Guide

Employment & the law

The IG Metall collective agreement for the electrical, metalworking and IT sectors

www.dialog.igmetall.de/infineon
What does the law regulate?

Laws define basic rules for almost all issues involved in employment relationships.

Examples:
- Working Time Act
- Vacation Act
- Protection Act
- Employment
- Continued Payment Act
- Civil Code
- Pre-retirement Part-time Protection from Work
- Dismissal Act
- Federal Data Protection Works Constitution Act
- Social Security Act

All of these laws (and many more) apply to every employment relationship, unless the collective agreement or employment contract is more favourable (exception: see above-opt-out clause).

Frequently, it is not even possible for individuals to waive terms of employment laws: Anyone who signs the clause, “There is no entitlement to vacation”, can still sue for paid vacation, which they are guaranteed under the Vacation Act, even for an employment relationship limited to one month.

What do collective agreements regulate? When do they apply?

Traditionally, collective agreements regulate all issues associated with payment (salary groups, salaries, special payments, continued payment), working time (hours per week, vacation) and termination of the employment relationship (duration of trial period, notice periods). In addition, they are increasingly concerned with creating and preserving jobs (part-time work for older employees, collective agreements on job security).
Differences between collective and statutory regulations

<table>
<thead>
<tr>
<th>Issue</th>
<th>Collective Agreement</th>
<th>Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages / Salaries</td>
<td>Yes</td>
<td>No regulation</td>
</tr>
<tr>
<td>Working time</td>
<td>35 hr. week</td>
<td>48 hr. week</td>
</tr>
<tr>
<td>Start of sick pay entitlement</td>
<td>immediately</td>
<td>after four weeks</td>
</tr>
<tr>
<td>after hiring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacation</td>
<td>Six weeks</td>
<td>Four weeks</td>
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<tr>
<td>Vacation bonus</td>
<td>50%</td>
<td>No</td>
</tr>
<tr>
<td>Overtime premiums</td>
<td>25-50%</td>
<td>No regulation</td>
</tr>
<tr>
<td>Premiums for</td>
<td>50-175%</td>
<td>„appropriate“</td>
</tr>
<tr>
<td>Sundays/holidays</td>
<td></td>
<td>premium</td>
</tr>
<tr>
<td>Special payments</td>
<td>55%</td>
<td>No</td>
</tr>
<tr>
<td>Paid leave (e.g. wedding,</td>
<td>1-2 days</td>
<td>No regulation</td>
</tr>
<tr>
<td>bereavement, birth of child)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dismissal protection for</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>older employees</td>
<td></td>
<td></td>
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</tbody>
</table>

Collective agreements are signed by employers’ associations (or individual employers) and unions on behalf of their members. They apply only to relations between members of the parties to the agreement, i.e. in all cases where the employer is a member of the employers’ association and the employees are members of the union that signed the collective agreement.

„Non-collective“ (AT) employees and collective agreements

So-called AT employees or „non-collective employees“ are defined in the Master Collective Agreement for the Bavarian Metalworking and Electronics Industry as „...employees whose salaries are defined on a non-collective basis at no less than 25 percent more than the highest salary for Group VII under the agreement“ („smallest difference principle“). Expressed in exact figures, the monthly salary at the top end of Salary Group VII on May 1, 2002 in Bavaria was €3,932. Applying the definition, a non-collective employee must earn at least €4,915 per month-based on a 35-hour week. With a 40-hour week, the gross salary must be at least €5,618.

Non-collective employees who belong to the union can go to court to enforce compliance with the „smallest difference principle“.

What is regulated by works agreements?

Works agreements can be negotiated to regulate any issues that are not regulated in collective agreements.

Typical issues for works agreements are:
- Plant holidays
- Remuneration principles
- Flexitime
- Working time accounts
- Principles for bonus payments
- Working time records
- Short-time, overtime
- Personnel information systems
- Working at computer screens
- Conduct in the workplace
- Company pension plan
- Meal allowance
- Programmes for the advancement of women
- Health projects
- Start and end of working day
Works agreements are negotiated between the works council and the employer on behalf of all employees, i.e. even for “non-collective” staff. These agreements are automatically binding for all staff, even if not mentioned explicitly in employment contracts.

**Expiry/limitation periods**

If you wish to make claims based on an employment relationship, the following limitation periods and deadlines apply:

- Claims to premiums for working overtime, Sundays, bank holidays and night shifts must be made immediately, and no later than 2 months after the pay slip is issued for the period for which this money should have been paid.
- All other claims expire within three months of falling due.
- According to Section 196, Par. 1, Item 8/9 of the German Civil Code, all claims from employment relationships expire within two years. However, the year in which the claim arises does not count towards this period. For example, salary claims from August 2001 expire on December 31, 2003.
If an employment relationship falls under the jurisdiction of a collective agreement, then the contract needs to cover just a few points: It should definitely include

- the names and addresses of the contract parties
- the starting date of the employment relationship
- the job description and place of work of the employee
- a note naming the applicable collective agreement
- the duration of the trial period
  (or statement that the trial period is waived)
- salary class under the collective agreement

Depending on specifics of individual cases, contracts may also cover:

- payments above and beyond collective agreement levels
- special agreements
- references to applicable works agreements
- for temporary employment relationships: duration; if the contract is for more than two years: reason for the limited term of the contract
- for part-time employment relationships: Working time: number of hours and the time of day; salary as a percentage of the collective agreement salary

If it proves impossible to reach an agreement based on the collective agreement, then the issues covered in the collective agreement should be added individually to the employment contract. These are, in particular:

- the agreed working time (number of hours; time of day) and, where applicable, payment or compensation for overtime and time spent travelling
- amount and components of salary, including all premiums,
bonuses, allowances and other items, stating the due date for payment; parameters for commissions and profit shares, where applicable with reference to the company remuneration framework
→ duration of annual vacation, vacation pay
→ notice periods

Written Employment Contract

In almost all white-collar employment relationships, all of these items are regulated in a written employment agreement. But verbal agreements are still permissible. In this case, the law requires the employer to give the employee the contractual terms in writing within one month of the start of the employment relationship. This paper must include at least the above-named items. If necessary, the employee can obtain a court order to that effect.

The same obligation applies to any changes in a contract. In this case, too, the changes must be given in writing to the employee within one month of taking effect. Finally, if an employee is sent abroad for more than one month, then the
→ duration
→ additional pay (in which currency?)
→ material benefits and
→ terms for the employee’s return
must be set down in writing and given to the employee before he/she departs.

Please note: The above-mentioned items must be documented only if they are agreed. All of these items should be checked very carefully. Employers have been known to write things in these documents that were either not discussed at all, or not arranged as stated in the employer’s written version, for example clauses allowing for the employee to be transferred anywhere in Germany

at any time, or stating that the employee can reasonably be expected to perform other work than that agreed in the job description. In such cases, the employee must object in writing and, if necessary, take the matter to court. It is definitely preferable to agree in advance to a written employment agreement: The employee then signs this agreement only when it says what was agreed—no more and no less.

Established practice

Rights and obligations under an employment contract can be derived from established practice.

Example:
Three years in a row, an employer pays a Christmas bonus in excess of the terms of the collective agreement without explicitly stating that the payment is voluntary and subject to cancellation at any time. Employees now have individual entitlement to the continued payment of this company bonus.

A contractual employment relationship can be terminated through a cancellation agreement, expiry of the agreed term of the relationship or through one of the parties giving notice.

If the employer wishes to make changes to the rights and obligations under an employment agreement, then this requires either mutual agreement by the parties (= Amendment agreement) or notice of termination pending amendments (a so-called „alteration dismissal“).
The required period for announcing this event is equal to the legal minimum notice period for ending an employment relationship (see the chapter „Ending Employment Relationships“). Limited employment contracts that leave employees with no protection against dismissal are permissible only in certain exceptional cases. This principle is based on court rulings. It states that the limitation of the contract is effective only if it is based on a „material reason“. Examples of recognised material reasons include:

- trial employment; casual employment
- substitution for employees on sick leave
- substitution for employees absent due to pre- and postnatal leave, statutory child-rearing leave, childcare sabbaticals (Section 21 Par. 1 Federal Child-rearing Allowance Act) and orientation training (Section 21 Par. 2 Federal Child-rearing Allowance Act)
- substitution for an employee drafted for military or social service,
- positions under state-sponsored job creation programmes (so-called ABMs) with time-limited wage subsidies,
- at the request of the employee. This request must be made explicitly and stated voluntarily.

When a regular (i.e. non-temporary) employment relationship begins, special regulations apply to notice periods and dismissal protection. This initial phase was known in the past as the „trial period“. Section 622 of the Civil Code states that these regulations apply only if a trial period is explicitly agreed. The Master Collective Agreement for White-Collar Workers—which regulates notice periods (see „Ending Employment Relationships“) makes no mention of a trial period.
Non-collective employees (so-called AT employees)

IG Metall negotiates pay increases for wage earners and salaried employees covered by collective agreements. They function as de facto minimum standards. Even in the case of non-collective staff (so-called AT employees) employers can hardly undercut the negotiated increases. This prevents employers from freezing the salaries of these employees. The "smallest difference principle" anchored in collective agreements states that the lowest AT salary must be at least 25% higher than the highest collective agreement salary. As a result, AT salaries automatically rise when increases are negotiated through collective bargaining.

The result: With every collective pay increase negotiated by IG Metall, the AT salary scale shifts upwards. But AT employees have an individual right to a salary rise in line with a collective increase only if they are IG Metall members.

Performance assessment

A performance assessment is the performance-based evaluation of each employee that must be carried out at least once a year. The results are kept in the employee’s personnel file. In addition to financial considerations, the assessment includes performance-related and personal recognition.

Note:
- On request, the performance assessment must be explained to the employee.
- When an employee moves up to a higher wage or salary class, the employer can re-evaluate the performance bonus.

Important! Section 102 of the Works Constitution Act states that the works council must be given a hearing. The works council can express reservations or object to the dismissal. However, this has no effect during the first six months of an employment relationship, since the employer can terminate the contract without stating reasons during this time. As a result, it is not possible to file suit to force the continuation of employment.

Regulations on payment

Collective wages and salaries are regulated in collective agreements. They determine the contractually guaranteed minimum amounts. Depending on the contract parties, various types of collective agreements can be signed: so-called wide-area collective agreements, „recognition agreements“, supplementary agreements, company or plant agreements. The contractually guaranteed salary is made up of:

- the basic salary of the collective agreement salary class
- the performance bonus
- premiums and special allowances for overtime, shift work, night shifts and Sundays/holidays
- other collectively agreed remuneration such as employer contributions to savings plans, „13th monthly salary“, vacation pay

Every two years, IG Metall and the employers’ association renegotiate salaries and working conditions in collective bargaining rounds. A comparison with the minimum standards under the law shows that it is worth defending the collective agreements with all our strength. Only IG Metall members are legally entitled to the standards under the collective agreement and can if necessary enforce these claims in court.
The extent to which the employee has achieved the targets must be examined in a joint discussion.

You can file an objection if you are not satisfied with your performance assessment. In this case, you will have the support of IG Metall and your IG Metall works council.

Agreed targets
The performance assessment as defined in the collective agreement is based on the assumption that the employee cannot be obliged in advance to meet certain performance targets because the necessary work cannot be precisely predicted. The performance can only be assessed after the fact. The agreed targets are used to define in advance the results that the employee should achieve. The amount of the performance-based salary component (performance bonus) depends on whether or not the employee achieves the goal agreed in advance (measured in terms of results or time).

Works agreement/Collective agreement
Like all regulations that influence the pay and performance conditions, agreed targets must be regulated in collective agreements or works agreements.

The following points must be considered:
- The targets cannot take the form of a generalised overall goal. Instead, the agreed targets must indicate concrete, individual goals.
- Targets must be clear, and it must be understandable to employees how successful they have been at achieving them.
- Employees must be given the necessary authority to achieve their targets.
- Targets can be agreed only if they fall under the employee’s tasks in the workplace.

Payment
At present, agreed targets cannot be linked with payment components in most cases. So far, regulations to make this possible are lacking both at the collective bargaining level and under in-company agreements. Companies are certainly very interested in such regulations. Unstable company structures (take-overs, spin-offs, restructuring) have weakened employees’ identification with companies and their goals. The idea is to restore these strong ties through financial incentives. But instead of spending additional money on these incentives, companies want to finance them by reducing the fixed portion of employees’ salaries. As a result, IG Metall has refused to enter into collective agreements on this issue. Reason: The improvement in results achieved through agreed targets must be reflected in higher incomes.
Premiums for overtime, Sundays, holidays and night shifts

Premiums for overtime, Sundays, holidays and night shifts are intended as compensation for additional burdens. Premiums are not regulated under the law—only in collective agreements. Overtime begins when the working time agreed under the collective agreement (35 hours per week) is exceeded. Overtime must be ordered by the manager and approved by the works council.

The premiums are 25% for the 1st-6th hour of overtime, and 50% as of the 7th hour. If an employee works more than 10 hours on any given day, then a premium of 25% must be paid for the 11th hour and 50% for every additional hour.

Premiums for night shifts apply to work done between 8 p.m. and 6 a.m. These payments range between 25-60%. Premiums for working on Sundays and holidays range between 50-175%.

<table>
<thead>
<tr>
<th>Sundays</th>
<th>50 %</th>
</tr>
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<tbody>
<tr>
<td>Holiday falls on off-day (unpaid holiday)</td>
<td>50 %</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Holidays</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory holiday with pay</td>
<td>100 %</td>
</tr>
<tr>
<td>On May 1</td>
<td>150 %</td>
</tr>
<tr>
<td>On December 25</td>
<td>150 %</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Working on December 24/31</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>After 12 noon</td>
<td>50 %</td>
</tr>
<tr>
<td>After 6 p.m.</td>
<td>100 %</td>
</tr>
</tbody>
</table>

*Only for companies that operate continually*
Under the collective agreement, weekly working time excluding breaks is **35 hours**. Daily working time is up to **8 hours**, unless another agreement has been reached.

For individual employees, the regular working week can be extended up to as many as 40 hours—with pay adjusted accordingly („13% clause“). This is possible only with the approval of the employee(s) in question. The works council must be informed of the agreed working time extension. If employees refuse to accept an extension of working time, they cannot incur disadvantages for this reason. At the end of each calendar half-year, the employer must supply the works council with a list of all employees with extended weekly working time. The number of employees in this situation may not exceed 13% of the entire workforce (excluding management).

However, some companies (e.g. Infineon) have **supplementary collective agreements** in which no quotas apply to 40-hour contracts, i.e. the 13% quota can be exceeded.

The regular individual working time can (through a **works agreement**) be spread evenly or unevenly over 5 days of the week, excluding Sundays (usually Monday-Friday).

If working time is spread unevenly **over several weeks**, then the collective agreement states that the average working week over a period of at most 12 months must be less than or equal to the regular individual working time. Works agreements regulating the distribution of working time must specify the start and end dates of averaging periods. In case of differences between the amount of hours worked and the agreed working week, the time can be made up in the form of days off.

**The beginning and end of daily working time** and breaks are agreed with the works council.

In **three-shift workplaces**, employees must be given paid breaks totalling 30 minutes per shift.

**On December 24/31, working time** ends at 12 noon unless a different agreement has been reached with the works council. Employees must be paid for the cancelled working hours.

Exceptions apply to employees who regularly have significant numbers of hours on standby or on-call duty during their working time (Section 2 of the Master Collective Agreement for Wage Earners).

Regulations on flexitime must be agreed with the works council with the involvement of the collective bargaining parties (This applies only to production workers: Section 2, Par. 4 of the Master Collective Agreement for Wage Earners).

To save jobs, the employer and the works council can sign a works agreement reducing weekly working time to a level below 35 hours per week, and even as low as 29 hours per week (Collective Agreement for Job Security).

Overtime premiums are payable when the agreed regular weekly working time is exceeded. Overtime must be ordered by the supervisor and approved by the works council.

It is also defined as overtime if an employee works more than 10 hours on a given day, regardless of the number of hours worked during that week. **Employees cannot work more overtime than 10 hours in a given week and 20 hours in a given month.** The works council can sign an agreement with management to permit individual employees or groups of employees to work more than 20 hours of overtime (limited to an eight-week period). For overti-
me of up to 16 hours, the employer can grant paid leave to compensate for the extra time worked if employees request it. Employees who work more than that amount of overtime must be given paid leave if they request it. This paid leave must be taken during the subsequent three-month period. The works council and plant management can agree that all overtime will be compensated in the form of paid leave. The obligation to pay overtime premiums is not affected unless the leave is taken within two months. Overtime premiums must be paid in money.

On-call duty

How is on-call duty defined?
On-call duty refers to an employee’s obligation to stay at a location of his/her choice that must be made known to the employer, and to remain available to be called in to work. It is also considered on-call duty if employees must be reachable via mobile telephone or another form of radio telephony.

Standby duty differs from on-call duty in that the employee must remain at a specified location.

On-call duty is not considered working time as defined in the Working Time Act. For the purposes of employment law, it is regarded as resting time. If an employee on on-call duty is called in to work, then this is considered an interruption of resting time. Working time counts from the time of the interruption.

What has to be regulated in connection with on-call duty?
In companies where collective agreements apply, these agreements define the basic framework for on-call regulations at the company level.

1. On-call duty is voluntary
In principle, on-call duty is voluntary. There is an obligation for an employee only if this is agreed in the employment contract or collective agreement. That means by the same token that employees are not entitled in any way to take part in on-call duty if it exists within the company. It is up to the employer to decide who will be involved in on-call duty. But the selection cannot be arbitrary or discriminatory.
2. Payment

**On-call duty without a call-in**
The employer must pay for on-call duty separately. If a collective agreement does not regulate payment, then an agreement must be reached with the employer. It is advisable to agree on a flat rate for on-call duty.

**On-call duty with a call-in**
Since the time spent on a call-in is working time, it must be recorded and documented. The employee must be paid for this time along with any premiums (e.g. overtime, night shift premium, Sunday/holiday premium). This payment is in addition to the flat rate for on-call duty.

**Payment for travel time**
As an alternative to payment for the actual travel time as working time, it is also possible to pay a flat rate for travel time: For example:

<table>
<thead>
<tr>
<th>Distance from home to workplace</th>
<th>Payable travel time</th>
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</thead>
<tbody>
<tr>
<td>0-20 km</td>
<td>30 minutes</td>
</tr>
<tr>
<td>21-40 km</td>
<td>1 hour</td>
</tr>
<tr>
<td>As of 41 km</td>
<td>2 hours</td>
</tr>
</tbody>
</table>

**Compliance with Working Time Act**
Employees must be given the 11-hour rest period stipulated in Section 5 of the Working Time Act. If an employee on on-call duty is called in between 10 p.m. and 6 a.m., then—depending on the number of hours worked—this can mean that the next working day is shorter or is cancelled completely (with full pay, of course).

**Liability problems / Insurance**
Work performed outside of normal working hours, and especially at night, is more prone to errors and accidents. For this reason, the employer is obliged to take out liability insurance that provides coverage even in case of gross negligence.

**Vehicles**
If an employee drives from home to the call-in location with a vehicle provided by the company, then insurance coverage is usually provided by the employer. If employees use their own cars, then it must be guaranteed that the employer bears full liability, with no involvement of the employee in any costs or damage claims. Any increase in the employee’s insurance premiums must also be taken into account.

Individual advice and model agreements are available from your IG Metall works council members or directly from IG Metall.
Business trips

Whether you are a service specialist, developer, trainer, consultant or sales representative—you are constantly on the go, travelling to customers, trade fairs, training sessions. And that does not mean just one-day outings—trips often last days or weeks on end. The weekend is barely long enough to take care of basic household chores, catch up on the washing and ironing and prepare for the next trip. Trips abroad are particularly stressful. The dream of seeing the world with the company’s help soon becomes a nightmare.

Although business trips have become a routine part of working life, most employees who travel are still unsure of the laws and regulations that apply to them. This is because business trips are not exactly defined under employment law. Laws regulate only specific details. And even where there are collective agreements, there are still grey areas.

The result: More and more, the buzzword „flexibility“ has created a situation in which employee’s willingness to travel is simply taken for granted. And the number of companies that provide fair compensation for travel time that eats up leisure time, days off and weekends is shrinking. As a consequence, employees’ social life, family life and friendships suffer.

It is high time for clear regulations for business trips!

What is a business trip?

A business trip is defined as a trip taken in the interest of the company during which the work required under the employment contract is performed for a limited period outside the workplace (which is usually defined in the contract). Secondments, i.e. tem-
The business trip includes the entire duration of absence from the normal workplace. Travel time is counted as the time taken to travel from the normal workplace to the location where the employee works temporarily.

**Constant business trips = Field service?**
Generally speaking, all employees can be expected to take business trips. However, there is still no clear legal definition of when we can say that a job with very frequent business trips has turned into a job in which travel plays an integral role.

**Field service: usually better regulated?**
Most companies have clear regulations for field service staff: Travel time is part of working time. Working time during the daily regular working time as defined by the collective agreement or employment contract is paid along with applicable premiums. For field service employees, the situation is still straightforward: Time spent travelling to customers’ premises is treated as working time. If a breakdown of a customer’s system results in six hours of repair work and 10 hours of travel time, then the field service technician is entitled to 16 paid working hours along with any premiums applicable to hours above and beyond the contractual daily working time.

**Costs of business trips: Clear entitlement to reimbursement**
Section 670 of the Civil Code states that employees have an individual claim to reimbursement of necessary expenses that are actually incurred through business trips and are not covered by their salaries. Even flat rates paid for expenses (based on tax regulations) must cover the actual costs incurred. The reimbursement of expenses is carried out without major problems.

**Travel time for personal enjoyment? Legal status unclear without collective agreement**
The biggest source of annoyance and conflicts is the handling of travel time: Is the time spent travelling to and from the destination seen as working time, or at least paid as working time? Court decisions in this area do not reflect reality. Courts have ruled that employees are only as busy as if they were at their desks if they actually do their own driving, or constantly study papers or do other work while travelling by train or plane. This means that someone who takes a nap on the train is not entitled to have their travel time treated like working time for payment purposes. Perhaps this interpretation of the law corresponds to the work experience of tenured judges. Employers are in any case delighted with it, but it has little to do with the realities of working life today in view of ever-increasing demands for employee mobility.

**Collective agreements: Up to 4 hours of travel time paid as working time**
Collective agreements genuinely improve the situation for employees in this area. For instance, Section 15 of the IG Metall Master Collective Agreement for white-collar workers in the Bavarian metalworking and electrical industries stipulates that travel time of up to four hours on working days and 12 hours on off-days must be paid like working time if it is in excess of normal working hours. On Sundays and holidays, the usual collective premiums also apply. On other days they do not. What „normal working hours“ means in practice is defined at the workplace level, i.e. in works agreements. If there is no agreement of this kind, then it is defined...
as one-fifth of the weekly working hours in case of a five-day working week. If the company has flexitime, then „normal working hours“ can mean the actual working time and—even for business trips—can be as long as 10 hours. Although collective agreements are not valid outside Germany, many companies apply collective regulations to travel time even on trips abroad.

For non-collective (AT) employees, the employment contract states that travel time (both in Germany and abroad) is covered by the monthly salary. In the eyes of the law, these employees are entitled to additional payment only if the amount of business travel is a considerable burden.

Collective agreements do not regulate payment for business travel beyond the limits mentioned above. Works agreements are needed to ensure that this travel time is also counted as paid working time. Works agreements are important even in workplaces covered by collective agreements. They can ensure that at least 4 additional hours of travel time count as paid working time even if the actual working time is 10 hours.

**Can employees object when they are constantly sent on business trips?**
Sending employees on business trips is part of employers’ prerogative to give instructions. In companies with no works council, individual refusal to go on business trips is difficult. It is also hard to conduct a discussion with a supervisor on travel-related stress without the support of colleagues.
There is in fact no explicit regulation granting works councils participatory rights on the issue of the frequency of business trips and the terms and conditions that apply to them. However, a right of the works council to be involved can be deduced from other regulations (co-determination on working time, hiring/dismissal/transfers, health and safety). Experienced works councils have utilised these rights to negotiate binding regulations for business trips. They cover minimum advance notice periods, limits for the total ‘stress load’ and compensation for the duress of business travel. In addition, each employee has an individual right to file grievances, which are followed up by the works council.

**What has to be regulated?**
- Payment as working time for all hours spent travelling for all employees. This also applies to trips abroad
- Right of works council to file grievances against excessive business travel burdens
- When business travel accounts for more than 50% of working time over a four-month period: Payment for travel time as normal working time subject to premiums (overtime, etc.).
Under the collective agreement, employees are entitled to **30 working days'** vacation. This applies when the regular individual working week is spread over five days per calendar week. If the number of working days per week is greater or less, then the number of vacation days is adjusted accordingly. Vacation days expire three months after the end of the year to which they apply unless the employee has tried without success to take them.

Employees who leave the company during the first half of the calendar year have a claim to one-twelfth of their annual vacation for each full month. (Remark: If the employment relationship ends on June 30th, then the employee leaves during the first half of the year!)

Employees have full vacation entitlement six months after the start of the employment relationship.

A claim to a fraction of a vacation day greater than half a day must be rounded up to a full day. Smaller fractions of days simply expire. If employees take more vacation than their entitlement, they cannot be forced to repay the vacation pay (unless they have acted illegally).

Vacation entitlements for ‘AT’ employees (staff above the collective bargaining salary classes): Regulated in individual employment contracts. As a rule, AT employees have 30 days’ vacation. In the absence of a contractual regulation, they have the statutory minimum entitlement of 24 days.

Additional vacation claims for disabled employees: Five working days (Section 47 of the Disabled Persons Act).
If an employee becomes ill again after receiving six weeks of sick pay, then:

a) If the second illness has the same cause, then sick pay is provided for a further six-week period only after an interim period of 12 months has elapsed since the start of the initial illness.

b) If the second illness has a different cause, then sick pay is provided for a further six-week period after an interim period of just 6 months has elapsed since the start of the initial illness.

An employee can report sick for up to three calendar days without a doctor’s certificate (as of the third year of employment).

The following table summarises employees’ obligations to submit a doctor’s certificate after an absence.

**Obligation to provide proof and notification in case of illness**

<table>
<thead>
<tr>
<th>T</th>
<th>W</th>
<th>T</th>
<th>F</th>
<th>S</th>
<th>S</th>
<th>M</th>
<th>T</th>
<th>W</th>
<th>T</th>
<th>Doctor’s note</th>
</tr>
</thead>
<tbody>
<tr>
<td>W</td>
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<td>W</td>
<td>Off</td>
<td>A</td>
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<td>A</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>Yes, if still unable to work during weekend</td>
<td></td>
</tr>
<tr>
<td>W</td>
<td>W</td>
<td>A</td>
<td>Off</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

W: Working day, A: Absent due to illness, Off: Vacation or flexitime day
Employer’s right to issue instructions

What orders can supervisors give?
It is not unusual for employment contracts to include only the names of the employer and employee, the starting date and the type of work. Detailed information on working time, pay and other terms and conditions of employment are then based on the law, collective agreements and works agreements, along with established practice within the company. Despite these underlying regulations and uniform approaches, gaps remain. Consequently, the employer is permitted to specify the contractual obligations in more detail and, for this purpose, can assign the employee to perform concrete tasks at certain times and locations. It is also possible to require overtime-pending approval by the works council. In short, the employer’s right to give instructions applies to details when implementing the employment relationship.

Employer’s obligation to provide information

The employer is obliged to inform or notify staff in connection with certain issues or circumstances. These obligations are defined in detail in the Works Constitution Act.

Workplace, work processes and working environment (Section 81)
The employer must inform employees of their tasks and responsibilities, the nature of their activities and how these activities fit into the work processes of the workplace. Before employees begin working for the company, the employer must inform them of health and safety hazards to which they will be exposed at work.
At the same time they must be informed of the measures and facilities to protect against these hazards and the protective measures required under the Health and Safety at Work Act.

The employer must give employees sufficient advance notice of changes affecting their work. As soon as it is clear that employees’ activities will change, and that their professional knowledge and skills will no longer be adequate to perform the new tasks, the employer must hold discussions with the affected employees on the possibilities available to the company for adapting their knowledge and skills to meet the future requirements. The employee can involve a member of the works council in these discussions.

Personnel and social issues; economic situation and trends (Sections 81, 110)

The employer (or a representative) must inform the staff at least once a year on personnel-related and social matters as well as the company’s economic situation and trends. In addition, the owners must report to staff once per quarter on the company’s economic situation and trends (in writing, if the company has more than 1,000 employees).

Employees have the right to file a grievance with the responsible personnel department or the management of the workplace if they feel that they have been treated unfairly, put at a disadvantage or otherwise harassed by the employer (Sections 84, 85, 86 BetrVG).

If you file a grievance, you cannot be subject to any disadvantages as a result, and must be kept informed by the employer on the steps taken to handle it.

The grievance right is not subject to specific periods, deadlines or forms (i.e. written/oral). Anyone can file a grievance at any time in any chosen manner about any person or thing. When exercising this right, employees can call on a trusted member of the works council to support them.

Employees need not submit grievances personally; they can turn to the works council for support. The works council must examine employees’ grievances and—if they seem justified—work to induce the employer to remedy the situation. If the works council and the employer cannot agree on whether the grievance is well-founded, the works council can appeal to the conciliation committee.

The employee should at least receive preliminary information within two weeks. Otherwise, he/she can address other bodies (e.g. trade standards authorities).

If required, it is also possible to set up a grievance commission with equal representation of staff and management.

The IG Metall works council is ready to support you with grievances and all related concerns.
Warnings are not regulated by law. There is no required form (e.g. written/oral) for warnings, and the word "warning" does not have to be used. Only the content is important. The conduct in question must be described specifically and in detail. This includes an exact specification of the time and location of the conduct in question.

Section 82, Par. 1 of the Works Constitution Act states that the employee who is warned must be given an opportunity to be heard and to explain the situation. That means that the employer must inform the employee before making the warning a permanent part of the personnel file.

What can you do if you receive a warning?

- Do not make any hasty statements. Do not simply make claims to the contrary.
- Check carefully to determine whether the claim(s) are true that contractual duties were violated.
- If this is not the case, then you have the option of writing a reply to be included in the personnel file along with the warning.
- We advise you to go to the works council and present your view of the situation once again! The works council can then advise you on the best approach to take in your own interest.
- You can take action against a warning, but do not need to do so.

There are no statutory periods that determine how long a warning remains in effect. Taking as a guideline the period after which claims under employment law lapse, a two-year period can be seen as a reasonable framework for being on the safe side, legally speaking.

The warning cannot in itself justify other actions such as withholding portions of wages or salary, withdrawing privileges or declaring the employee ineligible for promotions.

Employee liability

Liability under general civil law (the Civil Code): Under civil law, those who cause material damage or personal injury to others through their own fault (i.e. deliberately or negligently) are liable for compensation to cover damages. This liability is reduced only if the party that incurred the damage was also at fault.

Liability for personal injury: If an employee injures the employer or a colleague at work, then there is no liability on the part of the person who caused the injury, since this is a work accident (Section 105 of the Social Code VII), unless the employee acts deliberately, or if the accident takes place en route to or from work.

Reimbursement claim of employees: If employees damage their own property (e.g. their own car) when doing their work, then they may be entitled to full or partial compensation from the employer for the damage on the basis of the above criteria.

Warnings

If an employer criticises specific conduct of an employee and states that the employee will be dismissed if the conduct is repeated, then this statement is termed a (written or oral) warning.

Thus, a warning is the preliminary step to a dismissal. It serves the purpose of giving the employee one last opportunity to correct the conduct criticised by the employer. Causes for warnings or dismissal could be: absence without notification, lateness, alcohol abuse, failing to follow supervisors’ instructions.
Every employee is entitled to a written reference when the employment relationship ends (legal basis: Master Collective Agreements along with Section 630 of the Civil Code). The employee is entitled to a reference as soon as notice is given and does not have to wait until he/she leaves the company.

The claim to a reference also applies even if the employee goes to court to contest a dismissal.

The employee must expressly request a reference, since employers are not obliged to issue references on their own initiative. The employer must issue the requested reference without delay.

In case of apprentices and trainees, references must be issued even if not requested (Section 8 of the Vocational Training Act).

Interim references

The Civil Code and collective agreements state that employees are entitled to interim references during the employment relationship if they have a „justified need“. Based on the detailed explanations in the collective agreement and established legal precedents, the following are examples for a „justified need“ for an interim reference:

■ transfer of the employee
■ changes in tasks/position
■ change in the identity of the supervisor primarily responsible for assessing the employee’s performance
■ qualification measures that require certification
■ lengthy leave of absence (e.g. parental leave)
The form and contents of interim references are subject to the same standards as final references.

Reference types
Generally speaking, employees have the right to choose between a simple reference or a so-called qualified reference. The simple reference simply states the type and duration of employment, while the qualified reference also assesses the employee’s conduct and performance.

Form
The reference must be typewritten on the company’s usual letterhead stationery, signed and dated with the name and address of the person issuing it. It must be extremely orderly in appearance and cannot include secret writing or symbols.

Signatory
The reference must be signed by the employer or a high executive and/or the head of the personnel department. If the employer does not sign the reference personally, then the signatory must clearly indicate his/her capacity as the employer’s representative.

Contents
The reference is intended to be useful to the employee in his/her future career. It must reflect the truth. Consequently, it can also include information unfavourable to the employee, but only in case of serious performance problems or negative characteristics. This means that references do not include isolated incidents untypical of an employee’s overall conduct. The evaluation must be that of a benevolent and understanding employer.

Language used in the reference
Employee assessments often use standard formulations (‘reference code’). The tables below list and interpret the most common formulations. This use of this language is not obligatory. However, its use is widespread among major industrial corporations. In references from other companies, individual formulations are often used. This should not be seen as negative in any way.

Regardless of individual remarks, close attention should be paid to the overall impression. If there is doubt as to the interpretation of a reference, you should obtain the advice of an experienced works council member or a lawyer specialising in employment law.
### Performance assessment:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Description</th>
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<tbody>
<tr>
<td>6</td>
<td>hat sich bemüht, die ihm/ihr übertragenen Arbeiten zu unserer Zufriedenheit zu erledigen.</td>
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<tr>
<td>5-6</td>
<td>hat sich stets bemüht, die ihm/ihr übertragenen Arbeiten zu unserer Zufriedenheit zu erledigen</td>
</tr>
<tr>
<td>5</td>
<td>hat die ihm/ihr übertragenen Arbeiten im großen und ganzen zu unserer Zufriedenheit erledigt</td>
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<td>4</td>
<td>hat die ihm/ihr übertragenen Arbeiten zu unserer Zufriedenheit erledigt</td>
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<tr>
<td>3-4</td>
<td>hat die ihm/ihr übertragenen Arbeiten zu unserer vollen Zufriedenheit erledigt</td>
</tr>
<tr>
<td>3</td>
<td>hat die ihm/ihr übertragenen Arbeiten zu unserer vollen Zufriedenheit erledigt</td>
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<tr>
<td>2</td>
<td>hat die ihm/ihr übertragenen Arbeiten zu unserer vollsten Zufriedenheit erledigt</td>
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<td>1-2</td>
<td>hat die ihm/ihr übertragenen Arbeiten zu unserer vollsten Zufriedenheit erledigt</td>
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<tr>
<td>1</td>
<td>hat die ihm/ihr übertragenen Arbeiten stets zu unserer Zufriedenheit erledigt</td>
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</tbody>
</table>

Corresponds to grade: 1=excellent; 6=bad

### The final formulation is also important for interpreting a reference:

- **Herr/Frau ... Mr./Ms. ...**
  - (keine Schlussformulierung)  
  - (no final statement)
  - -
- **verlässt uns auf eigenen Wunsch**
  - ... is leaving us on his/her own initiative.
  - -
- **verlässt uns auf eigenen Wunsch. Für die Zukunft wünschen wir ihm/ihr alles Gute**
  - ... is leaving us on his/her own initiative. We wish him/her all the best for the future.
  - -
- **verlässt uns auf eigenen Wunsch. Wir bedauern sein/ihr Ausscheiden und wünschen ihm/ihr für die Zukunft alles Gute.**
  - ... is leaving us on his/her own initiative. We regret his/her departure and wish him/her all the best for the future.
  - +
- **verlässt uns auf eigenen Wunsch, um sich einer neuen Aufgabe in einem anderen Unternehmen zu widmen. Wir bedauern sein/ihr Ausscheiden sehr, danken ihm/ihr für die bei uns geleistete Arbeit und wünschen ihm/ihr auch an seiner/ihrer neuen Wirkungsstätte in Zukunft alles Gute.**
  - ... is leaving us on his own initiative to take on a new challenge at another company. We very much regret his departure, are grateful for the work he performed for us and wish him continued success at his new position in the future.
  - +
- **verlässt uns auf eigenen Wunsch, um sich einer größeren Aufgabe in einem anderen Unternehmen zu widmen. Er/Sie hat sich unserem Hause gegenüber bleibende Dienste erworben. Wir bedauern sein/ihr Ausscheiden außerordentlich und wünschen ihm/ihr an seiner/ihrer neuen Wirkungsstätte sowie für seinen/ihren weiteren beruflichen Werdegang alles Gute, viel Glück und Erfolg.**
  - ... is leaving us on his own initiative to take on a greater challenge at another company. He has made a lasting contribution to our company. We greatly regret his departure, and wish him every happiness and success in his new position and in his further career.
  - +

*italic text = Reference Formulation in German  bold text = Reference Formulation in English*
In the course of corporate restructuring and efforts to boost the value contributed by all areas of companies, outsourcing and ownership changes are becoming part of day-to-day business. Practically overnight, employees find themselves working for a new company. Instead of Siemens AG, for example, they are now with a wholly-owned subsidiary (e.g. SBS, Osram, SGM), or a company in which Siemens holds a stake (e.g. Epcos), a joint venture (e.g. Fujitsu Siemens Computers), a subsidiary within another corporation (e.g. océ, Pirelli) or a completely independent company owned by the former Siemens department head („management buyout“).

What does ‘change of ownership’ actually mean?
An employment relationship is a contractual relationship between the employee and a company, e.g. Siemens AG. In a change of ownership, another company takes the place of Siemens in the contractual relationship. Since employees cannot be forced into this kind of transfer of their contract, they have a right of appeal. The deadline for exercising this right is usually three weeks after being properly notified of the ownership change.

If you file an objection against a change of this kind, then the employment relationship with the existing employer remains in effect. However, the previous position no longer exists. You should now attempt to arrange a transfer within the original company as quickly as possible. If these efforts are not successful over a lengthy period, then there is the risk of ‘dismissal for operational reasons’ based on a lack of employment opportunities within the company.

Employees can state their objection simultaneously. It is permissible for employees to exercise this right jointly and appoint the works council to submit the declaration.
Examples of material reasons for an objection are:
- the new owner is not bound by the collective agreement
- refusal of the new owner to continue existing works agreements or negotiate new ones
- the new owner is not subject to obligations to negotiate a ‘social plan’ (small enterprise or start-up)
- the new owner is known to be unreliable (not creditworthy)
- reduced protection against dismissal with new owner because company is smaller

Employee rights during ownership changes (Section 613a Civil Code)
Section 613a of the Civil Code regulates the rights of employees during ownership changes.
- Dismissals due to the change in ownership are not permitted, i.e. the new employer must take on all employees with the unit that is taken over.
- Personal rights (employment contract, vacation claims, flexitime accounts etc.) are transferred to the new company without change and indefinitely. This means that the new employer cannot demand changes to employment contracts. The new employer can attempt to change employment contracts by mutual agreement. However, this is possible only with the consent of the employee. Otherwise the new employer can attempt to force changes (deterioration of conditions) by means of an alteration dismissal, i.e. dismissal with the option of continued employment under altered conditions. The employee can conditionally accept this and then take court action against the change. If the employee wins the case, then the employment relationship continues under the previous conditions; if he/she loses in court, then it also continues, but under the changed conditions.

Collective Agreement: The collective agreement for the metalworking industry applies collectively, i.e. it enjoys strong protection, and individual employees cannot be pressured to waive their rights. However, this applies only to union members. This applies to all blue-collar workers and „collective“ white-collar employees.

For ownership changes the following distinctions must be made:
- The collective agreement clause in individual employment contracts remains in force along with all other individual rights. The clause applies indefinitely, but special protection does not apply.
- The collective agreement as a collective contract: Here the following distinctions must be made:
  1. The new company and the old company are covered by the collective agreement. In this case, the current master collective agreement remains in effect.
  2. The new employer is covered by another collective agreement with another union in the DGB (German Trade Union Federation). Then the new collective agreement displaces the old one and there is no protection of existing rights (under Section 613a Civil Code).
  3. The new employer is not covered by any collective agreement (Example: the SBS subsidiary SICAD). Then the collective agreement becomes part of the individual employment contracts of the transferring employees. And, contrary to widespread rumours, this change is for an indefinite period. In addition, these rights are subject to special protection for a full year, so that an alteration dismissal with a negative impact is not permissible. Afterwards, this right remains in force as a normal contractual right.
Works agreements (e.g. flexitime regulations, company pension schemes). The situation here is similar to the one described for the collective agreement:
1. If the same rule is in force at the new company, then nothing changes.
2. If another works agreement exists on the same issue, then it displaces the old one.
3. If the new company (still) has no works agreement on a given issue, then the transferring employees take the old regulation with them as an individual right. It applies indefinitely and is subject to special protection for a full year. An example: At Siemens AG, employees with 25 years’ seniority are exempt from dismissal for operational reasons. This right is retained in case of a transfer through ownership change from Siemens AG to a subsidiary. But an employee who transfers individually from Siemens AG to the subsidiary loses it.

Problems associated with ownership transfers

Collective bargaining rights under threat. The spread of outsourcing has since created „non-collective zones“ within companies covered by collective agreements. This frequently occurs when units are sold to other companies. The transferring employees take their collective agreement coverage with them—provided that they are union members—along with the collective bargaining clause in their employment contracts as an individual right. This guarantees that they will continue to receive annual collective pay rises, for instance. But what happens when such companies hire new people, or employees transfer individually? Then it is possible that some staff members will receive the salary increase, while others do not. In the course of time, those who „cling to their entitlements“ can find themselves under pressure to „voluntarily“ surrender their rights.

The company may also attempt to use outsourcing to obtain a weaker collective agreement. Outsourcing has become the vehicle of choice for employers fleeing the jurisdiction of collective agreements.

Collective bargaining rights can be secured in the long term if the employer can be forced into the employers’ association. The situation is critical in connection with dismissals for operational reasons: A dismissal is regarded as „socially unjustified“ if continued employment in another position within the company is possible—but that means „in the company“, and not „within the group of companies“. This means that when your position no longer exists, you cannot claim that unfilled positions are available, because these jobs are now with an „outside company“. This problem can be solved only by means of a special agreement for the ownership change.

Fragmentation of workforces and works councils Ownership changes create new, smaller companies all the time. This means that even in units or departments that were small before the change, all in-company structures have to be built from scratch. This also includes the establishment of a separate works council.

IG Metall assessment:
The provisions of Section 613a of the Civil Code do not adequately protect existing rights when there is a change of ownership. The same problems keep coming up:

- how to secure collective agreement rights for all employees
- how to ensure that employees will still have access to the group-wide job market
- how to keep functional works councils intact

Works councils and workforces must discuss these issues with management again with every new outsourcing move.
Numerous laws and agreements contain regulations protecting employees against dismissal. We have put together this overview of the most important regulations. For detailed information, please contact your IG Metall works council members.

An ordinary dismissal of an employee whose employment relationship has lasted longer than six months without interruption within the same establishment or company (Section 1 of the Dismissal Protection Act) is legally invalid if it is socially unjustified.

A dismissal is considered socially unjustified if the reason has nothing to do with the employee himself or his/her conduct, is not based on operational reasons or a ‘socially-based’ selection of employees for dismissal, or if it would be possible to offer further employment within the company, possibly after appropriate training.

Dismissal notification must always be in writing and is legally valid only if the reasons are stated and the notification is signed by the person authorised to do so. The employer can announce a dismissal only after a proper hearing of the works council’s response.

A dismissal protection suit is admissible only if it is filed within three weeks.
Types of dismissal

**Termination dismissal:** This variant serves to terminate employment.
- A **personal dismissal** is linked to the individual employee, e.g. a lack of qualifications, long-term illness or frequent short illnesses.
- A **conduct-related dismissal** is based on the employee’s conduct, e.g. theft, frequent lateness, defamatory statements against superiors, disruption).
- A **dismissal for operational reasons** takes place when a position ceases to exist, e.g. when a department is shut down or through other business decisions.

**Alteration dismissal:** This type of dismissal is not intended to terminate employment, but to change the terms and conditions of the employment relationship. Here, too, the dismissal must be socially justified.

**Dismissal without notice/Extraordinary dismissal:** Section 626 Par. 1 of the Civil Code states that employment relationships can be terminated without notice for important reasons. The recognised reasons for this move include theft, assault and persistent refusal to work.

Notice periods

**Collective agreement regulations:**

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<tr>
<th>Seniority</th>
<th>Notice period</th>
<th>Dismissal effective:</th>
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<tbody>
<tr>
<td>First three months</td>
<td>Two weeks</td>
<td>15th or end of month</td>
</tr>
<tr>
<td>As of fourth month</td>
<td>Four weeks</td>
<td>15th or end of month</td>
</tr>
<tr>
<td>As of second year</td>
<td>One month</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 5 years</td>
<td>Two months</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 8 years</td>
<td>Three months</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 10 years</td>
<td>Four months</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 12 years</td>
<td>Five months</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 15 years</td>
<td>Six months</td>
<td>End of month</td>
</tr>
<tr>
<td>&gt; 20 years</td>
<td>Seven months</td>
<td>End of month</td>
</tr>
</tbody>
</table>

* calculated as of 25 years of age

**Longer notice periods** can be agreed; however, employees cannot be required to keep to longer notice periods than the employer.

**Shorter notice periods** can be agreed in individual contracts only for the first three months of casual employment and in small establishments with at most 20 employees. If shorter notice periods are agreed in other cases, then they apply only to the employee; the employer must still adhere to the statutory notice periods.

**Employees not covered by the collective agreement ('AT' employees)**
The notice period for both parties is one month to the end of the calendar month during the first six months of employment, and
Mothers or fathers during parental leave
Beginning with the time when an employee requests parental leave—at most eight weeks before taking leave—and during child-rearing leave, he/she cannot be dismissed. In special cases such as plant shut-downs or a move by the company or a department to another region, and when there is no suitable opening elsewhere in the company, a dismissal may be permissible with approval of the trade standards authorities. This special dismissal protection also applies to part-time work during child-rearing leave.

Trainees/apprentices
After the trial period is over, apprentices and trainees can be dismissed only for important causes (Section 15 of the Vocational Training Act).

Alteration dismissal
The purpose of a so-called alteration dismissal is to change the defining terms and conditions of the employment relationship. It is a genuine dismissal in the formal sense, so that all applicable legal standards apply (e.g. notice periods, hearing of the works council etc.). The alteration dismissal can be explained as a termination of the existing employment relationship with the offer of continuing it under changed working conditions (see Section 2 of the Dismissal Protection Act). Like any other dismissal, it must be in writing with reasons given.

Significance for the concerned employees
Employees can react to an alteration dismissal as follows:
You can accept the proposed changes without reservations. In this case the employment relationship continues under the changed contractual conditions.
You can reject the proposed changes. In this case the alteration dismissal becomes a termination (see „Dismissal“ for the applicable procedure).

You can conditionally accept the changes (Section 2 of the Dismissal Protection Act). If you declare your reservations in time (i.e. within three weeks), then you can file a protective claim against the alterations within this three-week period to have the „social justification“ of the claim examined by a labour court (Section 4, No. 2 of the Dismissal Protection Act).

Our advice:
If you are presented with an alteration dismissal, go first to your IG Metall works council members. In any case you should sign an alteration dismissal only with the remark „Conditionally acknowledged“.

>> Cancellation agreement

It is actually unusual for employment relationships to be terminated by the employer. Instead, they are ended by mutual agreement through cancellation contracts, which usually specify a large severance payment. In this way, the parties avoid long and expensive litigation.

You should definitely not sign an agreement of this kind without thorough consultations with IG Metall. This is one area where it pays to think twice before deciding to fight alone for your own interests. In the experience of trade union lawyers, the most serious mistakes in this area are made, ironically, by highly qualified professionals for whom the amounts at stake are often in the five to six-figure range.

If you are offered a cancellation agreement, then you should in any case demand an appropriate period to consider your response. Appropriate here means sufficient time for you to obtain clear information on all consequences of this step.

Do not permit the employer to persuade you to accept a shortened notice period for the end of employment.

If your job is being eliminated, then you should investigate opportunities for an internal transfer. Any training you need for a new position should be covered by the department you are leaving. This is definitely cheaper and more sensible for the company than a cancellation agreement.

You should also obtain complete information on other possibilities you have for covering your living expenses. Good advice on this point is important not least of all because severance payments may suspend or delay your claim to unemployment benefits, and cancellation agreements usually result in a 12-week waiting period being imposed by the Labour Office.

Under the Income Tax Act the first €8,180.67 of a severance payment paid by the employer for the loss of the taxpayer’s job is exempt from tax if the employer initiated the termination process. This tax exemption increases to €10,225.84 and €12,271.01 for employees who are at least 50 years old and have 15 years’ seniority or are at least 55 years old and have 20 years’ seniority, respectively. The severance amount above the tax-exempt portion is usually taxed according to the so-called ‘fifths regulation’.

Tax reductions are granted if severance pay is used for direct insurance premiums (approx. €1,752 x number of years of seniority; flat tax rate = 20%). Amounts used to top up claims in the state
pension scheme are tax-free up to 50% of the severance amount, as are payments into the company pension scheme if the employment relationship is terminated prematurely as of the age of 55 (Section 40 (2) No. 3 and Section 3 No. 28 of the Income Tax Act).

If employees leave the company prematurely without retiring, then they retain their pension claims only if they are at least 35 years old when they leave and they have been part of the pension scheme for at least 10 years. A new regulation has come into force in this area: As of January 1, 2006, pensions will be vested on departure from the company if the employee is at least 30 years old and has five years' seniority with the company.

**Unemployment benefits/Severance pay**

You are entitled to unemployment benefits if you

- are unemployed, are looking for a new position and are willing to work
- have registered with the Labour Office
- have applied for unemployment benefits. (Sections 117-122 Social Code III)

When your claim expires, or if you have no claim to unemployment benefits, then you may have a claim to **unemployment assistance**.

**Unemployment benefits: the amount**

The amount of unemployment benefit generally depends on the gross wages or salary subject to insurance premiums earned over the 52-week period preceding unemployment. This also includes vacation pay and the Christmas bonus. The usual statutory deductions are subtracted from this average gross income (taxes, social insurance). Standard amounts are used for this calculation instead of taking the actual individual deductions.

The deductions are based on your tax class at the start of the calendar year in which you become unemployed. Any subsequent change in your spouse’s and your tax class is taken into account only if it will reduce the benefit claim, or if new tax class resulted from a change in your income situation.

Of the net income calculated in this way, you will then receive

- 67 percent (enhanced benefit rate), if you have at least one child as defined in Section 32 of the Income Tax Act
- 60 percent (general benefit rate) if you have no children (Section 129-139 Social Code III)
Get involved in IG Metall! Eight good reasons

1. To keep moving in the right direction in your working life.

2. Because you’re not a top executive negotiating your own generous compensation package.

3. Because we negotiate collective agreements for major IT companies.

4. Because we also define the conditions for temporary staff, students and freelancers.

5. Because our collective agreements guarantee your on-the-job training and therefore secure your professional future.

6. To ensure that industry-wide standards also apply to your working conditions.

7. Because works councils are more effective when they team up with the union.

8. Because we cooperate at the international level to address the consequences of globalisation and market pressures.

IG Metall is working to guide and shape the technological transition from the industrial age to the information economy. Let’s work together to build the new high-tech world! Join in!

As a member, you are entitled to the full range of support and services under the IG Metall charter: legal assistance, accident insurance for leisure time, strike/lockout pay, seminars, member magazine and expert advice from our works council members and at our local offices.
More information.

IG Metall has been active in the IT sector right from the start, with competent works council members and clear concepts.

For a sample copy of our IT magazine, please contact:
IG Metall, Rhein-Main-Projekt
Lyoner Strasse 19
60528 Frankfurt am Main, Germany

or:
www.igmetall.de
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Yes, count me in!

I want to be guaranteed all benefits and increases from collective agreements.

I want to do my part to make sure major employers in the high-tech sector continue to apply the collective agreements.

I'm in favour of putting more weight behind employee interests.

☐ That's why I want to join IG Metall.

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