

Blocking period on the basis of cessation of work

A blocking period can be applicable due to cessation of work if the employment relationship is ended “voluntarily”, e.g., through a termination agreement, and this results in unemployment, § 159 (1) sentence 1 no. 1 SGB III.

The blocking period is generally twelve weeks. The duration of the entitlement to unemployment benefit is then reduced by a quarter. The blocking period is not applicable if the event causing the blocking period occurred more than one year ago when the conditions for entitlement to unemployment benefit were met, Section 148 SGB III, e.g. after a so-called disposition year.

However, so-called “important reasons” exist whereby no blocking period and therefore also no reduction occurs. For example, an important reason can apply if there were a threat of lawful dismissal for operational reasons to the same termination date if the termination agreement had not been concluded.

In particular cases of hardship the duration of the blocking period can be reduced.



Suspension of the entitlement to unemployment benefit

Further regulations in the termination agreement can have consequences for unemployment benefit. In particular, severance pay (compensation for dismissal) or holiday pay or pay still to be received can lead to suspension of entitlement to unemployment benefit.

Suspension on the grounds of compensation for dismissal

A suspension due to compensation for dismissal arises if the ordinary notice period applicable to the employer is not observed in the termination agreement, as it is irrefutably assumed that the severance payment includes the waived notice period. The suspension period begins from the time of conclusion of the agreement, i.e., from the time when both of the contractual parties have signed the agreement. The length of time for which the entitlement to employment benefit is suspended is individual to each employee and depends, among other things, on the notice period and the amount of the severance payment, § 158 SGB III.

**Attention:** If an ordinary dismissal is excluded (e.g., in the case of special protection against dismissal under collective agreements or protection against dismissal in the case of severe disability), special notional notice periods apply, Section 158 (1) SGB III.

Suspension in the case of holiday pay in lieu

If holiday pay in lieu is due, then the entitlement to unemployment benefit is suspended in principle for the period of the holiday in lieu, § Section 157 (2) SGB III.

Can a termination agreement also have consequences for other areas of social law?

Conclusion of a termination agreement and any subsequent unemployment can also impact the pension and health insurance situation.

Can I “reverse” a termination agreement?

This is only possible in exceptional circumstances when certain conditions are met.

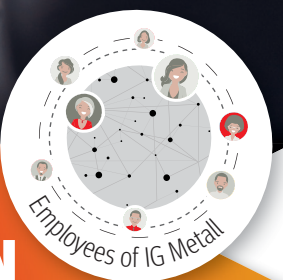
If the employer does not pay the agreed severance pay, for example, the employee can withdraw in accordance with § 323 BGB. However, this does not apply in the event of the employer’s insolvency if the insolvency court prohibits such payments in accordance with § 21 of the Insolvency Code following the application to open insolvency proceedings or if insolvency proceedings have already been opened. Contestation of the termination agreement is also possible in exceptional cases if certain conditions are met. If, for example, the employee mistakenly believes that the severance payment will not be offset against his or her unemployment benefit, this does not constitute grounds for contestation.

The termination agreement is also invalid if the employer has violated the “imperative of fair negotiations” during the negotiation. This always depends on the concrete situation in each individual case. The mere failure to grant a reflection period will not, however, constitute a violation.

## ANOTHER FEW TIPS IN CONCLUSION

If you are offered a termination agreement:

- ▶ immediately contact your works council or IG Metall and have an expert check the consequences of concluding your termination agreement, which may not be immediately obvious. There are numerous pitfalls and points to consider. It is difficult to reverse a termination agreement once it has been signed.
- ▶ Caution is advised in any case with formulations such as ‘I waive all further claims arising from the employment relationship’ or ‘all claims are thus settled’. You should not sign this kind of formulation in any event without first being sure that all the that all claims to which you are entitled have really been fulfilled or regulated in the termination agreement. This includes, for example, payroll payments, holiday or Christmas payments, etc.



**TERMINATION AGREEMENT**  
a guide





## BACKGROUND

If companies find themselves in difficult economic situations, they often try to overcome them by reducing the number of employees. Employees are often offered "voluntary" termination agreements as part of this process. "Disagreeable employees" are also sometimes offered a "voluntary" termination agreement if forced termination is difficult.

**This flyer provides a general overview of points that need to be considered in connection with the signing of a termination agreement.**

## TERMINATION AGREEMENT

What is it?

Employers and employees agree the termination of the employment relationship, effective from a certain date. The employment relationship is terminated based on of the agreement without the need for notice from the employer or the employee.

Further points concerning the processing of the contract are usually also regulated, for example the assessment in a reference, severance payments and holiday compensation. A termination agreement should not be concluded without comprehensive advice from IG Metall because it can have further consequences, e.g., blocking periods or suspension of unemployment benefit, and a termination agreement can only be "reversed" with difficulty.

Does a termination agreement need to be made in writing?

Yes. In accordance with § 623 of BGB (the German Civil Code), termination agreements must be made in writing. If written form is not upheld, then the agreement is invalid.



What does it contain & who determines the content?

In principle, the content of a termination agreement is freely negotiable between the employer and the employee. In addition to the termination of the employment relationship, effective on a certain date, the following points may be agreed:

- ▶ reason for termination
- ▶ extent and due date of severance pay
- ▶ outstanding payments (commissions, bonuses, holiday pay, Christmas bonus)
- ▶ agreements regarding outstanding leave
- ▶ the employee's confidentiality obligations
- ▶ regulation of company pensions
- ▶ return of company property
- ▶ reference

Do I need to sign a termination agreement then and there?

Termination agreements result in the end of the employment relationship and can only be reversed in exceptional cases with certain prerequisites. Therefore, you should carefully consider signing such an agreement and get advice if necessary.

Am I entitled to severance pay?

No. You do not have a legal entitlement to severance pay, except if it arises from a social plan, for example. Whether a severance payment is made and how high it is must therefore be negotiated with the employer.

Do I need to tax my severance pay?

Yes. Since 1 January 2006, severance pay must be taxed from the first Euro. If the requirements of Section 34 (1) and (2) EStG (German Income Tax Act) are met, a tax reduction can only be achieved by applying the fifths rule.

What consequences does a termination agreement have for unemployment benefit?

An entitlement to unemployment benefit can be valid for a period of up to 24 months, §147 SGB III (German Social Code III).

However, the unemployment benefit law provides for various blocking periods and suspensions, §§ 156 ff SGB III. If unemployment benefit is suspended, then it is deferred by the duration of the suspension period, so that it is only paid later if the other conditions are still met. However, its duration is not reduced. Also in the case of a blocking period, the claim is first suspended for the duration of the blocking period. However, the total duration of the claim is also reduced.



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