

**GERMANY**

Items	Regulations in force on 1 January 2019
<p><b>1:</b> Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>Legal requirement for notification to employee to be in writing, after oral or written warnings to employee in case of dismissal for reasons related to the conduct of the employee.. Previous notification of planned dismissal, including reasons for termination, to works council (if one exists - works councils covered 47% of employees in 2004 - source EIRO) is necessary. Works council can make a statement within 1 week. In case of notice given despite works council objection and subsequent law suit, dismissal has to wait for decision by Labour Court. ( § 623 Bürgerliches Gesetzbuch (BGB)) According to § 102 para. 1 Sentence 2 Betriebsverfassungsgesetz (BetrVG) - Works Constitution Act - the employer is obligated to inform the work council about the reason for dismissal. It is not mandatory to provide that information in writing. Special cases: notice to a disabled person requires prior consent of public authorities (Integrationsamt); notice to a pregnant woman and until 4 months after delivery requires prior consent of public authorities (Behörde für Arbeitsschutz): notice to a person on parental leave requires prior consent of public authorities. Value (for EPL indicators): 1.75 (= average between 1 without work council's objection and <math>(1+4)/2=2.5</math> with work council's objection, since authorisation from the court only in case of subsequent law suit).</p> <p>As of a certain number of dismissals (see Item 18): see item 19</p>
<p><b>2:</b> Delay involved before notice can start</p>	<p>If a works council exists, the employer has to inform it first. Works Council can make a statement within a week. Notice can then be served, but takes effect either on the last or on the 15<sup>th</sup> day of the month. Calculation: 16 days (1 day for notification of works council + 7 days for statement + 1 day for notification of employee + 7 days on average for last/15th of month)</p> <p>As of a certain number of dismissals (see Item 18): see item 20</p>
<p><b>3:</b> Length of notice period at different tenure durations (a)</p>	<p>All workers: 2w in trial period, 4w&lt;2y, 1m&lt;5y, 2m&lt;8y, 3m&lt;10y, 4m&lt;12y, 5m&lt;15y, 6m&lt;20y, 7m&gt;20y. ( § 622 BGB) Calculation (for EPL indicators): 9 months tenure: 4 weeks, 4 years tenure: 1 month, 20 years tenure: 7 months.</p>

<p><b>4: Severance pay at different tenure durations (a)</b></p>	<p>Personal reasons: there is no right to severance pay in cases of dismissal for personal reasons, although severance pay may be provided through collective agreements or social plans.</p> <p>Operational reasons: If a dismissal is based on business needs or compelling operational reasons, the employee has a right to a severance payment if he does not bring his case to the court within 3 weeks. The right is only given if the employer points out in the notice that the dismissal is caused by business needs or urgent operational reasons and that the employee has a right to severance payment if he accepts the dismissal. The amount of the severance payment is a half month pay for each year of tenure (§ 1a Kündigungsschutzgesetz (KSchG)).</p> <p>Calculation: 0 months since the employer is free to offer or not severance pay. No severance pay in establishments employing 10 or fewer employees.</p>
<p><b>5: Definition of unfair dismissal (b)</b></p>	<p>Fair: Dismissals based on factors inherent in the personal characteristics or behaviour of the employee (such as insufficient skill or capability), or business needs and compelling operational reasons. A dismissal for economic or operational reasons is the result of an independent business decision. A court can examine whether this decision was obviously unobjective, unreasonable or arbitrary. Unfair: Dismissals where the employee can be retained in another capacity within the same establishment or enterprise, and redundancy dismissals where due account has not been taken of "social considerations" (e.g. seniority, age, alimony) (§ 1 para. 3 KSchG). Rehabilitation must already have been attempted before dismissal, or the dismissal is considered unfair.</p> <p>(§ 1 para. 2 and 3 KSchG)</p> <p>Establishments employing 10 or fewer employees are exempt from regular employment protection legislation. Special protection is still provided to protect employees against discriminatory dismissal and arbitrary dismissal.</p> <p>As of a certain number of dismissals (see Item 18): a social plan to be set up in conjunction with Works Council, regulating selection standards, transfers, lump-sum payments, early retirement.</p>
<p><b>6: Length of trial period (c)</b></p>	<p>6 months (all workers). During trial period a termination of the employment relationship is possible with two weeks' notice. (§ 622 para. 3 BGB)</p>
<p><b>7: Compensation following unfair dismissal (d)</b></p>	<p>Compensation of up to 12 months, depending on length of service (15 months if aged over 50 and tenure &gt;15 years, 18 months if aged over 55 and tenure &gt; 20). Compensation must be requested for by employee or employer during court action; continuation of employment must be unreasonable for one of the parties. In some cases, additional liability for wages from the expiry date of the notice to the conclusion of the court hearing (§ 10 KSchG).</p> <p>Calculation (for EPL indicators): Typical compensation at 20 years tenure (all workers): 18 months</p>
<p><b>8: Reinstatement option for the employee following unfair dismissal (b)</b></p>	<p>A reinstatement order is possible, although rarely taken up by the employee concerned.</p> <p>However, courts can dissolve the employment relationship upon request of either party when continuation of employment is no longer possible even when the dismissal is found to be unfair. In such cases, the Court awards compensation. The evidence on court rulings suggests that, in practice, this often occurs (§§ 9, 10 KSchG).</p>
<p><b>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</b></p>	<p>3 weeks (§ 4 KSchG).</p>
<p><b>10: Valid cases for use of standard fixed term contracts</b></p>	<p>Fixed-term contracts without specifying an objective reason are possible up to 2 years or up to 4 years if an employer launches a new business. Exception: with employees over 52 years of age and unemployed for more than 4 months or participating in a public employment measure for more than 4 months, fixed-term contracts are possible without any restrictions (§ 14 Teilzeit- und Befristungsgesetz (TzBfG)).</p>

<b>11:</b> Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	4, up to an entire length of 2 years. Exception: employees who are older than 52 when beginning the employment and if an employer launches a new business. Objective reason: Successive fixed-term contracts with objective reason are possible without any restrictions, but there must be an objective reason for each successive contract. § 14 TzBfG
<b>12:</b> Maximum cumulated duration of successive standard FTCs	24 months (No legal limit in case of objective reason). Exceptions: launching a new business: 48 months, older unemployed (see above): 60 months Calculation (for EPL indicators): average of 24 and 48 months.
<b>13:</b> Types of work for which temporary work agency (TWA) employment is legal	General, with exception of construction industry. In the construction industry the law does not prohibit the use of TWA employment if there is a universally-binding collective agreement allowing its use, which in January 2013 was not the case.
<b>14:</b> Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No for assignments Yes for contracts between the agency and the worker (see fixed term contracts - item 10)
<b>15:</b> Maximum cumulated duration of TWA assignments (f)	The maximum cumulated duration of TWA assignments with the same user firm is 18 months (Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes und anderer Gesetze).  However, sectoral collective agreements, which allow a prolonged duration, can be negotiated. In the area covered by such a collective agreement, employers, who are not bound by a collective agreement, can adopt the regulations in employment agreements .  Contracts between the agency and the worker can be open-ended.
<b>16:</b> Does the set-up of a TWA require authorisation or reporting obligations?	TWA needs permission by labour authority and needs to report regularly.
<b>17:</b> Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	The basic principle is equal treatment on pay and conditions. However deviating from this principle is allowed within the first nine months of a TWA assignment, if a collective agreement is applied to the employment. A deviation from the principle for more than nine months is allowed, if there is an additional collective agreement (Zuschlagstarifvertrag), which increases the wages of the workers gradually to equal pay. These additional "Zuschlagstarifverträge" have to comply with the following conditions: the first increase in salary has to start after six weeks and after 15 months at the latest the workers have to reach the salary, which is defined as equal by the collective agreement (Arbeitnehmerüberlassungsgesetz).
<b>18:</b> Definition of collective dismissal (b)	Within 30 days, >5 dismissals in firms 21-59 employees; 10% or > 25 dismissals in firms 60-499; >30 dismissals in firms > 500 employees. Firms with 20 employees or less are exempt from requirements for collective dismissals.
<b>19:</b> Additional notification requirements in cases of collective dismissal (g)	Notification of employee representatives: Consultation with Works Council. Notification of public authorities: Notification of local employment office. Value C1N: 3.25 (= average between 3 without work council's objection and (3+4)/2=3.5 with work council's objection, since authorisation from the court only in case of subsequent law suit)
<b>20:</b> Additional delays involved in cases of collective dismissal (h)	Minimum 2 weeks negotiation with works council before notification to PES. 1 month delay after notice to PES (which can be extended to two months), but procedures for individual notification (cf. items 2 and 3) can be implemented simultaneously to notification to PES (§17 Kündigungsschutzgesetz).
<b>21:</b> Other special costs to employers in case of collective dismissals (i)	Type of negotiation required: Consultation on alternatives to redundancy and ways to mitigate the effects; social plan to be set up in conjunction with Works Council, regulating selection standards, transfers, lump-sum payments, early retirement etc. Selection criteria: Social as well as economic considerations can enter the selection criteria, e.g. labour market prospects of concerned employees and economic viability of the company. Severance pay: No legal requirements, but the social plan usually includes termination payments for affected employees. Very often a termination payment is calculated using the formula Tenure x Monthly wage x Factor, where the factor varies between 0.5 and 1.5 and tends, therefore, to be greater than what reported in Item 4.
<b>22:</b> The worker alone has the burden of proof when filing a complaint for unfair dismissal	No
<b>23:</b> Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	In case of notice given despite works council objection and subsequent law suit, dismissal has to wait for decision by Labour Court (§ 623 Bürgerliches Gesetzbuch (BGB)).

<b>24: Pre-termination resolution mechanisms granting unemployment benefits</b>	In case of fulfilment of the prerequisites under German law, an unemployed person generally stays eligible to receive unemployment benefits even if the employment relationship has been terminated unilaterally by the employee or mutually by resignation agreement. However, a temporary blocking period applies, during which the unemployed person is not qualified to receive unemployment benefits and which reduces the period of entitlement to such benefits unless the unemployed had a legally acknowledged important reason for terminating the employment relationship.
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Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:

- a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
- b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
- e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
- g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators Versions 1 to 3 (cf. Item 1).
- h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
- i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.