

# Termination of an indefinite individual employment contract in Switzerland and Liechtenstein

An overview of frequently asked questions in practice



Swiss labor law is in many cases more flexible and liberal than the labor law regulations in other European countries. Liechtenstein has adopted the Swiss regulations on employment contract law (Art. 319 et seq. Swiss Code of Obligations (CO)) practically one-to-one (§ 1173a Art. 1 et seq. Liechtenstein Civil Code (ABGB)).

The liberal character of Swiss and Liechtenstein labor law is reflected in particular in the regulations governing the termination of an employment relationship. In practice, however, there are often uncertainties in connection with dismissals. The following summary provides a brief overview of some of the frequently asked questions.

## **For what reasons can an employee be dismissed?**

Generally, either party to an employment contract can give notice at any time

with or without reason, provided that the statutory or contractually agreed period of notice is observed. However, during certain periods the employee is protected from dismissal (so called “restricted periods”). In addition, the employer must ensure that dismissal cannot be regarded as abusive.

## **Does a dismissal have to be justified?**

There is generally no need to give reasons for the termination of an employment contract. However, the employee has the right to demand written reasons for termination and the employer is obliged to state these at the employee’s request.

## **When is the dismissal of an employee prohibited?**

The employer may not give notice during restricted periods such as:

- the employee’s pregnancy and 16 weeks following the birth;

- a period of 30 days in the first year of service, of 90 days in the second year up to and including the fifth year of service and of 180 days after the sixth year of service, if the employee is fully or partially prevented from working due to illness or accident;
- the employee’s performance of compulsory military or civil defense service, provided such service lasts more than 11 days, as well as four weeks prior to and four weeks following such service. However, this last point is missing in Liechtenstein labor law, since Liechtenstein citizens do not have to perform military or civil defense service.

## **What happens if notice is given during a restricted period?**

Any notice of termination given by the employer during a restricted period is null and void. Therefore, it must be given again when the respective period has expired.

### What happens if the employee becomes ill after notice has been given?

If the employee becomes ill during the period of notice, the period of notice is extended by the number of sick days (but by no more than the restricted period that is applicable by law in the respective case). Since an employment relationship may not end in the middle of a month, the period is additionally extended to the next end of the month.

### In what cases would dismissal be considered unlawful?

The reasons in which dismissal is considered unlawful are listed in Art. 336 CO, respectively in Art. 46 ABGB. Terminations of employment are unlawful if, for example, they are based on a quality inherent in the employee as a person, such as age, race, sex, origin or other, if the employee exercises a constitutional right such as political activity or practices his or her religious faith etc.

### What happens if the termination is qualified as unlawful?

In contrast to termination by the employer during a restricted period, an unlawful notice of termination is valid. The employee has no right to remain employed. However, the employer who abuses his right of termination is obligated to pay compensation to the employee. The compensation is determined by the court and may not exceed the employee's salary for six months.

### How long is the notice period?

At the end of the probationary period, the statutory notice periods are one month in the first year of service, two months in the second and up to and including the ninth year of service and three months thereafter. The parties may freely determine the duration of the period of notice in writing, whereby the period of notice may not be shorter than one month (special provisions for employees with a collective bargaining agreement apply).

### In which cases can an employer give termination with immediate effect?

Both the employee and the employer may terminate the employment relationship at any time with immediate effect for good cause. Good cause for termination is any circumstance in which the party giving notice cannot be expected in good faith to continue the employment relationship. Only serious misconduct that destroys mutual trust can give the other party the right to terminate the contract with immediate effect.

### Is it possible to put the employee on garden leave?

Yes, but during garden leave the employee remains employed by the employer and is therefore entitled to his or her salary, commissions, lump-sum expenses etc. until the end of the notice period. Garden leave is not permitted in exceptional cases only. These are cases where an employee needs to be able to work effectively to secure his or her professional future (e.g. a pilot who would lose his license if he did not fly regularly).

### What are the employee's claims in the event of termination?

In the event of termination of the employment relationship within a calendar year (e.g. to May 31), the employee has a pro-rata entitlement to holidays and other benefits, such as bonus payments or share-based compensation, provided that these payments qualify as a part of the salary. In addition, the employment contract may provide for a severance payment, for compensation with respect to a non-competition clause or other indemnification. In practice, particularly bonus payments give rise to disputes in court. The reason for this is that it is not always clear whether these payments can be qualified as being a part of the employee's salary or not. In general, in cases where a bonus can be calculated according to objective criteria (i.e. does not depend on the employee's personal performance) and has been paid regularly in the past, it is likely that the bonus payments can be qualified as being a part of the salary and the employee therefore has a pro-rata entitlement in the event of termination. However, this question must always be assessed on a case-by-case basis.

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