# NORWAY

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**1. Are there any laws that govern a layoff of employees? If so, what do the laws require?**

In Norway, we have the Employment Act from 2005 which contains several rules regarding layoffs. Most employment relationships are terminated either by resignation by the employee or dismissal by the employer. The Employment Act provides that a dismissal must be objectively justified due to circumstances relating to the operation of the business, the employer or the employee. This requirement applies to both individual and collective dismissals. Further, the requirement is absolute and cannot be contracted around.

**2. Are there any formal requirements for terminating an employee or groups of employees?**

Yes, there are strict procedural rules that have to be satisfied when dismissing employees. Failure to comply with the procedural rules shall, as a general rule, lead to a finding that the dismissal was unfair and unjustified. A notice of dismissal must satisfy certain formal requirements, including information about the employee's rights. It must be in writing and delivered to the employee personally or by registered mail. The notice of dismissal need not contain a reason for the dismissal. However, the employee can request an explanation for the dismissal and it is therefore normal to give a short explanation for the dismissal in the notice. The period of notice is often stipulated in the contract of employment. If not, the statutory period of notice is usually one month.

An employer may summarily dismiss an employee, i.e. dismiss him without notice, if the employee is guilty of a gross breach or other serious breach of the contract of employment. Whether the dismissal is individual or collective, the company is obliged to discuss the situation with the employee and his or her representative, if any, before making any decision to dismiss an employee.

In the case of mass lay-offs (more than 10 employees within a period of 30 days), the employer has an extensive duty to discuss all circumstances with the employees' representatives. The employer must also give notice to the Labour and Welfare Service. Furthermore, the lay-off will not take effect until 30 days after the Labour and Welfare Service has been informed.

**3. Are there special legal requirements for a layoff caused by redundancy in the workforce?**

An employer who is considering collective redundancies shall hold meetings as early as possible with employee representatives with the purpose of reaching agreement and avoiding a collective redundancy or the purpose of reducing the number of dismissals. Redundancies and other rationalization measures must also be considered by the company's working environment committee, if one exists. Working environment committees are obligatory for employers that employ more than 50 employees.

Furthermore, both the rationalization measures and the individual dismissals must be justified. The employer shall weigh the needs of the enterprise against the disadvantage

for each employee. There is a statutory duty to consider whether the employee can be given suitable alternative work within the enterprise and dismissal will not be deemed to be justified if the employer has other suitable work to offer the employee. The requirement that the dismissal must be objectively justified also obliges the employer to consider less drastic alternatives than redundancy, for instance temporary lay-off. The law does not prescribe selection conditions other than the previously mentioned requirement that the notice must be "justified". The most common selection conditions are based on a combination of the principles of length of service and qualifications, but individual and social circumstances are also taken into account. Employees with a considerable length of service and seniority enjoy stronger protection. Most collective bargaining agreements lay down a seniority principle that applies unless there are grounds for deviating from it. Employees who are made redundant have a preferential claim to new employment for 12 months after the expiration of the notice period, provided the employee is qualified for the vacant post and the employee has been employed by the company for a total of at least 12 months within the past two years.

Temporary lay-offs are considered to be a less drastic measure than dismissal. Layoffs are executed by suspending the employer-employee relationship in accordance with the employment contract. Although Norwegian legislation does not directly regulate the employer's right to lay off employees, certain rules have arisen from practice and the collective agreements. Even if an employer must also show good cause in the event of a lay-off, the burden is not as heavy as it is for dismissal. Still, the company must act reasonably in evaluating who should be laid off. Furthermore, temporary lay-offs must only be used when the employer is set to bring back the employers in question into the workforce after the temporary situation has passed. The temporary situation must also be based on specific, short term difficulties. The employer pays salary for the first 5 days of a temporary lay-off in case of a full lay-off or a reduction of at least 40 percent in the working hours. If the working hours are reduced by less than 40 percent, the employer's period is 15 days. Employees who are temporarily laid off are entitled to unemployment benefit if the working hours are reduced by 40 percent or more.

**4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?**

An employee who considers a dismissal to be unfair or unreasonable may contest it and claim that it was invalid and/or claim damages. If a dismissal is contested, both parties can, within certain time limits, demand that negotiations are held after notice is given. Both parties may be assisted at such negotiations. If the negotiations are not successful, or if no negotiations are held, the employee may institute legal proceedings. Provided that the notice of dismissal complied with the formal requirements, the time limit for instituting a proceeding is eight weeks from the conclusion of negotiations or, if negotiations were not held, from the date when notice of dismissal was received. If the employee's claim is limited to damages, the time limit for instituting proceedings is six months.

Provided that the employee institutes proceedings within eight weeks from the conclusion of negotiations or, if negotiations were not held, from the date when notice of dismissal was received, and within the notice period, the employee is generally entitled to remain in her post during any ongoing legal proceedings pending final resolution. This right includes the right to perform ordinary work tasks and to receive wages and additional benefits until the parties have reached an agreement or the case has been legally and finally settled.

The employer can apply to the court for an order that the employee shall vacate her post after the expiration of the notice period. Such an order can be granted at the discretion of the court if it finds that it would be unreasonable for the employment relationship to continue pending judicial determination.

**5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?**

If the court finds in favor of the employee, the dismissal shall, as a general rule, be deemed to be invalid and the employee may continue in his employment. In exceptional circumstances, the court can find that employment shall be terminated, notwithstanding that the dismissal was invalid. The employee may also claim compensation for economic and non-economic loss as a result of the dismissal. Such compensation shall be at the discretion of the court having regard to the employee's loss of income, any future losses and the other circumstances of the case. The employee may also be awarded legal costs.

6. **What are the one or two most common mistakes that employers make that lead to liability for a layoff?**

These days, a very common mistake is to initiate temporary lay-offs without good cause. Temporary lay-offs must be based on the assumption that the redundancy is temporary, and that the employees in question will return to the company when the redundancy period is over. Shortfall in turnover due to the financial crisis is as a general rule not deemed to be good cause. Thus, the employee may claim salary for the dismissal period (normally 1 to 3 months) instead of 5 days.

Furthermore, in collective dismissals, employers tend to make mistakes when applying selection conditions, which easily could lead to claims. The most common mistakes are ignorance of collective agreements prescribing the application of certain selection conditions, lack of awareness in the actual application of otherwise fair and justifiable selection conditions, and failure to hold individual meetings and discussions with every employee.

**7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?**

In general, many employees contest dismissals due to alleged lack of documentation or justification of the reason for dismissal. As a result of this, it is advisable to build up documentation for an individual dismissal, such as warnings in writing and other documentation of breach of the employment contract.

Furthermore, on March 1, 2009, new provisions regulating employers' access to employee emails came into effect in Norway. Under these provisions, employers may access employees' emails only if it is deemed necessary for the daily operations of the company, or if they suspect that the employee is breaching their contractual obligations. Moreover, the employee is entitled, as far as possible, to be notified and given an opportunity to respond before the employer accesses the email information. They should also be allowed to be present when the emails are being accessed and to be represented by a trade union representative. Of course, where access is requested on the basis of suspicion of serious breaches to duties arising from the employment relationship, an early warning

may provide the employee with the opportunity to delete data that may prove their guiltiness. To prevent this from occurring, the employer may therefore make a copy of the appropriate areas of the computer network which is to be subject to inspection before the employee is notified.