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KANZLEI FÜR ARBEITSRECHT

NEWSLETTER LABOR LAW

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Focus: Termination Agreement

Rules for fair negotiation

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Dear readers!

Welcome to the newest edition of the Labor Law Newsletter!

We are pleased to welcome you to a new edition of our newsletter! As editor, it is particularly important to me to keep you regularly informed about important developments, legal pitfalls, and practical issues in labor law—clearly, concisely, and with a focus on the essentials.

This issue focuses **on termination agreements**:

What exactly is a termination agreement, what legal framework applies, and how can fair negotiations between employer and employee be structured? We provide guidance and highlight which requirements are useful for a transparent and legally compliant approach.

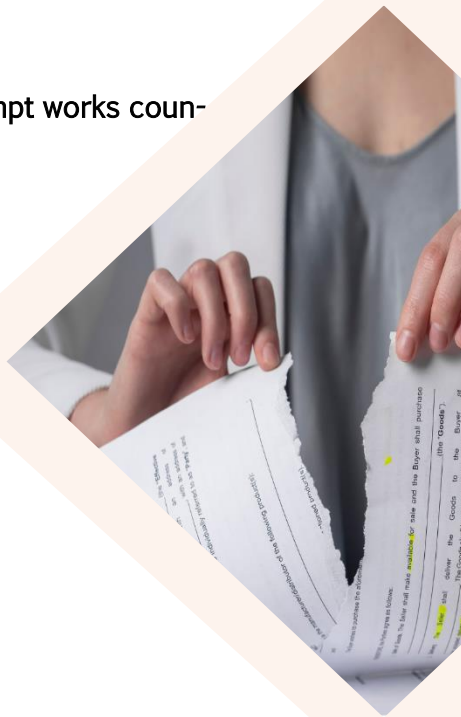
In addition, in this edition:

- **Termination invalid**? – When employees may be entitled to severance pay despite being dismissed – especially in cases of serious disruptions in the employment relationship.
- **Rethinking health protection** – Between personal responsibility and the employer's duty of care: How companies must take their protective obligations seriously in the face of new work structures.
- **"Catch-all clauses" in employment contracts** – What are they, what are their limits, and what do they mean for contract drafting?

I hope you enjoy reading this newsletter and that you find it useful for your practice.

Your Olha Vitenko

Topics



Termination agreement in employment relationships:

What is it and what do you need to be aware of? Which requirements can be established for fair negotiation?

Normally, an employment relationship ends with termination—either by the employee or the employer. There are termination periods and often protection against dismissal, especially for long-term or vulnerable employees.

However, there is an alternative: employers and employees can mutually agree to terminate the employment relationship at a specific point in time. This is called a termination agreement or termination contract.

What is a termination agreement?

A termination agreement is a **voluntary**, **written agreement** between you and your employer. Both parties agree to terminate the employment relationship on a specified date. This allows them to settle important details that are often disputed in the event of termination.

What should a termination agreement cover?

A good termination agreement should clearly define the following points:

- **End date of employment**: When exactly does your employment end?
- **The turbo clause**, often referred to as the sprinter clause, gives the employee the option to terminate the employment relationship before the originally agreed termination date.
- **Severance pay**: Has a payment been agreed as compensation? If so, how much is it and when will it be paid? As a rule, this is a gross amount that is subject to tax. Tax advantages can be exploited through the so-called one-fifth rule.
- **Remaining vacation**: What happens to your remaining vacation days? Will they be compensated or do you still have to take them?
- **Job reference**: Make sure you receive a good performance and conduct assessment, as well as expressions of thanks, regret, and good wishes.
- **Garden leave**: Do you have to continue working until the end of the notice period or will you be granted garden leave, possibly with credit for remaining vacation days?
- **Return of company property**: Which items (laptop, cell phone, keys, company car) do you have to return and when?

- **Confidentiality**: Are there any regulations regarding confidentiality of trade secrets? **Be careful with so-called "catch-all clauses"!** The Federal Labor Court has ruled such blanko regulations (e.g., in its ruling of October 17, 2024, Ref. 8 AZR 172/23) to be invalid.
- **Non-competition clause**: Are you prohibited from taking up employment with a competitor after termination?

Advantages of a termination agreement

A termination agreement can be advantageous for both parties:

- **Quick termination:** The employment relationship can often be terminated more quickly, as notice periods can be circumvented.
- **Flexibility:** You can negotiate individual details such as garden leave or severance pay.
- **Avoidance of legal disputes**: Employers often want to avoid dismissal protection lawsuits and the associated court proceedings.
- **Predictability**: Both parties know exactly when and under what conditions the employment relationship will end.

Risks: You need to pay particular attention to these!

Despite the advantages, a termination agreement also involves significant risks that you should be aware of:

1. **Block period for unemployment benefits**:

If you voluntarily sign a termination agreement and thereby actively contribute to the termination of your employment relationship, the Employment Agency may impose a waiting period. This means that you will not receive unemployment benefits for a certain period of time (often 12 weeks). A waiting period can be avoided if there is an "important reason," e.g., an impending termination by the employer for operational reasons, which is explicitly stated in the contract.

2. **Loss of protection against dismissal:**

By signing the termination agreement, you waive your statutory protection against dismissal. This also applies to special protection rights, for example as a pregnant woman, a person with a severe disability, or a works council member.

3. **Unfair terms / invalidity:**

A termination agreement is not valid if it was concluded under unfair pressure or in violation of the "requirement of fair negotiations." This is the case if:

   - Your employer threatens you with unjustified dismissal ("Sign this, or you'll be fired on the spot!")
   - You are taken by surprise, e.g. pressured to sign without prior notice and without sufficient time to consider the matter.
   - Psychological pressure is exerted that impairs your free will (e.g., through an extremely unpleasant atmosphere during the conversation)

In such cases, the termination agreement may be invalid, and any legal action waiver contained therein is then usually void.

Are you entitled to severance pay?

No, there is generally no legal entitlement to severance pay. Employers usually offer severance pay to make voluntary termination of employment more attractive to employees and to avoid lawsuits for unfair dismissal.

- **Amount of severance pay:** The amount of severance pay is negotiable. The rule of thumb is**: 0.5 gross monthly salaries per year of employment**. Often, more is paid. A factor of 1 or 1.5 is not uncommon. It depends on the individual case!
    - **Rule of thumb example:** Someone who has been with the company for 30 years and earns €4,000 gross can expect a severance payment of approximately €60,000.

Conclusion: What you should definitely keep in mind!

- ✓ A termination agreement can be a good solution for both parties—but only if it is **negotiated fairly** (see checklist below).
- ✓ The agreement must always be concluded in a **written form**.
- ✓ There is **generally no automatic entitlement to severance pay**; it is a matter of negotiation. In case of doubt, legal assistance should be sought, e.g., from an experienced labor lawyer.
- ✓ Be **particularly careful about the waiting period and suspension of unemployment benefits**! Consult an attorney for advice.
- ✓ **Always take time** to think it over! Never sign under pressure or in a rush.
- ✓ When in doubt: **Get advice on labor law!** Works councils and staff councils in particular should support their colleagues in such decisions and encourage them to seek legal assistance.

Guidelines for fair negotiations

The requirement of fair negotiation when concluding termination agreements, established by the Federal Labor Court (BAG) in its ruling of February 7, 2019 (BAG 7.2.2019 – 6 AZR 75/18, NZA 2019, 688) derives from the ancillary obligation of consideration under employment contracts according to § 311 (2) No. 1 in conjunction with § 241 (2) of the German Civil Code (BGB).

Checklist: Fair negotiation [1]

- Contract negotiations and the conclusion of the termination agreement should take place at the company during normal working hours. No home visits to the employee should be made.

- Always critically question whether a deviation from the standard situation is necessary and whether there are any indications of a difficult negotiation situation.

- Announce the meeting in advance and send a draft in advance if possible.

Once a concrete draft has been drawn up, a reflection period of at least three days should be granted. The desire to consult a trusted person should be asked about and, if necessary, fulfilled.

- Always consider circumstances on a case-by-case basis; generally, take into account:

Psychological pressure, physical weakness, or insufficient language skills must not be exploited.

- Document change requests

- Caution when shortening claims:

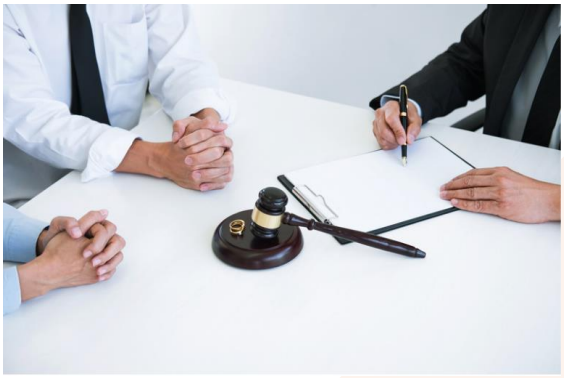
Will the notice period be shortened? Will the immediate vesting of company pension entitlements be prevented? Will remuneration already accrued be waived?

[1] Based on Martin J. Reufels. Heuking Kühn Lüer Wojtek Partnerschaft mbB of lawyers and tax advisors, Beck´sche Online-Formulare Arbeitsrecht 19. Edition 2025 Status: 01.05.2025

Termination invalid? A right to severance pay – if the relationship is shattered!

Imagine this: your employer fires you, but the termination is invalid. You should actually continue working. But what if the relationship with your boss or colleagues has suffered so much that you don't want to go back? Or conversely, what if your employer can no longer employ you because trust has been irrevocably destroyed?

This is precisely where the German Unfair Dismissal Protection Act (KSchG), in particular §§ 9 and 10, offer a way out of this dilemma. They allow for a separation even if the dismissal was actually invalid—and regulate the payment of severance pay in the process.



When employment is no longer reasonable: Termination by court order in accordance with § 9 of the German Employment Protection Act (KSchG)

The Unfair Dismissal Protection Act protects employees from unjustified dismissal. If a court finds that a dismissal was invalid—for example, because it was socially unjustified or had formal errors—then your employment relationship does

not end. You would have the right to continued employment.

However, there are situations in which continued employment has become unreasonable for one of the parties. In such cases, the labor court can terminate the employment relationship by judgment. A request for this judicial termination can come from either side:

- **The employee requests termination**: This is possible if you, the employee, cannot reasonably be expected to continue the employment relationship. This may be the case if the relationship of trust with the employer has been severely damaged, you have already found a new job, or other unreasonable circumstances exist.
- **The employer requests termination**: The employer can also request termination if it is unreasonable to expect them to continue the employment relationship. However, there must be serious reasons for this, which often lie in the employee's behavior and make future trusting cooperation unthinkable—for example, in the case of serious breaches of duty or profound disruptions.

Severance pay as financial compensation: What § 10 KSchG says about this

If the employment relationship is terminated by the court, the employee is entitled to **reasonable severance pay** (§ 9 (1) sentence 1 KSchG). The amount of this severance pay is not a fixed amount, but depends on various factors:

- the duration of the employment relationship,
- your age,
- the economic impact of the termination on you, and
- the specific circumstances of the individual case, in particular the degree of disruption or misconduct.

§ 10 KSchG defines how to calculate the "monthly salary" that serves as the basis for the severance payment. There are legal upper limits for the amount of the severance payment, which is determined by the court on a case-by-case basis.

A specific case from practice: Bonn Labor Court (Ref. 1 Ca 456/24).

A recent ruling by the Bonn Labor Court on November 14, 2024, provides an example of how these regulations are applied in practice:

The facts: An employee contested her ordinary dismissal. As an alternative, she applied for the judicial termination of her employment relationship with severance pay. The reason: The managing director had repeatedly made sexist, offensive, and degrading remarks to her.

The court's decision: The labor court found that the employee's dismissal was socially unjustified and therefore **invalid**—the employment relationship thus actually continued. However, in view of the managing director's behavior, it was **unreasonable** to expect the plaintiff to continue working for the company.

Therefore, the court terminated the employment relationship and awarded the employee severance pay of **€70,000**. The reasoning was clear: the plaintiff's personal rights had been severely violated. The severance pay was intended to compensate for the financial disadvantages and to provide redress for the humiliation suffered.

Conclusion: Protection and a fair solution

The judicial termination of employment pursuant to **§ 9 of the German Employment Protection Act (KSchG)** is a very important instrument in dismissal protection law. It offers a fair and respectful way out of a deadlocked situation in which a return to work is unreasonable for one party, despite the dismissal actually being invalid.

The case from Bonn emphatically underscores how this instrument can be used in cases of serious personal misconduct on the part of the employer. The severance payment awarded serves not only as financial compensation, but also as redress and a preventive signal.

In special cases, judicial termination thus strengthens the protection of personal rights and contributes significantly to a fair resolution of conflicts in labor law.

Between personal responsibility and welfare obligations: the role of health protection in a new work organization

In the course of modern work organization—especially in the social sector—responsibility for managing work processes is increasingly shifting to employees. This form of **indirect management** is often accompanied by increased pressure to perform and greater demands on self-organization and responsibility. Against this backdrop, health protection enshrined in labor law is becoming increasingly important, as is the role of employee representatives in helping to shape health-promoting working conditions.

Legal framework

According to the provisions of the Occupational Safety and Health Act (ArbSchG), employers are obliged to avoid hazards to the health of their employees or reduce them to a minimum (§ 4 ArbSchG). In doing so, the so-called **TOP principle** must be observed.:

- **Technical measures** always take priority (e.g., ergonomic workplace equipment).
- In **social work**, where technical solutions are often insufficient, **organizational measures** are of central importance—for example, through realistic targets, sufficient time budgets, and sensible task distribution.
- **Personal measures**, such as behavioral training or self-management seminars, should only be used as a last resort.

Role of employee representation

According to the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG), employee representatives have extensive **co-determination rights**, particularly in the area of occupational health and safety (§ 87 (1) No. 7 BetrVG).

These rights allow the interest group to ensure that demands placed on employees, such as targets or project-related

control mechanisms, are **realistic** and correspond to actual conditions. This also involves ensuring **that sufficient human, time, and material resources** are available.

Continuous communication with the teams concerned and a **participatory approach** increase the effectiveness of co-determination and promote viable solutions in terms of health protection.

Conclusion

The obligation under labor law to avoid health risks requires particular attention to be paid to the organizational design of working conditions in the context of work processes. Employers are obliged to create structures that reduce stress and actively protect the health of their employees.

Employee representation plays a central role in this regard: through its co-determination rights, it can make a significant contribution to ensuring that the demands placed on employees remain realistic and that working conditions are designed to promote health. A cooperative, participatory dialogue between employers, employee representatives, and employees is crucial for a sustainable and health-conscious work culture.

"Catch-all clause" in employment contracts

Concept of the "Catch-all clause"

The so-called *Catch-all clause* refers to a provision in an employment contract that obliges the employee to maintain confidentiality regarding all internal processes and information of the company, regardless of whether they are business or trade secrets.

It is noticeable that this obligation is often **unlimited in time** and continues to apply even after the end of the employment relationship.

Unlike traditional confidentiality clauses, which are limited to specific confidentiality interests of the employer, the catch-all clause aims to establish **a comprehensive and blanket confidentiality obligation**. It therefore also covers information that is **not worthy of protection** and is already known outside the company or can be easily accessed.

The significance of such clauses under labor law is that their violation can result in sanctions such as **warnings, dismissal**, and, in some cases**, claims for damages** or, in extreme cases**, criminal consequences**.

Legal assessment by the Federal Labor Court

In its ruling of **October 17, 2024** (Ref. 8 AZR 172/23), the Federal Labor Court (BAG) dealt with the validity of such catch-all clauses. The court clarified that **standard clauses** that impose an **unlimited and comprehensive confidentiality obligation** on employees constitute an **unreasonable disadvantage** within the meaning of **§ 307 (1) sentence 1 of the German Civil Code (BGB)** and are **invalid**.

The BAG emphasizes that **the protection of trade secrets** may, in principle, be regulated in employment contracts and may also be extended. However, this is subject to the condition that the regulation is **specific, proportionate, and appropriate**. A blanket, unlimited confidentiality obligation, on the other hand, is equivalent to a **post-contractual non-competition clause** and is therefore **subject to the strict requirements of §§ 74 et seq. of the German Commercial Code (HGB)** – such as compensation for the period of non-competition.

In the event of a dispute, the employer also bears **the burden of proof** for the existence of a trade secret worthy of protection and the appropriateness of the confidentiality measures.

Conclusion

The *Catch-all clause* is a **legally problematic** provision in employment contracts. It suggests to the employee a comprehensive and permanent duty of confidentiality that goes beyond what is legally and constitutionally permissible.

Employees should exercise particular caution when signing such clauses.

Employers, on the other hand, are required to establish **transparent and differentiated regulations** that **specify concrete secrets** and are **appropriately limited in terms of time and content**. Otherwise, they risk the clause being **invalidated** and the resulting **legal disadvantages**.

The BAG's decision provides clarity and protects **the freedom of occupation** guaranteed to employees under **Article 12(1) of the German Basic Law (GG).** A permissible post-contractual confidentiality obligation may therefore only relate to specifically designated trade secrets, but not to all internal information in a blanket and unlimited manner.

Exempt works council member – remuneration adjustment – participation of the works council

Decision of the Federal Labor Court, November 26, 2024 – 1 ABR 12/23

The increase in remuneration for a works council member who is released from his professional duties pursuant to § 37 (4) or § 78 sentence 2 BetrVG (Works Constitution Act) is **not subject** to the **works council's co-assessment** pursuant to § 99 BetrVG.

The employer, which regularly employs more than 20 employees eligible to vote, operates two car dealerships in Leipzig for which the applicant works council is responsible.

After the exempted chairman of the works council successfully completed the "Leadership Potential" assessment center in 2021, the employer remunerated him in accordance with a higher pay group under the relevant collective agreement.

The works council believed that it had a right of co-assessment in this matter according to § 99 (1) BertrVG and asserted

its participation in court within the framework of this decision-making process in accordance with § 101 BetrVG.

The previous instances ordered the employer to initiate a consent procedure with the works council in accordance with § 99 BetrVG. The employer's appeal against the decision of the Regional Labor Court was successful before the First Senate of the Federal Labor Court.

The works council has no right of co-assessment under § 99 BetrVG in the event of **an increase in the remuneration** of an exempt works council member on the basis of § 37 (4) or § 78 sentence 2 BetrVG.

The standard provides for the involvement of the works council in classification and reclassification. These consist of assigning an employee's duties to a specific group in the relevant remuneration regulations. In contrast, when the remuneration of an exempt works council member is increased in accordance with § 37 (4) or § 78 sentence 2 BetrVG, no such classification takes place, but rather an adjustment of the works council member's remuneration in accordance with the legal requirements set out in these standards.

According to these provisions, the remuneration of an exempt works council member must be adjusted either in line with the **customary development of comparable employees** in the company or to avoid discrimination, because the works council member was unable to advance to a higher-paid position solely as a **result of taking office**.

This & That

Congratulations to our former trainee Rina Bislimaj!

A reason to celebrate: our talented Rina Bislimaj shines in her exam!

We are very proud. Our former trainee Rina Bislimaj achieved outstanding success in the bar exam administered by the Freiburg Bar Association: with excellent results, she secured **the second-best score** in the 2025 district. We are particularly pleased that we were able to contribute to this as a training law firm.

Congratulations, dear Rina, we are very proud of you and look forward to continuing to work with you.

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