



LABOR LAW

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Judge (Labor Court Hagen)



Procedure

1. **Employees**
2. **Conclusion of contract**
3. **Remuneration**
4. **Maternity and parental leave**
5. **Problems in the employment relationship**
6. **Termination of the employment relationship**
7. **Post-contractual obligations**

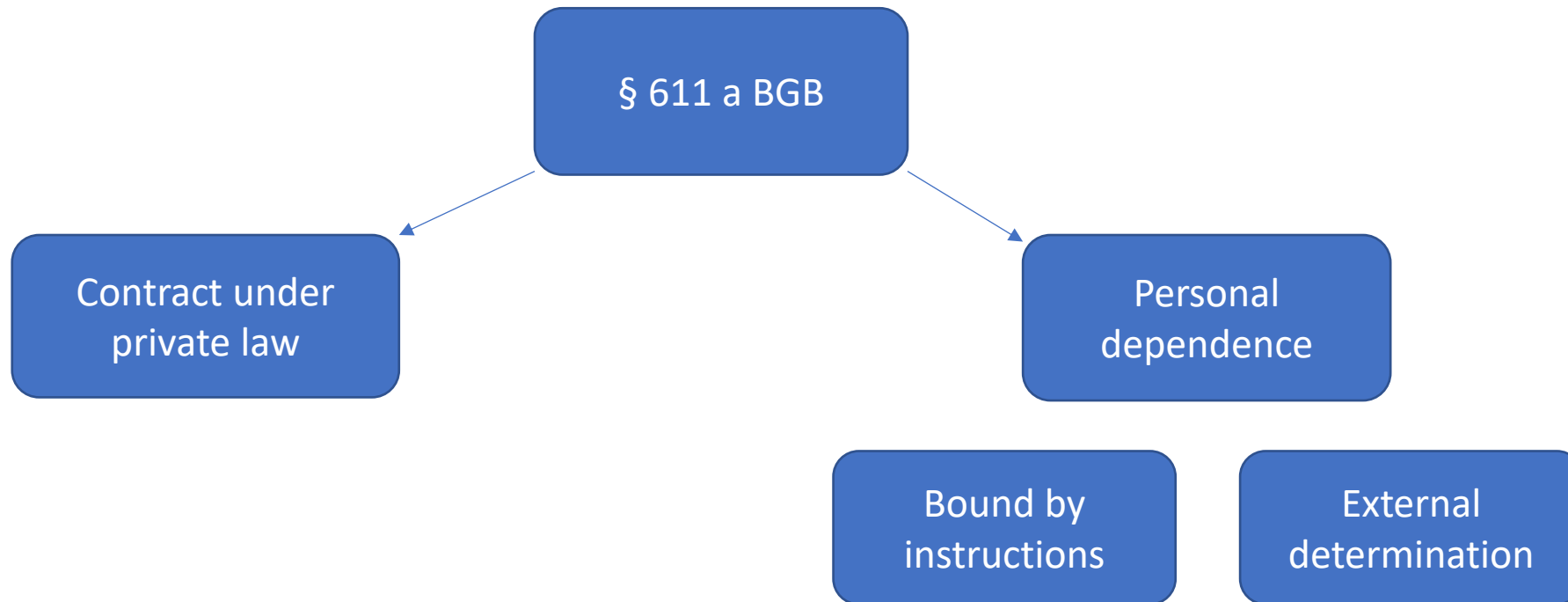
The RUB logo is a large, dark blue circle with a white, distressed, hand-painted border. The letters 'RUB' are written in a large, white, sans-serif font across the bottom of the circle.

RUB

EMPLOYEES

Who is actually an employee in Germany?

Employees



Do special rules apply to me if I am not a German citizen?
No, not towards the employer!

CONCLUSION OF CONTRACT

Initiation of the employment relationship



- **Job advertisement**

- Works council can demand internal job advertisement
- No discrimination, otherwise possible claim for compensation (Section 15 (2), (3) AGG)

- **Information rights of the employer**

- Principle: Applicant does not have to point out circumstances without being asked
- Exception: Employer may expect clarification → Knowledge must be indispensable for the employer
- Employer's right to ask questions
 - Required: Justified interest worthy of protection with regard to the employment relationship
 - Generally permissible: Questions about professional qualities, duration and number of employment relationships
 - Limited admissibility: Question about previous convictions if there is a connection to the desired activity
 - Generally inadmissible: Intimate areas, in particular questions about pregnancy ("right to lie")

Employment contract



- Do I need a written employment contract?
 - No, the written form has no effect on effectiveness
 - But: Employers have been obliged to record the main terms of the contract since 1.8.2022 (NachwG)
 - Otherwise: Employers may be fined
 - Before 1.8.2022: Employee has claim against employer for transcript
- What applies if I only have a verbal contract?
 - Unlimited, as written form required
 - Unless otherwise agreed verbally
 - Usual remuneration, if no agreement on this
 - Vacation entitlement: 24 working days with a 6-day week (= 4 weeks)

General Terms and Conditions (AGB)



- What are AGB?
 - Unilateral pre-formulated agreements for a large number of contracts
- AGB control
- Relevant in practice: exclusion clauses, transfer clauses, repayment agreements, ...

**NOTE: Not everything in the contract
is effective!**

Time limit



- Without objective reason
 - Up to 2 years (maximum 3 extensions)
 - Fixed-term employment without objective reason is not possible if an employment relationship already existed between the employer and employee beforehand
- Objective reason, Section 14 (1) sentence 2 TzBfG
 - E.g.: nature of the work, operational need is only temporary, employee is employed to replace another employee
- **IMPORTANT:** Action for termination has a deadline of 3 weeks after the agreed end of the fixed-term employment contract

Contract content - who owes what?

Employer	Both parties	Employees
Salary (due date?)	Mutual consideration	Work performance
Employment		Employer's right to issue instructions (limitation of employment contract and higher legal sources)
Duty to protect		Overtime?

REMUNERATION

Minimum wage

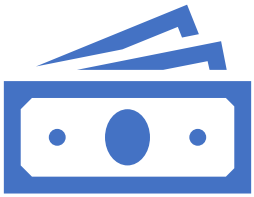
Equal pay

Illness

Vacation

Disruptions in the employment relationship

Minimum wage



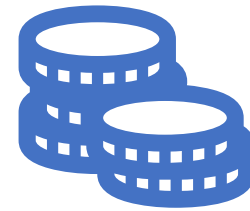
Since 1.1.2025: € 12.82

From 1.1.2026: € 13.90

From 1.1.2027: € 14.60



Mandatory right



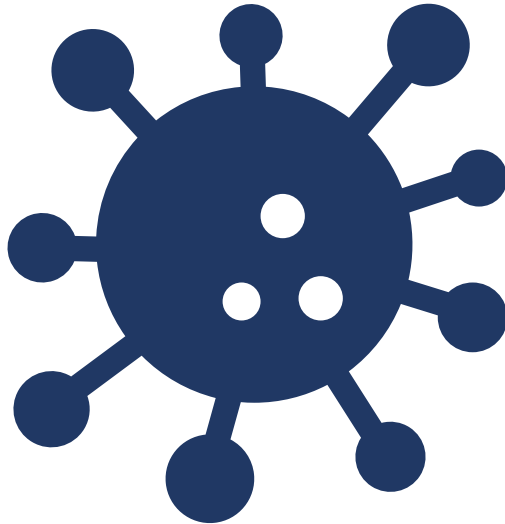
In addition: Industry minimum
wage

Equal pay



- Important BAG ruling from 2023
 - A woman is entitled to equal pay for equal work or work of equal value if the employer pays male colleagues higher pay on the basis of gender
 - This does not change if the male colleague demands higher pay and the employer gives in to this demand
- Right to information under EntgTranspG
 - If the company has more than 200 employees

Illness



- Illness = any abnormal physical or mental condition
- Entitlement against employer for 6 weeks; amount is 100% of regular remuneration
- Fulfillment of the waiting period of 4 weeks
- If the 6 weeks are exceeded: Claim against health insurance for sick pay amounting to 70% of the regular remuneration
- Sick leave again
 - Due to another illness: renewed claim against employer for 6 weeks' continued payment of wages
 - Exception: other illness occurs during the period of the first incapacity for work (six-week period only once)
 - Due to the same illness: All absences are added together → Maximum entitlement over 6 weeks
 - Exception: employee has not been unable to work for at least six months due to the same illness before the renewed incapacity for work OR if 12 months have passed since the first incapacity for work

Vacation



- Statutory: 24 working days with a 6-day week (expiry of the waiting period of 6 months)
- Contractual → not less than statutory vacation
- In principle, vacation cannot be paid out; exception: termination of the employment relationship
- Other employment is prohibited during vacation
- Termination after 30.06.: possibly entitled to full annual leave
- Expiry of vacation entitlement
 - Generally at the end of the year, but not automatically: employer must ask the employee to take the leave
 - If this information is missing, the employer cannot invoke the statute of limitations

Disruptions in the employment relationship



- Remuneration in the event of default of acceptance, § 615 BGB
 - Applies in the event of **unwillingness** and **inability** to accept → Employer bears operational and economic risk
- Personal reasons, § 616 BGB
 - Often waived in the employment contract
 - Possible cases: Funeral, wedding, childcare, doctor's visit during working hours
- Legal consequence: Employee retains entitlement to remuneration

MATERNITY PROTECTION AND PARENTAL LEAVE

Special features of maternity protection

Parental leave (since July 01, 2015)

Maternity protection



- **Before birth**
 - General ban on employment 6 weeks before delivery, but pregnant woman can waive compliance
 - Individual ban on employment with a medical certificate → Entitlement to maternity pay (average of the last 3 monthly salaries)
- **After birth**
 - Absolute employment ban 8 weeks after birth
- **Maternity pay**
- **Special protection against dismissal**

Parental leave



- What is parental leave?
 - Unpaid time off from work for mothers and fathers
- Who is entitled to parental leave?
 - Entitlement to parental leave exists if
 - parent works in Germany
 - **or** the employment contract was concluded under German law (parent does not have to live in Germany)
 - Prerequisites:
 1. Employees
 2. Living together with a child in the household
 3. Care and education of the child

Parental leave



- **How long is the entitlement to parental leave?**
 - 3 years per child; maternity leave after childbirth is taken into account for the mother
 - From the child's 3rd birthday, only 24 months can be taken
 - End no later than the day before the child's 8th birthday
- **What do I have to do to get parental leave?**
 - Application is not necessary. Parental leave only needs to be registered with the employer in writing
 - Registration 7 weeks in advance
 - Mothers: Parental leave only begins after the end of the maternity protection period (8 weeks); registration after the birth is therefore sufficient
 - Fathers: 7 weeks before the expected date of birth

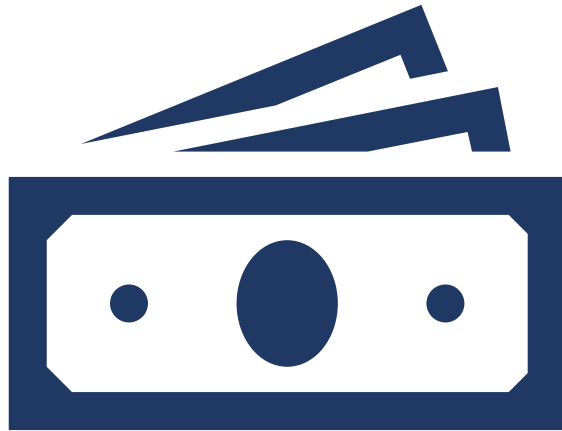
If parental leave
from birth is
desired

Part-time parental leave, § 15 BEEG



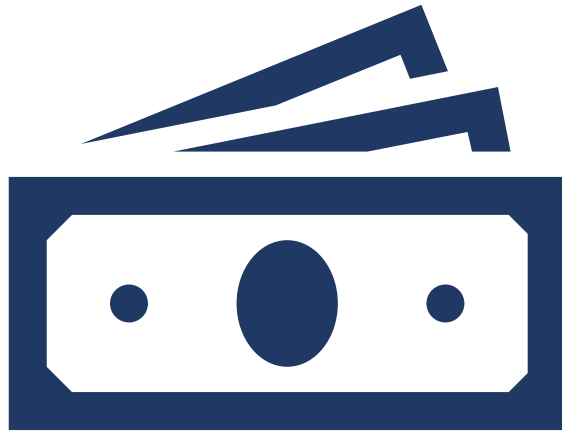
- You can work part-time during parental leave
- Requirements:
 1. Employment with this employer for more than 6 months
 2. Employer generally employs more than 15 employees (trainees are not included)
 3. Parent must want to work for at least 2 months (min. 15, max. 30 hours/week; monthly average is decisive)
 4. No conflicting operational reasons
 5. Application to employer

Parental allowance



- Against whom is the claim directed?
 - Parental allowance office
- Parental leave does not necessarily have to be taken, but a maximum of 30 hours of work → is also credited for this
- Studies/training do not have to be interrupted to receive parental allowance
- Parental allowance models
 - **Basic parental allowance** for 14 months if parents share parental leave or in the case of single parents; otherwise 12 months
 - New regulation for births from April 1, 2024: Simultaneous entitlement of parents only for 1 month in the first 12 months of life (except for premature babies, multiple births or children with disabilities)
 - Generally 65% of net income → Parental allowance calculator from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
 - **Parental allowance plus**
 - It lasts twice as long as basic parental allowance and is half as high
 - Particularly worthwhile if you want to work part-time (because of the crediting)
 - **Partnership bonus**
 - 4 additional months of Parental Allowance Plus if both parents work part-time at the same time (i.e. fair division of work and family)

Parental allowance



- **Who is entitled to parental allowance?**

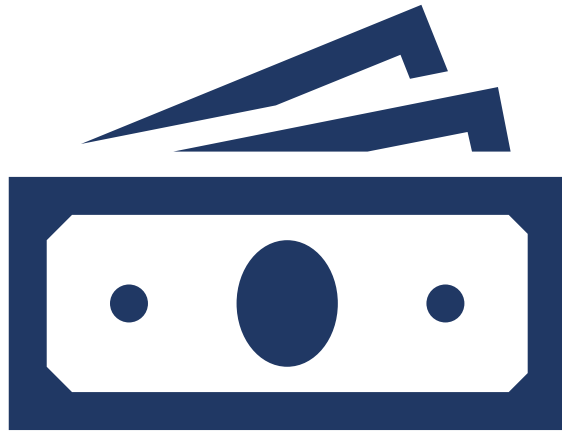
- Principle:

1. Care and education of the child
2. Living together with a child in one household
3. Living in Germany
4. Not working at all or a maximum of 30 hours/week

- For which child do I receive parental allowance?

- Physical child
- Natural child of the spouse or partner
- Adopted child (even if adoption proceedings are still ongoing)
- Under certain circumstances: Grandchild, sibling, niece/nephew
→ e.g. parents are deceased

Parental allowance cut-off for high incomes?



- Upper income limit
 - Births from April 1, 2024
 - Single parents and couples: € 200,000.00 of taxable income (not the same as gross income)
 - Births from April 1, 2025
 - Single parents and couples: € 175,000.00 of taxable income (not the same as gross income)

Parental allowance for foreign parents?

YES	NO
EU citizens or from Iceland, Liechtenstein, Norway or Switzerland, if parents live or work in Germany	Residence permit
EU permanent residence permit	Tolerance
Settlement permit	Residence in Germany for the purpose of training or further education
Residence permit and if parent is allowed to work in Germany or was previously allowed to work here → Further restrictions in individual cases (contact the parental allowance office if you have any questions)	

PROBLEMS IN THE EMPLOYMENT RELATIONSHIP

Warning letter

Warning letter



- **When is there a warning?**
 - Information, admonition and warning function
- **What is the warning important for?**
 - Success of a dismissal for behavioural reasons
 - Actual improvement of the employee
- **Do I have to defend myself against a warning letter?**
 - Not mandatory and often not recommended
 - Removal from the personnel file may be required

TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Termination agreement

Termination by the employee

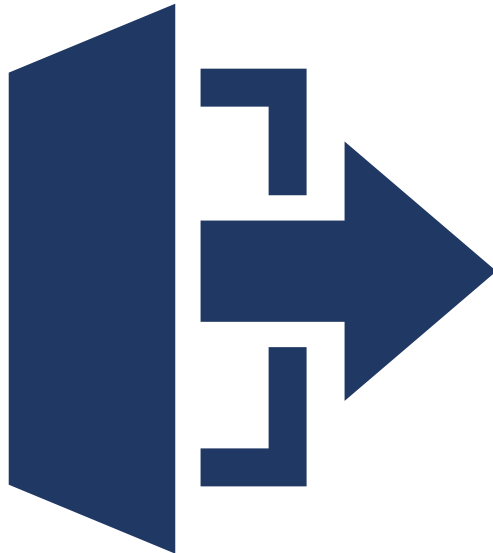
Termination by the employer

Termination agreement



- = Agreement between employer and employee to terminate the employment relationship at a certain point in time
- Written form is required
- Advantage: Not bound by notice periods and independent of official approval requirements
- Right of withdrawal need not be granted
- In the event of dissatisfaction with the termination agreement at a later date, it may be worth having the agreement legally reviewed (in practice: often difficulties in providing evidence)
- Be careful when signing termination agreements: There may be disadvantages under social security law (blocking period)

Termination by the employee



- Written form
- Notice periods
 - Contractual
 - Statutory: 4 weeks to the 15th or end of the month (during the probationary period: 2 weeks)
- Practical: Assert other claims in the letter of termination (e.g. reference letter)

Termination by the employer



- Written form and receipt of the letter of termination
- "Types" of terminations
 - Ordinary termination subject to a notice period
 - Extraordinary termination
- Dismissal protection law offers great advantage
 - Waiting period: 6 months
 - Principle: At least 10 employees

IMPORTANT: In the event of dismissal, an action for protection against dismissal must be filed with the labor court as soon as possible (maximum 3 weeks; after that, the dismissal is usually effective)

Ordinary termination



- **Notice periods**
 - Contractual
 - Statutory: Section 622 (2) BGB (depending on length of service with the company)
- **Reasons for termination according to KSchG**
 1. Operational
 2. Personal factors
 3. Behavioural

Reasons for termination according to KSchG



Operational

Operational circumstances can trigger a labor surplus (= loss of jobs)



Personal factors

The reasons must affect the employer's interests and be based on the employee's personal characteristics and abilities (fault is irrelevant)



Behavioral

The employee acts significantly contrary to his contractual obligations

Example cases



56-year-old employee A has two dependent children and has been working for a security company for ten years. Due to a lack of orders, the security company needs fewer staff and gives notice to A. The childless 22-year-old B has the same job as A, has been working for the company for one year and is not dismissed. Is A's dismissal valid?



Truck driver F has her driver's license revoked due to a criminal offense. The employer then terminates her employment. Is the dismissal effective?



Employee P makes comments to his two female colleagues about the size of their breasts and the posture of women with large breasts. The employer then terminates P's employment without notice. Is the dismissal effective?

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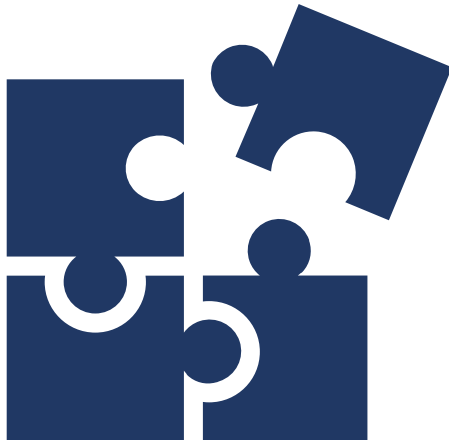
The LAG Cologne denies this. A warning letter would have been required first. The action for protection against dismissal was successful (see LAG Cologne of 27.8.2020 - 8 Sa 135/20).

Extraordinary termination



- Exclusion period: 2 weeks after obtaining knowledge (possibly longer in the case of investigations), but termination with notice may still be possible thereafter
- Excluded in the case of special protection against dismissal for pregnant women (even in the case of blatant breach of duty)
- In principle, no notice period must be observed
- Important reason
 - Personal: Withdrawal of work permit, commencement of prison sentence
 - Behavioral: Theft/fraud
 - Operational reasons: ordinary termination is excluded (works council members or by contract)

Continued employment during dismissal protection proceedings



1. Right to continued employment under works constitution law
 - Works council has objected to termination
2. General entitlement to continued employment
 - When filing the claim, also apply for
 - (+), if won at first instance

Special protection against dismissal



- **Parental leave, § 18 BEEG**
 - No notice of termination during parental leave, but at the end of parental leave
- **Maternity protection, § 17 MuSchG**
 - Scope: In principle, exclusion of termination up to 4 months after childbirth
 - Exception: Approval from occupational health and safety authority
 - Company closure, insolvency, serious misconduct (theft)
 - if employer is not aware of pregnancy, this can be communicated within 2 weeks of receipt of the notice of termination (but pregnancy must have existed at the time of termination!)
- **Severely disabled persons, §§ 168ff. SGB IX**
 - Scope: Approval of the integration office
 - if the employer is not aware of the disability, the employer can be informed within 3 weeks of receipt of the notice of termination
- **Trainees**
 - Higher requirements, §§ 20-23 BBiG
 - The more advanced the training, the more difficult termination becomes, as requirements for good cause become more stringent
- **Works council members, § 15 KSchG**
 - Ordinary termination is generally excluded
 - Exception: company closure

Dismissal Protection Act is inapplicable



- **What applies then?**
 - Written form and receipt of the letter of termination
 - Involvement of the works council
 - Compliance with the notice period
 - Special grounds for invalidity (e.g. violation of the AGG, violation of the prohibition of measures, special protection against dismissal)

POST-CONTRACTUAL OBLIGATIONS

Secrecy

Reference letter

Reference letter



- **Hidden formulations?**
 - "The employee knew how to delegate tasks successfully."
 - Can mean: passing on to colleagues
 - "The employee made every effort to meet the requirements."
 - Could mean: The employee was not really useful
 - "The employee applied himself within the scope of his abilities."
 - Can mean: The employee was incompetent
 - "The employee was an understanding employee."
 - Can mean: No assertiveness/no authority
 - "The employee was sociable."
 - Could mean: The employee talked a lot and worked little
 - "We wish the employee all the best and good health."
 - This could mean that the employee was often ill.
- **What should I generally look out for in a reference?**
 - Exact description of the activity
 - Positive: Regrets, thanks, personal wishes for the future (also private)