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# Germany

## Redundancies

### Collective Redundancies

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#### Threshold

A collective redundancy process is triggered where an employer proposes to make redundant, within a 30-day period:

- (i) more than five employees in an operational unit which regularly employs between 21 and 59 employees;
- (ii) more than 25 employees, or 10 percent of the workforce, in an operational unit which regularly employs between 60 and 499 employees; or
- (iii) more than 30 employees in an operational unit which regularly employs at least 500 employees.

#### Obligations

There is an obligation to:

- (i) inform and consult with the Works Council regarding the proposed redundancies and ways to avoid the redundancies; and
- (ii) after completion of the consultation process, notify the local employment agency.

If there is no Works Council in place, only the employment agency needs to be notified. There is no obligation to inform or consult with the affected employees themselves.

In most cases, a collective redundancy will constitute or be part of an operational change (within the meaning prescribed by the Works Constitution Act). If this is the case, there is also an obligation to:

- (i) inform the Works Council of the operational change;
- (ii) negotiate a reconciliation of interests with the Works Council (a "**Reconciliation of Interests**"). This will focus on the reasons for the proposals, the number of people who will be affected, the process that will be followed and the manner in which any redundancy calculations will be made; and
- (iii) negotiate a social plan with the Works Council (a "**Social Plan**"). This will focus on redundancy packages.

If no Works Council is established, there is no obligation to consult with or reach an agreement with affected employees.

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Independent of an operational change and the conclusion of a Reconciliation of Interests, the Works Council must be informed prior to the issuing of termination notices to individual employees. This information generally must contain the reason for the dismissal (including any social selection among employees) and the respective employee's age, length of service, job position, marital status, number of dependent children, any known disability, the notice period and the envisaged time frame in which the termination notice is proposed to be sent to the employee.

### **Timing**

Depending on the circumstances of the collective redundancy, the process of negotiating a Reconciliation of Interests and a Social Plan can take several months. In many cases, the process takes approximately three months.

The notification to the employment agency must not be made earlier than the 15th day following the date on which the Works Council is informed.

Once the Works Council has been informed of the redundancies, the employer must wait at least one week before sending notices of termination to employees.

The dismissals generally cannot become effective until one month after the date the local employment agency is notified. The local employment agency can approve a shorter period, and can also delay the dismissals for up to two months.

### **Representatives**

The appropriate representatives for information and consultation will be the Works Council.

### **Information/Notification**

There are three main notifications:

- (i) **Notification to the Works Council:** The following information must be provided in writing to the Works Council:
  - (a) the reasons for the proposed redundancies;
  - (b) the number and the job titles of the employees whose roles are proposed to be made redundant;
  - (c) the number and the job titles of all employees regularly employed in the affected operational unit;
  - (d) the proposed timing for the redundancies;
  - (e) the selection criteria to be used in identifying those to be made redundant; and
  - (f) the basis for calculation of any severance payments.

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If the collective redundancy also constitutes an operational change of the affected operational unit, the Works Council must also be informed of the details of the operational change. If no Works Council is established, there is no obligation to provide information to the employees instead.

- (ii) **Notification to the employment agency:** A notification of a mass dismissal must be submitted to the local employment agency before notices of termination are sent to the individuals. The notification should include the same information as provided to the Works Council, and amended to reflect any changes agreed through consultation with the Works Council. The employment agency must be provided with the final opinion of the Works Council on the collective redundancy or any concluded Reconciliation of Interests instead.
- (iii) **Notification to the employees:** Each employee must be provided with a notice of termination signed on behalf of the employer in handwriting. The original signed notice must be sent to each employee - a scanned copy is not sufficient.

## Consultation

Where the collective redundancy constitutes or is part of an operational change, there is an obligation to negotiate a Reconciliation of Interests and a Social Plan with the Works Council. The number of consultation meetings required will vary depending on the extent of the measures and the number of employees affected.

## Penalties

Failure to comply with the information and consultation obligations (including the notification to the employment agency) may result in the employees claiming that the notices of termination are invalid.

If the collective redundancy also constitutes an operational change of the operational unit, the Works Council can apply for an injunction to suspend the implementation of the collective redundancy until the employer has carried out the appropriate procedure. In addition, any failure to inform the Works Council of the planned operational change can result in an administrative fine for both the employer and its managing directors of up to €10,000. A failure to comply with the obligation to negotiate a Reconciliation of Interests can also result in severance payments for the affected employees.

An employee who has at least six months' service and is employed in a business with more than 10 employees can bring an unfair dismissal claim before the labor courts to challenge any notice of termination, even if the requirements for collective redundancy are met. Under the Protection against Unfair Dismissal Act, a justified reason for a dismissal is required which may be based on:

- (i) personal grounds (e.g. ongoing sickness);
- (ii) breach of contract; or
- (iii) operational reasons.

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**Other**

The employer must comply with any additional process prescribed in any applicable CBA.

Although German labor law generally does not require that documents are prepared in German, there is a general consensus that the Works Council can refuse documents in other languages, and so it is advisable for information to be provided in German. Any documents to the employment agency must be in German.

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## Individual Redundancies

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### Threshold

Where the threshold for a collective redundancy is not met.

If individual redundancies result in or are part of an “operational change” of the affected operational unit within the meaning prescribed by the Works Constitution Act, the rules for collective redundancies apply (including the requirement for negotiation of a Reconciliation of Interests and Social Plan). This report assumes that individual redundancies will not result in or be part of an “operational change.”

### Obligations

There is no prescribed process to be followed in the case of individual redundancies where there is no Works Council. In practice, the employer need only issue a termination notice in writing, giving the applicable notice. In the event a Works Council exists, the Works Council must be informed about the proposed dismissal.

### Timing

There is no prescribed timeframe for the process if no Works Council exists. If a Works Council exists, the mandatory information to be provided to the Works Council triggers a waiting period of one week. Notices of termination cannot be sent to employees until at least the end of this one-week period.

### Representatives

Any existing Works Council must be informed about the proposed dismissals. In the absence of an existing Works Council, there is no requirement to elect representatives.

### Information/Notifications

There are two notifications:

- (i) **Information to Works Council:** Where there is an existing Works Council, it must be provided with the following information (recommended in writing):
  - (a) the reason for the dismissal (including any social selection among employees);
  - (b) the employee’s age, length of service, position, marital status, number of dependent children and any known disability;
  - (c) the employee’s notice period; and
  - (d) the proposed timeframe for termination.
- (ii) **Notice to employee:** The employee must be provided with a notice of termination signed on behalf of the employer in handwriting. The original signed notice must be sent to the employee — a scanned copy is not sufficient.

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**Consultation**

There is no mandatory obligation to consult with employees, but it is advisable if a termination agreement is to be reached.

**Penalties**

Failure to comply with the requirement to notify an existing Works Council in a complete and correct manner will void the termination notice given to the employee.

An employee who has at least six months' service and is employed in a business with more than 10 employees can challenge any notice of termination because of unfair dismissal in a labor court proceeding even if requirements for collective redundancies and individual redundancies with respect to works council information are met. Under the Protection against Unfair Dismissal Act, a justified reason for a dismissal is required which may be based on: (i) personal grounds (e.g., ongoing sickness); (ii) breach of contract; or (iii) operational reasons.

**Other**

The employer must comply with any additional process prescribed in any applicable CBA.

Although German labor law generally does not require that documents are prepared in German, there is a general consensus that the Works Council can refuse documents in other languages, and so it is advisable for information to be provided in German.

Specific rules may apply to the dismissal of certain categories of employee, depending on which category they belong to.