

10 Pitfalls

when offboarding employees in Germany



Letting employees go in Germany can be complex. In addition to operational handover work to be done, the mere termination of an employment can come with bureaucratic and legal hurdles employers should be aware of when their German employees are departing. The following outlines the ten most common pitfalls when it comes to offboarding employees in Germany – and how to avoid them.

1 Not informing payroll early and enough

After it becomes clear that employees are leaving the employer, payroll should be informed of the correct termination date as soon as possible. Under German law, employees get paid their regular salary through official notice periods – no “pay in lieu” allowed. By deregistering employees upon their termination date, employers ensure that employees are paid only what they are legally owed while preventing accidental payments beyond that. If any payments have been agreed with the employee by way of settlement or termination agreement (e.g. severance), the payments therein granted must be instructed to payroll as well. It is important that each payment is titled correctly (severance as severance, variable as commission/bonus). Otherwise, the applicable deductions are not made correctly.

documents are standard procedure for payroll providers, but the providers should be informed of this in each individual case.

2 Not providing exit documents on time and completely

Employers should bear in mind documents to be issued to the employee upon termination. This particularly includes the employment certificate which is issued via an online platform to which a standard payroll provider usually has access to. Furthermore, social insurance confirmation and a tax wage certificate must be provided to an employee upon their termination date. These

3 Not providing a proper reference letter

Employers should be prepared to issue a fair, well-intentioned qualified reference letter and manage the pick-up/issuance logistics, so it is available at exit. While employees are legally entitled to a wet-ink signature on their reference letter, the parties can either mutually agree on a digital signature or a qualified digital signature. If no consent by the employee in any way is given, a wet-ink signed reference letter must be provided to the employee in hard copy.

4 Forgetting to pay out unused vacation

Employers should clarify remaining vacation early and document precisely how it will be handled. Normally, the employee is expected to take the vacation in kind before the termination date. However, if this is not (fully) possible due to the termination, any unused vacation days which were not offset at termination date must be paid out. In order to avoid this, there is also the option of placing the employee on garden leave and taking into account any outstanding vacation entitlements and other potential time-

off entitlements (such as those resulting from accumulated overtime).

Employers should therefore weigh up whether, toward the end of the employment relationship, they would prefer to continue engaging the employee's services or to refrain from doing so and place the employee on garden leave.

Additionally, should the employee request it, the employer must provide the employee with a statement on the termination date detailing the vacation days granted or compensated during the current calendar year.

5 Not handling post-contractual non-compete clauses correctly

Employers should verify whether a post-contractual non-compete exists, whether it is valid and decide early whether to maintain, waive, or adjust it. Valid post-contractual non-compete must provide for a compensation payment of at least 50% of the last earned remuneration for the duration of the non-compete. Unilateral waiver of a (valid) post-contractual non-compete on behalf of the employer is only possible with the effect of the obligation to pay a compensation payment being waived one year after the waiver was declared. Mutual waiver is always possible, but employers should expect that employees will only waive if they receive something in return.

6 Not collecting company property

The employee must return all employer property (documents, devices, badges, tools, protective gear). Employees generally have no right to retain company items – unless transfer of ownership is explicitly agreed. Particularly, the return of a company car should be well documented and timely conducted. Employers should specify the exact return date and the items to be returned and capture a signed hand-over protocol (including condition notes).

7 Not following clean IT offboarding procedures

The access to the employer's IT systems must be revoked at termination date at the latest. This includes disabling or deleting all accounts for e-mail, collaboration and cloud services, CRM, HR, and finance systems, as well as removing remote and admin rights and access to shared mailboxes and distribution lists. Use a structured IT offboarding checklist to ensure no system is overlooked. If employees need to retrieve private data stored on company devices, arrange a supervised appointment with IT, set a clear deadline, and allow copying personal files to a private medium under supervision – without granting access to business-critical information.

8 Not making confidentiality clear

Employers should not rely solely on implied duties, but instead include clear confidentiality clauses in all employment and separation agreements – for example, post-termination non-disclosure of all business, client, and partner information, mandatory return or deletion of confidential data, and a ban on using trade secrets for personal or third-party gain. Reference to ongoing obligations under the German Trade Secrets Act (*Geschäftsgeheimnisgesetz* – "**GeschGehG**") should be made explicitly. Employers should also implement practical measures, such as a written reminder of confidentiality duties in exit documents and a checklist for the return or deletion of confidential materials, as part of their "appropriate measures" to protect trade and business secrets.

Employers should clearly highlight confidentiality rules in exit documents, along with other offboarding steps (like returning property or handling accounts), to ensure strong controls-of-property, e-mail/account handling) to create clear responsibilities. Managers and IT need a short briefing on confidentiality: Give clear instructions such as turning off system access on the last day, dealing with confidential data, and watching for breaches – so all safeguards match what the contract requires under German law.

9 Not checking for repayment obligations ("claw back" claims)

Employers should determine at an early stage whether there are any outstanding payment claims against departing employees. In some cases, certain payment claims may even arise as a result of the (early) termination of the employment relationship, such as the repayment of training costs, sign-on bonuses, or employer loans – if the claw back clause in the applicable agreement is well drafted. Should such payment claims exist, these claims should be asserted in good time, possibly by offsetting them against outstanding salary claims where permitted. Furthermore, such payment claims should be addressed in the event that a termination/settlement agreement or a court settlement is concluded.

10 Not paying attention to dismissal claims filed

If the employment relationship was terminated by the employer, the employer should verify whether the employee has filed an unfair dismissal claim (*Kündigungsschutzklage*) with the competent labor court. Employees are entitled to file a claim within three weeks of receiving their dismissal letter, regardless of whether or not it is with merit. Filed claims can be checked by reviewing incoming court correspondence and confirming with the competent labor court if there are any proceedings pending against the company in relation to the specific employee and termination.

This check is important because, depending on the specific circumstances, employers may have to consider the possibility that the termination was invalid. In such a case, in addition to potentially lengthy legal proceedings, the employer may also be required to retroactively pay salary arrears to the employee. In order to develop a suitable strategy and, where appropriate, approach the employee to negotiate the options for a settlement of the dispute, early notification of the legal action is highly beneficial.

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contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

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