

Termination:

Source: DRS, M. *Arbeits- und Sozialrecht*; Wien: Manz, 2019: pp.175-195

- a) First, if an employer wants to terminate an employee's employment, the contract of employment must be checked by the corporate lawyer. If a fixed-term contract has been agreed, the process continues, and if a temporary contract has been agreed, the agreement must be checked. If it was agreed in advance, the process will continue. Otherwise, the termination cannot be considered.
- b) If there is a works council in the company, the preliminary procedure must be followed. If not, the necessity of a works council will be checked.
- c) The preliminary procedure is carried out as follows: the employer notifies the works council about the termination. Thereafter, they wait one week for the works council's statement. The works council remains silent, agrees to the termination or contradicts it.
- d) After receiving the works council's statement, it is checked whether the preliminary procedure was followed. If it was not followed, the termination will not be effective.
- e) Next, if the termination was effective, it can be appealed in court. The dispute periods are set by laws based on the works council's statement in the preliminary procedure. In case of contradiction, the works council is able to dispute within one week at the employee's request. If the works council has not disputed, the employee can dispute within another two weeks. If the works council has remained silent, the employee can dispute within two weeks. In case of agreement, the employee can dispute only because of permitted legal activities or other reasons.
- f) If there is no works council available in the company and a works council is required in the company, the employee can also dispute within two weeks. Otherwise, if no works council is required, the employee has the opportunity to dispute under certain circumstances because of other reasons.
- g) If the works council or the employee decides to dispute, a reason has to be determined. Reasons could be for example social unlawfulness, permitted legal activities or other reasons.
- h) The judge checks whether the dispute reasons are convincing, then makes a decision. If a convincing reason has been put forward, the dispute will be successful, and the employee will not be fired. Otherwise, the dispute will not be successful, and the employee will be fired.
- i) The employer must grant the unterminated employee unpaid salaries during the termination process using the HR-management system. If the employee is fired, the employer must adhere to notice periods. If they do not, the termination will still be effective, but compensation will be required. Finally, termination claims are granted to the terminated employee using the HR-management system.

