

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

General regulations concerning the layoff of employees can be found on the federal level, especially in the “Bürgerliches Gesetzbuch” (BGB) and the “Kündigungsschutzgesetz” (KSchG), a special law on layoffs and protection of employees.

According to the KSchG, the termination of an employment has to be “socially justified.” In case of a redundancy due to business operations, the termination of an employment is presumed to be socially justified.

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

Section 622 para. 2 BGB requires the compliance of a delay depending on how long the employer has been employed (e.g. a delay of two months to the end of the months in case of an employment of at least five years). The notice of termination has to be made in writing (Section 623 BGB).

In enterprises with five or more employees, there should be a BETRIEBSRAT (Staff Committee which might have nothing to do with a trade union). In most of German enterprises, such a Betriebsrat does exist. In case of layoffs, the employer has to inform the committee about the grounds of the termination and give the committee the opportunity to be heard (Section 102 Betriebsverfassungsgesetz (BetrVG)). The Betriebsrat has a certain time limit to give its opinion. If the employer terminates the contract without hearing, the termination is invalid.

If the number of layoffs and the size of the enterprise reaches a certain limit, the employer is also obliged to give written notice to the AGENTUR FÜR ARBEIT (Federal Employment Agency), to the Betriebsrat and to the individual affected employees (Section 17 KSchG). In case of insolvency of the enterprise, special requirements will apply for the layoffs (Insolvenzordnung (InsO)). The Betriebsrat has to be heard (Section 111 BetrVG).

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

No.

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

Yes. The employee has the possibility to file a protest claiming that his inclusion in the layoff is a discrimination (e.g. age/maintenance obligations/disability etc.). The

duration of the labour contract is also one of the main criteria for selection during a layoff procedure: The longer you worked for this enterprise, the more chances you have not to belong to those who are included in the layoff.

The place to attack the termination is the ARBEITSGERICHT (Labour Court (Special Courts for litigation on labour law)). There are three levels of courts, local, regional and federal level – all of them with participation of lay judges, one nominated by employers and the other nominated by employees. In first and second instance, there is only one professional judge, on the federal level there are three professional judges, each time accompanied by two lay judges. The rules for litigation are laid down in the federal Arbeitsgerichtsgesetz (ArbGG).

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

Usually, there are no sanctions or penalties which may be imposed against the employer for violating any of the legal requirements. However, if any of the requirements mentioned above is missing, the employer takes the risk to be confronted with the contest of the termination at (labour) court. If the court is convinced that the necessary requirements have not been fulfilled, the employment contract is still valid and the employer has to continue paying the employee her salary even for times when the latter did not work. Punitive damages are unknown so far in Germany.

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

In general, formal mistakes are the most important for litigation in this domain.

In enterprises, where a BETRIEBSRAT exists, the main source for mistakes is probably the non-hearing of the staff committee. If the termination is effected without the participation of the Betriebsrat, the employee concerned has the best chances to declare the termination null and void at the Labour Court (Special Courts for litigation on labour law).

Another mistake, especially in smaller enterprises, might be the lack of correspondence of the responsible persons in the enterprise and the persons who signed the termination.

**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?**

One of the most important political and economic measures in the current financial and business crisis is the so-called KURZARBEIT (short time work) as an alternative to layoffs. This legal concept dates back many decades (it was introduced even before the founding of the Federal Republic of Germany) and is included in the legislation on welfare law (Sozialgesetzbuch III). Recently, it was put into practice again at the beginning of the business crisis.

The aim of Kurzarbeit is to enable employers to keep their employees during a temporary crisis while reducing the labour costs with the financial help of the AGENTUR FÜR ARBEIT (Federal Employment Agency). This Agency is partly financed by the contribution of employers and employees, but also receives money from taxes. The employees receive less money, but their contribution to Social Security (health insurance, pension insurance, unemployment insurance) remain on the same level due to the sponsorship of the Agentur für Arbeit.

Kurzarbeit is limited to a period of 6 months, but can be extended to a maximum period of 24 months. The Federal Government recognized a special economic crisis and extended the period to 2 years (elections will come soon at the federal and state level...).

As employees are paid less during the period of Kurzarbeit, the employer has to request the consent of the BETRIEBSRAT (Staff Committee) which is normally given in a general crisis like this. Together with this consent of the Betriebsrat, the employer can request Kurzarbeit at the Agentur für Arbeit.

Sometimes TARIFVERTRÄGE (collective wage agreements, mostly for special branches) provide special provisions to the period of Kurzarbeit, e.g. professional trainings.