

10 Pitfalls

Special Protection Against Dismissal in German Employment Law



In Germany, certain groups of employees enjoy special protection against dismissal, including works council members, pregnant employees, and employees on parental leave. This protection ranges from a general prohibition of ordinary dismissals to approval requirements by authorities. These rules are strict, and non-compliance can render terminations invalid and costly. This flyer summarizes the key pitfalls that employers should be aware of when dealing with special dismissal protections.

1 Lack of Awareness of Special Protection

Certain employees enjoy extensive protection against dismissal. Employers must first be aware that these protections exist and understand which groups are affected before taking any termination steps. Failing to recognize these protections can render a dismissal invalid and expose the company to legal risk. Awareness of these groups and their specific safeguards is therefore crucial to avoid costly disputes.

The main protected groups include:

- Employees with collective bargaining or company-specific special dismissal protection
- Company-appointed officers (e.g., data protection officer, environmental officer)
- Public representatives
- Pregnant employees and employees on parental leave
- Severely disabled employees and those legally considered equivalent
- Works council members
- Apprentices
- Employees on care leave or family care leave

2 Failing to Properly Document Special Protection

Before issuing a termination, employers must systematically check whether the employee is subject to special dismissal protection. Common mistakes include not having a structured process, missing checklists, or neglecting to verify the employee's status (e.g., pregnancy, parental leave, disability, works council membership). Importantly, if an employee has already informed the employer of circumstances triggering special protection and the employer fails to document this properly, the employee is generally not required to remind the employer later. In legal disputes, this can work strongly in the employee's favor and may result in significant costs or obligations for the employer. Establishing clear internal procedures and proper documentation is therefore important.

3 Underestimating Consequences of Improper Terminations

Failing to respect special protection against dismissal can have serious legal and financial consequences for employers. If a termination violates the statutory protections, it is generally invalid, meaning the employment relationship

continues and the employee must be allowed to continue working or reinstated. Employers may also be required to pay back wages for the period since the invalid termination. Furthermore, publicly known invalid dismissals of protected employees can significantly damage the company's reputation. Employers should fully understand these potential consequences before taking any termination action.

4 Confusing Absolute Prohibitions with Approval Requirements

In German labor law, some employees enjoy absolute protection against dismissal, while others require specific approvals before termination. Absolute protection applies, for example, to works council members, where ordinary dismissal is prohibited. Employees with approval-based protections, such as pregnant employees, may only be terminated if an authority grants exceptional approval. The approval procedure can take time and depends on individual circumstances. It should be observed in parallel with any works council involvement. This can lead to a lengthy termination process during which the employee remains employed. Approval must be obtained first, and only afterward may the employer issue the dismissal, which then triggers the notice period. Employers often confuse these categories, which can lead to invalid dismissals or delays. It is essential to clearly identify the applicable category and follow the correct procedure.

5 Ignoring Special Protections Under Collective Works Agreements

Employers should be aware that special dismissal protections are not limited to statutory provisions. Collective agreements and works agreements often grant employees additional safeguards. For example, some agreements protect employees from ordinary, especially operational, dismissals if they have reached a

certain age or have long tenure. Company-level agreements can also establish enhanced dismissal rules, such as temporarily restricting redundancies during restructurings. Failing to consider these contractual or collective protections can invalidate a termination and expose the company to legal and financial risks.

6 Overlooking Protections for Pregnant Employees and Those on Parental Leave

Dismissals are generally barred during pregnancy and until four months after childbirth as well as until four months after a miscarriage occurred after the 12th pregnancy week. Only in rare cases can the competent authority pre-approve an exception, and strict formalities apply. Protection still applies if pregnancy becomes known only after notice, provided the employee informs the employer within two weeks. The employee may inform the employer even later if the delay was not the employee's fault. During parental leave (full-time or part-time), the same prohibition applies from the employee's valid request for parental leave through its duration.

7 Failing to Obtain Required Approval for Disabled Employees

Any dismissal of a severely disabled employee or an employee with recognized equivalent status requires prior approval from the competent state authority. Without approval, the dismissal is legally ineffective, and the employment continues. Employers should also be alert to pending recognition or equalization applications. These can trigger protection once granted under the relevant criteria and timing rules. Employers should involve the representative body for severely disabled employees early. This is important because preventive measures and accommodations are scrutinized closely in approval proceedings. Proceeding without approval is a fundamental pitfall that typically cannot be cured afterward.

8 Disregarding Protections for Works Council Representatives

Works council members and comparable office holders enjoy an absolute bar on ordinary dismissal during their term of office and, typically, for a period after that term. Only an extraordinary dismissal for good cause is possible, and it requires the works council's prior consent or a judicial decision replacing it under the statutory procedure. This strict regime safeguards the independence of the employee representation. It continues to apply even in complex operational scenarios with only narrow statutory exceptions for plant or department shutdowns. Even then, the employer must first examine and implement transfers or offer other suitable positions before a termination. The protected circle includes works council member, their substitutes while acting, election board members, candidates, initiators of works council elections and under certain requirements even early-stage initiators. Ignoring these protected roles or mishandling the consent procedure under the Works Constitution Act (*Betriebsverfassungsgesetz* – "**BetrVG**") is a classic – and avoidable – source of invalid dismissals and litigation. The key to avoiding this pitfall is precise status screening, timely initiation of the consent process, and careful documentation of any operational constraints underpinning transfers or shutdowns, including the works council hearing requirements that apply in all cases.

9 Overlooking Special Protection for Company-Appointed Officers

Certain company-appointed officers – such as Data Protection Officers or Environmental Protection Officers – carry their own special dismissal protections. These roles are protected by law to ensure independence in overseeing compliance and safety obligations. Employers sometimes forget that an individual holding such a position generally cannot be terminated through ordinary means while in office and even

after their term of office.. In practice, only a termination for a serious cause (extraordinary dismissal) is permissible for these officers. Dismissing a protected company officer without meeting the legal criteria will be ineffective, so always confirm whether an employee has a protected officer status before proceeding.

10 Failing to Consider Termination Agreements as an Alternative

When statutory protections make a dismissal difficult or impossible, a mutual termination agreement (*Aufhebungsvertrag*) can be a practical alternative. Many employers overlook this option, but offering a protected employee a fair separation agreement – often with an appropriate severance – may achieve a consensual end to the employment without violating the law. Unlike a unilateral dismissal, a mutual agreement is not subject to the same statutory restrictions as long as it is truly voluntary. Failing to explore this route can leave the employer stuck in an untenable employment relationship or facing protracted legal disputes. If the company perceives the employee's willingness to conclude a mutual termination agreement, it may save time and cost for the approval procedure as it either may not be necessary at all or the application at the authority can be withdrawn. In other cases, it may be more effective to play both sides simultaneously, i.e. offering a mutual termination agreement while already applying for the authority's approval.

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Dr. Christian Maron, a leading international labor and employment lawyer at Taylor Wessing Germany, has been advising global companies expanding into the German market for more than fifteen years. Alongside his dedicated team, they help businesses align their global operations with German labor and employment law, providing strategic guidance on HR matters, employment

contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

Want to learn more?

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