is factual reason to assume that the staff movement is likely to result in the dismissal of or other prejudice to employees of the establishment not warranted by operational or personal reasons; in cases of permanent recruitment non-consideration of an equally suitable employee on a fixed term contract shall also be considered a prejudice to that employee;
 - 4. if the employee concerned suffers prejudice through the staff movement although this is not warranted by operational or personal reasons;

Overview

Section 99 Co-determination in individual staff movements

- 5. if the vacancy has not been notified in the establishment as required under section 93; or
- 6. if there is reason based on facts to assume that the applicant or employee envisaged for the staff movement would cause trouble in the establishment through unlawful conduct or gross violation of the principles laid down in section 75 (1), in particular through racist or xenophobic activities.
- (3) If the works council refuses its consent, it shall notify the employer in writing, giving its reasons, within one week of being informed by the employer. If the works council fails to do so within the said time limit it shall be deemed to have given its consent.
- (4) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent

Overview

Section 102 Co-determination in the case of dismissal

- (1) The works council shall be consulted before every dismissal. The employer shall indicate to the works council the reasons for dismissal. Any notice of dismissal that is given without consulting the works council shall be null and void.
- (2) If the works council has objections to a routine dismissal, it shall notify the employer in writing within a week giving its reasons. If it does not report its objections within the said time limit, it shall be deemed to have given its consent to the dismissal. If the works council has objections against an exceptional dismissal, it shall notify the employer in writing immediately and at any rate not later than within three days, giving its reasons. The works council shall consult the employee concerned before it takes a stand, in so far as this appears necessary. The third sentence of section 99 (1) shall apply, mutatis mutandis.

Overview

Section 102 Co-determination in the case of dismissal

(3) The works council may oppose a routine dismissal within the time limit specified in the first sentence of subsection (2) in the following cases:

1. if the employer in selecting the employee to be dismissed disregarded or did not take sufficient account of social aspects;
2. if the dismissal amounted to non-observance of a guideline covered by section 95;
3. if the employee whose dismissal is being envisaged could be kept on at another job in the same establishment or in another establishment of the same company;
4. if the employee could be kept on after a reasonable amount of retraining or further training; or
5. if the employee could be kept on after a change in the terms of his contract and he has indicated his agreement to such change.

Overview

Section 102 Co-determination in the case of dismissal

- (4) If the employer gives notice of dismissal although the works council has lodged Objections to such dismissal under subsection (3), he shall append a copy of the works council's point of view to the notice of dismissal sent to the employee.
- (5) If the works council has lodged an objection to a routine dismissal within the period and in the manner prescribed and if the employee has brought an action under the Protection against Dismissal Act for a declaration that the employment relationship has not been dissolved by the notice of dismissal, the employer shall be bound to keep the employee in his employment at the latter's request after expiry of the term of notice until a final decision is given on the case at issue; during such period he shall not make any change in his conditions of work. On application by the employer the court may issue an interim order releasing him from his obligation under the first sentence of this subsection to maintain the employment relationship in the following cases:

Overview

Section 102 Co-determination in the case of dismissal

1. if the action brought by the employee is not reasonably likely to succeed or appears abusive; or
 2. if the continuation of the employment relationship imposes an unreasonable financial burden on the employer; or
 3. if the objection raised by the works council is manifestly unfounded.
- (6) The employer and the works council may make an agreement to the effect that any notice of dismissal requires the approval of the works council and that differences of opinion on whether a refusal of consent is justified are to be submitted to the decision of the conciliation committee.
- (7) The foregoing shall be without prejudice to the regulations relating to the participation of the works council made under the Protection against Dismissal Act.

Overview

Section 111 Alterations

In establishments that normally have more than twenty employees with voting rights the employer shall inform the works council in full and in good time of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof and consult the works council on the proposed alterations. In establishment that have more than 300 employees, the works council may retain a consultant to support it; section 80 (4) shall apply, mutatis mutandis, the foregoing shall be without prejudice to section 80 (3). The following shall be considered as alterations for the purposes of the first sentence above:

1. reduction of operations in or closure of the whole or important departments of the establishment;
2. transfer of the whole or important departments of the establishment;
3. the amalgamation with other establishments or split-up of establishments;
4. important changes in the organization, purpose or plant of the establishment;
5. introduction of entirely new work methods and production processes.

Overview

Section 112 Reconciliation of interests in the case of alterations; social compensation plan

- (1) If the employer and the works council reach an agreement to reconcile their interests in connection with the proposed alterations, the said agreement shall be recorded in writing and signed by the employer and the works council. The foregoing shall also apply to an agreement on full or part compensation for any financial prejudice sustained by staff as a result of the proposed alterations (social compensation plan). The social compensation plan shall have the effect of a works agreement. Section 77 (3) shall not apply to the social compensation plan.
- (2) If no reconciliation of interests can be achieved in connection with the proposed alterations or if no agreement is reached on the social compensation plan, the employer or the works council may apply to the president of the Land labour office for mediation. If no such application is made or the attempt at mediation is unsuccessful, the employer or the works council may submit the case to the conciliation committee. The chairman of the conciliation committee may request the president of the Land labour office to take part in the proceedings.

Overview

Section 112 Reconciliation of interests in the case of alterations; social compensation plan

(3) The employer and the works council shall submit proposals to the conciliation committee for the settlement of differences on the reconciliation of interests and the social compensation plan. The conciliation committee shall attempt to reconcile the parties. If an agreement is reached, it shall be recorded in writing and signed by the parties and the chairman.

(4) If no agreement is reached on the social compensation plan, the conciliation committee shall make a decision on the drawing up of a social compensation plan. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.

(5) When making a decision in pursuance of subsection (4), the conciliation committee shall take into account the social interests of the employees concerned while taking care that its decision does not place an unreasonable financial burden on the company. In doing so and within the framework of equitable discretion, the conciliation committee shall be guided by the following principles, in particular:

Overview

Section 112 Reconciliation of interests in the case of alterations; social compensation plan

1. When compensating in full or part any financial prejudices sustained, in particular by a reduction in income, the lapse of additional benefits or loss of entitlements to company pensions, removal costs or increased travelling costs, it shall provide for payments which generally make allowances for the circumstances of the individual case.
2. It shall take into account the prospects of the employees concerned on the labour market. It shall exclude from payments employees who may continue to work in reasonable employment in the same establishment or in another establishment of the company or of a company belonging to the combine, but refuse said continued employment; the possibility of continued employment at another location shall not alone be sufficient grounds for claiming unreasonableness.
- 2a. In particular, it shall duly consider the support schemes aimed at avoiding unemployment provided for in Book Three of the Social Code.
3. When calculating the total amount of the social compensation plan payments, it shall take care that the continuance of the company or the jobs remaining after the implementation of the alterations is not jeopardised.

Overview

Short Time Works

✓ Short time work

- Reason: to avoid unemployment
- Salary: State compensation
- Subsidies limited to 24 months
- Condition: Employer is not liable for the short fall of work



Overview

Mini Job

Mini Job (< € 450 per month)

No social insurance

Midi Job/ low paid job (450,01€ till 800€per month)



Overview

Tendencies

- Germans are willing to sue (legal insurance for employment issues is very common)
- Especially in labour law: conciliation hearing or settlement
- Out of court settlements are rare
- Reasons for high numbers of court procedures:
- Costs are low, the losing party is not obliged to bear the winning parties' legal fees, employees are insured



Overview

Court System

- Labour Court
- Regional Labor Court
- Federal Labor Court
- European Court of Justice



Overview

Case A

Temp A was hired as a Secretary Assistant in the year 2001 and worked partly as a Network Administrator.

Temp A took maternity leave for 6 years and moves to another city. The Company outsourced the IT Division.

Temp A comes back and only wants to work as a Network Administrator, in her opinion the Company can not move her to another position. She argues her job position did transform to a Network Administrator position due to a recommendation letter appreciating her performance as the latter. She demands a termination and a compensation fee.

Overview

Case A Solution

- Defining: Job description in the Working Contract
- Right of Direction
- Conclusive Agreement of Job Chance through actual working in one position?
- Conditions:
- Working time of 5 years in the same position
- Sign of Acknowledgement
- Problem: Outsourcing

Overview

Case A Solution

Result:

- A has no right to work as Network Administrator
- A does not offer her job performance
- Event of Default + Termination

Overview

Case B

Salesman B was working in a leading position. When the company moved to another building, B was assisting the move and got his shirt dirty. The parties did not find an agreement over paying for the shirt. B was disappointed and founded a Works Council. From this moment on B did not sell any product. The company transferred him to another sales area without any success.

The average selling rate in the company is about 2 products per month. B does not respond well to critic or advanced education. The company terminates B with the approval of the Works Council. B thinks Works council members are protected against termination. He argues he the area is bad for selling and he has less time than other salesmen due to hi obligation in the Works Council.

Overview

Case B Solution

- Work Protection for Work Counsel Members
- Termination Conditions:
 - Approval of the Work Counsel
 - Compelling Reason for Termination

Overview

Case B Solution

Problem: Non-Performance as a Compelling Reason

- Non- Performance because of a Refusal

- ❖ Right to Refusal?

- Non-Performace because Personal Reasons

- ❖ Lacking abilities to perform?

- Non-Performance because of Behavioral Reasons

- ❖ Negligence

- ❖ Intention

Overview

Case C

- Company C wants to outsource several divisions
- Company C terminates the Employees of the divisions with a six month notice
- The Employees want to quit immediately or are not motivated to work or call in “sick” for a while.

Overview

Case C Solution

- **Possibilities:**
- **Compensations**
- **Performance Bonus**
- **Attendance Bonus**

Overview

Case C Solution

Risks of paying a Compensation:

- No motivation for performances
- Higher odds for „sick“ Employees

Risks of paying a Performance Bonus:

- No guaranty against quitting
- Obligation to continue the payment during sickness

Risks of paying a Attendance Bonus:

- No motivation for performances
- Obligation to continue the payment during sickness

Overview

Case D

Worker D works on the assembly line. She had a heart attack that led to a longer absence. The Company established a shift operation and determined D to work only in the night shift. The other worker B, who is dating Manager M, should only work in the day shift. B can only work for half a shift.

D can not work in the night shift due to her heart attack. The Company argues they can not find a third person for half a night shift. Also they do not believe D can do the work anymore due to her health condition.

Overview

Case D Solution

Right of Direction:

- Employer's reasonable discretion
 - ❖ No arbitrariness
- Interests of the Employee
 - ❖ Health

Overview

Case E

Director E has signed a Compensation Agreement that's grants him 1 Mio. €.

In the following years E does not get a promotion and decides to provoke a terminations on order to get his Compensation paid out. E stops talking to the rest of the board members for over a year and demands to "de-promote" several of the members in order for his support.

The Company restructures the corporate structure and abolishes the director position of E and replaces the positions with a team consisting of the General Manager and a Regional Manager. The company hands over a termination notice to E.

E argues they can not replace him without overtime work.

Overview

Case E Solution

Terminations Reasons:

- Behavioral, Personal or Corporate Reasons
- Exclusive Reason or Addition of Reasons

- Behavioral Reason
 - ❖ Non- Performance

- Corporate Reason
 - ❖ Abolishing of the Position

Overview

Case E Solution

Problem:

Corporate Decisions and Control through the Court

- Principle: only control of arbitrariness
- Exception: Corporate Restructuring and Termination is congruent, than:
- The Employer has to report the benefit of the decision and how the company can balance the missing of the Employee

Overview

Case E Solution

• **Does the Employer has to pay the compensation?**

❖ **Principle: Yes**

❖ **Exception: Provoked Termination:**

Argument: Violation of Good Faith, due to abusing a legal position

Overview

Case F

Employee F works together with her supervisor G in one Office. After a time of harmonic cooperation irritations arose. F complained about too much private talk and dirty cups. Also she did not appreciate the using of her working computer by G. G wondered about private mail reaching the office for F. The biggest issue is the sending of the company mail. F did bring the mail and packets to the post, transporting the packets with her own car. After her car broke down F did stop bringing the packets and claimed to get a company car. G did not agree and sent out a warning letter to F. F argues it is the Companies duty to send of the packets by foot.

Overview

Case F

Problem: Non-Performance

- Non-Performance because of a Refusal
 - ❖ Right to Refusal?

- Non-Performance because Personal Reasons
 - ❖ Lacking abilities to perform?

- Non-Performance because of Behavioral Reasons
 - ❖ Negligence
 - ❖ Intention

Overview

Case G

Employee G is terminated from a Company that employs under 10 Co-Workers. After G got served the termination notice, he claims to be severely disable and presents a certificate of the German agency for integration.

Employee G claims work protection due to severe disability. The company argues they did not know about his disability with the result that G can not claim for work protection.

The German agency for integration did approve the termination.

Overview

Case G Solution

- **Work protection in case of a severe disability**
- **Termination is only valid with a approval of the agency of integration**
- **Approval is subject to reasonable discretion**

Overview

Case G Solution

Problem: No knowledge of the disability

- **Defining: proof of disability through a certificate**
- **Information of the Employer before the termination is not necessary**
- **After termination: Employee has to inform in reasonable time**

Overview

Termination Notice

09.07.2020

Employment Agreement with ...

Dear [...],

We hereby terminate the Employment Agreement extraordinary without notice, alternatively to the next possible date.

We also point out your obligation to inform the “Bundesagentur für Arbeit” immediately after receipt of this termination letter, about your unemployment beginning immediately.

Best regards

Overview

Warning Letter

Warning Letter

Dear Mr.

In a personal meeting on February 13, 2020 I delivered to you a letter specifying 5 topics describing the way I intent to Manage During the meeting I ordered you furthermore to give your opinion with regards to these topics and to explain the way you intend to behave in the future in this regard. You did not respond to this during our meeting on 13.02.2020 but you promised to respond to this issue in written until 20.02.2020 as requested in my letter. Until to date you have been following my order neither oral nor in written.

This behaviour violates the obligations of our employment contract. You are obliged to comply with the contract. This includes especially that you follow the orders of the Management.

You violated these obligations of contract when you didn't follow my orders.

We cannot tolerate such violation of our employment contract.

I explicitly ask you to deliver to me your promised written response per e-mail on these 5 topics until Sunday 26.02.2020.

Overview

Warning Letter Part 2

In case of recurrence of the violation of contract contested in this warning letter, we reserve our rights to terminate our employment contract with notice, if required, even without notice.

A copy of this warning letter will be filed in your personal file.

With regards