

Dismissals in Europe

This publication is linked to Sofie Persson's guest blog post ['The icy winds of employment uncertainty across Europe'](#)

This is but a brief look at a few EU countries. It is an overview only and it is suggested that you take appropriate professional advice on any particular situation. It is derived from the 2013 study by Deloitte, published [here](#).

Denmark

No general fairness or cost requirement applies to individual dismissals. However, if the employee is salaried employee or a 'white collar worker', the dismissal must be reasonably justified by the conduct of the employee or the circumstances of the employer. As regards the conduct of the employee, it means that dismissal based on sickness absence, under performance etc. will usually be considered reasonably justified but the employer must still make sure that they are not acting contrary to any discrimination legislation.

Employees are usually entitled to notice of termination unless dismissal is for gross misconduct. Gross misconduct could, for example, be unexplained absence, theft, engaging in competitive actions, disloyalty, inappropriate behaviour and subordination etc.

There is no general legislation establishing the right to severance pay upon termination of employment. However, white collar employees are entitled to redundancy pay if they have been continuously employed with the same employer for at least 12 years.

France

In France, an employer must have a 'real and serious cause' to terminate the employment agreement and must comply with all the applicable procedures which differ if the dismissal is on economic or personal grounds. There is no legal definition of what a real and serious cause is and a judge will determine this on a case by case basis. The cause must be real, meaning exact, precise and objective and serious which justifies the termination of the contract. Whatever the cause of the termination, except for gross misconduct and negligence, an employer must give notice prior to dismissing an employee. This is generally between 1 and 3 months but sometimes 6 months. There is a minimum legal severance pay if you've been employed for more than 1 year. It is payable regardless of whether the grounds for dismissal are economic or personal. The severance pay is equal to one fifth of a month's salary for each year of service increased by two fifteenths of a month's pay per year for service longer than 10 years. A collective bargaining agreement may provide for higher severance pay in lieu of the legal requirement.

The French procedure for dismissing an employee is highly formalistic. There are several meetings where first of all an employer has to consult its Works Council regarding economic grounds and/or redundancy plan if the number of employees who are made redundant exceeds certain thresholds.



Germany

In Germany, where an employer regularly has more than 10 employees (including temporary workers) and the relevant employee has more than 6 months of service, the employer may ordinarily give notice to terminate only if the termination has justifiable reasons relating to the employee's person or conduct or for urgent operational requirements.

Employee's conduct dismissal usually requires a breach of contract in spite of prior warning and urgent operational requirements exist where there is a genuine redundancy situation. The application of these statutory requirements has been worked out by the labour courts in countless judgements.

Written notice to terminate must be given prior to dismissal. The standard statutory notice period is 4 weeks. The notice period for the employer increases to one month, after two years of service and by one additional month each after 5, 8, 10, 12, 15 and 20 years of service up to a maximum of 7 month' notice.

An employer may still dismiss an employee extraordinarily with immediate effect for an important reason. This type of dismissal appears to be very fact-specific and written notice must be given within two weeks from the employer becoming aware of the circumstances justifying immediate termination. Grounds for extraordinary terminations could be taking vacation without approval, simulated sickness, serious insult or assault against the employer or fellow employees and criminal offences in employment in particular to the employer's detriment.

Statutory rights for severance only exist in particular cases.

Italy

In Italy, employees that are not executives can only be dismissed without notice when a breach occurs that is sufficiently serious, and with notice in the case of a serious breach of an employee's legal and contractual duties and specific rules apply to executives. In particular, they can be dismissed without notice in the case of serious breach of contract, for any reason with notice.

Upon termination of the employment contract, the employee is entitled to receive the employment termination payment and other amounts already accrued at the employment termination date such as unused holiday etc.

The amount payable is equal to the sum of each annual salary divided by 13.5. In practice, it's 7.4 percent of the annual gross salary. They also have to pay the pro rata supplemental monthly payments and the payment for new and unused holidays. The dismissal must always be in writing and if the dismissal is based on an employee's breach of contract, a special disciplinary procedure must be followed prior to the dismissal. It's not as extensive as the Acas Code and does not appear to have an appeals procedure.

The Netherlands

The Dutch legislation requires a permit from the employee insurance agency or the UWV which among other things issues dismissal permits. The Dutch employment law system is based on a closed dismissal system. There are 6 ways to terminate an employment relationship:



1. By mutual consent. Usually find ways to a settlement agreement through a cantonal judge.
2. Non-renewal of a contract over a definitive period of time and this still needs the prior permit from UWB.
3. In the event of a contract for indefinite period giving notice which is only possible after having first obtained a permit from UWB.
4. Upon request of the cantonal judge.
5. Termination during the probationary period but you don't need a permit and the employer's not required to give a reason for the termination unless the employee has asked for underlying reason.
6. For an urgent reason with immediate effect in the event of for example, theft, drunkenness, serious disobedience, refusal to perform duties and threatening of employer or their family etc.

Termination, as mentioned under 3 and 4 above, is possible for among other reasons, economic reasons, restructuring and underperformance. If it is underperformance, the employer still has to have had communicated the underperformance sufficiently and the employee has to be given a reasonable time to improve their performance.

If the cantonal judge dissolves the employment contract the employment contract terminates at the date of the dissolution and no further notice is required. The cantonal judge can order the employer to make a severance payment unless it concerns an immediate dismissal and an employer cannot pay in lieu of notice unless the employee agrees.

For dismissal for an urgent cause, the employer is required to tell the employee right away that he or she is 'fired with immediate effect' and to give details of the nature of the urgent cause. If the employer does not meet the requirements, and the urgent cause is not so urgent that no other disciplinary measures would be seen as more fitting, the dismissal will be invalid. According to Dutch case law 'all facts and circumstances' have to be taken into account, including the personal circumstances of the employee.

Poland

In Poland, in the case of termination of employment contracts for an indefinite period of time and the termination upon the contract for that notice, the employer is obliged to state the reasons for termination which should be real, specific and exhaustively defined. It is inadmissible to indicate a different clause in the document handed to the employee and subsequently to prove grounds for termination on the basis of a different reason. The employer is obliged to consult on the termination of employment contracts and in cases described above with trade unions, if any, disclosing its cause in a written notification. Written termination notice must always be shown to the employee prior to dismissal. The length of the notice period depends on the individual's work experience at a given workplace. There are some possibilities to pay in lieu of notice.

You can terminate an employment contract without notice with immediate effect either due to the employee's fault or for cases listed in the labour code. In the event of terminating an employment agreement without notice, the employer is obliged to state their reason justifying termination and consult the trade union representing the employee.



The employer may terminate an employment agreement without notice if the employee is unfit to work because of illness for a specific period and in the case of an unauthorised absence of the employer for a period exceeding one month. There is severance pay under the Polish Redundancy Act and the amount will depend on the length of employment. However, the severance pay may not exceed 15 times the minimum remuneration for work in Poland.

Romania

In Romania, the employment agreement can only be terminated in specific cause cases provided by the labour code and the procedure requirements must be met. The main categories for dismissals regulated under Romanian law are dismissals for cause, that is, restructuring and dismissals without cause. The dismissal for cause is akin to a redundancy situation and dismissals for poor performance and disciplinary reasons are the most common types of dismissal for cause. If an employer fails to comply with the specific procedures, it may trigger the annulment of dismissal decisions in court.

The employer has to give a 20 day notice for all categories of dismissal except where dismissal is for disciplinary reasons or when the employee is arrested for more than 30 days. An employer may dismiss an employee without notice in the event of dismissal for a disciplinary reason or where the employee is arrested for more than 30 days. Payment in lieu of notice is not specially regulated by Romanian law.

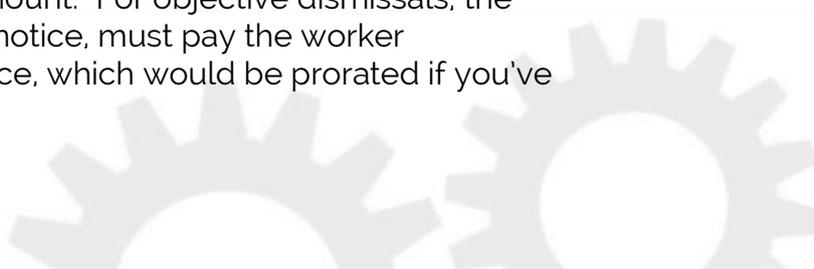
There are specific procedures prescribed by law in the event of a dismissal for cause or a dismissal without cause. In addition there is a numbers game in relation to collective redundancies. With regards to collective dismissals the labour code provides for certain mandatory stages to be followed. There are 5 stages in total and are similar to the redundancy consultation that we have in the UK. There is legislation in relation to severance pay but this is largely regulated by collective bargaining agreements. Such compensation is generally calculated based on the length of service.

Spain

In Spain, there is no termination without cause which is why the employer must always properly justify the reasons for terminating an employment agreement. The only exception to this rule is for dismissal during a trial period during which the employer doesn't have to give any reason whatsoever.

Grounds for dismissal are divided into objective grounds and disciplinary grounds. These two categories largely cover redundancy and disciplinary dismissals. It is interesting that absences from work even if justified but intermittent the circumstances can form the basis of an objective ground of dismissal.

If the grounds are objective the required notice is 15 calendar days. With respect to disciplinary dismissal, however, notice is not required because of the nature of the dismissal. In cases of disciplinary dismissal the employer is relieved of the obligation to give notice or pay compensation. Severance pay consists of two kinds of compensation which vary in amount. For objective dismissals, the employer, in addition to giving 15 days' notice, must pay the worker compensation of 20 days per year service, which would be prorated if you've worked less than a year.



For disciplinary dismissals, the law does not require the employer to pay any compensation whatsoever. If the court holds the dismissal to be on improper grounds, the employer must choose between reinstating the employee and paying him or her compensation of 33 days of salary per year of service, periods of work less than one year being prorated, with a maximum of 24 monthly payments.

Compensation may also vary if you are upper management, a professional athlete or artists in public shows. In cases of objective dismissals an employee must be notified in writing stating the facts underlying the dismissal and the effective date. At the same time as the delivery of the written notice the compensation of 20 days per year of service must be made available to the worker.

Sweden

In Sweden, employers may dismiss employees either with or without notice. A dismissal with notice must be based on objective grounds. Objective grounds are not defined by statute or case law, but can be either for objective reasons or subjective personal reasons. Objective reasons are dismissals based on redundancy, shortage of work or the economic situation of the employer whilst subjective personal reasons relates to the employee's conduct or performance. An overall assessment of the factors involved must be made when determining whether objective grounds for dismissal exists. A dismissal with notice will never be considered as being on objective grounds if there were other alternatives available to the employer, such as relocating the employees elsewhere within the business.

In a redundancy situation, a basic principle to be applied is that the employee with the longest aggregate period of employment with the company should be entitled to stay the longest. The employer must select those to be dismissed on a "last in, first out basis". One condition for continuing employment is that the employee has sufficient qualifications to perform the available positions that it may be offered.

An employer must provide prior notice of termination before dismissing an employee and must also observe certain formal rules that set out in the Employment Protection Act when serving notice of termination to an employee. This should always be made in writing and must state the procedures to be followed by the employee in the event the employee wishes to claim that the notice of termination is invalid or claim damages as a consequence of termination.

Dismissal without notice is lawful only where the employee has committed a fundamental breach of the employment agreement such as gross misconduct by disloyalty in working for competitors and should be implemented only in exceptional cases. There are no statutory provisions regarding severance pay.

Union power is very strong in Sweden and prior to terminating an employment agreement due to objective reasons; the employer may be obliged to conduct negotiations under the Co-Determination Act.



About the Author



Sofie Persson has recently joined [Engleharts](#) in Hove and heads up the firm's Employment department specialising in all aspects of employment law. She has a particular interest in Tribunals and drafting employment contracts, staff handbooks and settlement agreements.

Sofie speaks fluent Swedish and Chinese and graduated with a Chinese & Politics degree from the School of Oriental and African Studies in 2005. After a few years living and working in China, she returned to the UK to qualify as a specialist employment lawyer.

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